

Presentation to Diplomats from Delegations to the Council of Europe, at the Open Society Justice Initiative and the European Implementation Network joint civil society briefing in advance of the forthcoming CM-DH

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1. Ladies and Gentlemen. Bulgaria holds the Chairmanship of the Council of Europe and its slogan is, “unity creates strength”. My presentation will focus on two groups of people to whom the universality of human rights has not yet reached: prisoners and people with mental health issues or intellectual disabilities.

1. Facts

1.1. Neshkov

2. Mr Neshkov was sentenced to 28 years imprisonment. This container on the screen measures 12m by 3m. It is the same size of the room in Varna Prison where Mr Neshkov was kept for several months with 10-15 other inmates. It was full of beds and cabinets. There was no access to sunlight and, unlike the container, no ventilation system. It was impossible for air the room and some of the inmates smoked. There was no toilet, just a bucket.
3. He faced legal and financial barriers to seeking justice in Bulgaria. In March last year the Strasbourg Court in a pilot judgment found a violation of Articles 3 and 13. The NGO Bulgarian Helsinki Committee represented one of the applicants in this case.

1.1. Stanev

4. When he was in his mid 40s he was taken from his home and driven 400km away to spend seven years in this establishment. Mr Stanev’s

only crime was to have a diagnosis of a mental health issue. Behind his back he had been placed under guardianship and his guardian had arranged a transfer to the institution that also had terrible conditions, and in two winters had a ten percent mortality rate. In 2012 the Strasbourg Court found a violation of Article 3 – the first in a disability case, and of Art 5 – the first in a social care case. My organisation litigated this case.

2. Bulgaria's incarceration crisis

2.1. Neshkov

5. In March last year the European Committee for the Prevention of Torture (CPT) issued a statement on prison and investigation detention facilities, that references Neshkov judgement from that January. The CPT noted its concerns in relation to, “the phenomenon of ill-treatment (both in the police and the prison context), inter-prisoner violence, prison overcrowding, poor material conditions of detention in IDFs and prisons, inadequate prison health-care services and low custodial staffing levels, as well as concerns related to discipline, segregation and contact with the outside world.” It found that, “corruption remains endemic in the Bulgarian prison system”
6. On overcrowding, it specified that the “vast majority of inmates had less than 2 msq of living space in multi-occupancy cells”, and that “material conditions at Sofia, Burgas, and Varna Prisons remained characterised by an ever-worsening state of dilapidation”. It went on, “[m]ost parts of the establishments visited were unfit for human accommodation and represented a serious health risk for both inmates and staff. To sum up, in the Committee’s view, the material conditions alone in the three prisons visited could be seen as amounting to inhuman and degrading treatment.”
7. The Government has responded to the CPT over many years. Commenting on these responses, the CPT’s view was that they, “contained very little new information and failed to address the majority of the Committee’s recommendations, usually merely quoting the existing legislation and/or explaining the lack of action by referring to budgetary constraints.” Exasperated, the CPT found that, “little or no progress has been achieved in the implementation

of key recommendations repeatedly made by the CPT”.

8. In the Neshkov pilot judgment the Court focused on two general measures: overcrowding, material conditions and hygiene. The Court recommended the government establish an independent body to monitor detention centres, carry out effective investigations of prisoners' complaints, award compensations and issue legally binding and enforceable decisions. It also suggested strengthening prosecutors' supervisory functions.
9. The government has done much planning but there are not yet any legislative results. It has introduced legislation that should pass in the next 3-4 months. The Bulgarian Helsinki Committee represented one of the applicants and submitted a third party intervention and had a representative in the Ministry of Justice working group. The Helsinki Committee says that with regard to the improvement of the actual conditions of detention however, the situation is more complicated. Although at present the number of prisoners in the system decreased due to the general demographic decline and migration, particularly in the age-groups in which people commit indictable offenses, some prisons continue to be overcrowded (especially Varna and Burgas). Even though in the system as a whole there may be sufficient space now, the prisoners from these and some other prisons cannot be transferred due to the specific legal requirements (related to their residence, recidivism and so on). These legal issues are addressed to some extent in the draft legislation, which allows for more discretion on the part of the prison authorities in the process of placement. The Neshkov and Kehayov judgments are not ready for closure because the necessary legislation is not yet passed and because the system is not adapted to their requirements.

2.2. Stanev

10. The Bulgarian social care system incarcerates 7,000 people with disabilities most of whom are under guardianship. To their discredit the CPT has not paid attention to this population. MDAC has prepared an information sheet on the general measures in *Stanev* and you each have have a copy. With regard to Article 6 of the ECHR, the Court recommended that the Bulgarian government “envisage the necessary general measures to ensure the effective possibility”

of accessing a court for a person who has been partially deprived of legal capacity with a view to seeking its restoration.

11. The reason for this is that people under guardianship are denied access to courts, and this meant that the applicant tried hard to challenge his detention in the disability institution, or to challenge the deprivation of his legal capacity, but his efforts were in vain as the law provided no effective way for him to do this. A domestic judicial finding that he was detained in the institution unlawfully may well have prevented Mr Stanev from having to spend seven subsequent years in cold and dirty conditions in an establishment that the Council of Europe's Committee for the Prevention of Torture insisted the government shut down as it was unfit for human habitation. Moreover, Mr Stanev could not obtain compensation for the violations of his rights owing to the fact that as a person deprived of legal capacity, he was legally prohibited from accessing the justice system. Given the many countries that have a similar system, the general measures ordered by the Strasbourg Court are of great significance.
12. The government submitted an Action Plan to the Committee of Ministers last summer. It explained that the draft "Law on Natural Persons and Support Measures" would ensure that people with disabilities would retain their legal capacity, thereby removing the access to courts barrier highlighted in *Stanev*. Under the new law, people with disabilities would be able to access court-authorized "support measures" for up to two years. The Government emphasised that respecting the rights, will and preferences of the person concerned was central in the proposed legislation.
13. Unlike prisons, there should be no effort to make disability institutions conditions better. Rather, these institutions should be evacuated and closed and their residents should be placed in scattered site housing in the community, and provided with supports that meet their needs, wishes and preferences. Bulgaria has also ratified the UN Convention on the Rights of Persons with Disabilities that provides a "right to live independently and be included in the community".

3. Similarities and differences

14. There are similarities between the two cases.
 - a) Incarceration and mental health work bi-directionally. In Bulgaria as, unfortunately, in many other countries, if a person has a mental health issue or intellectual disability she is incarcerated. And those incarcerated in the criminal justice system develop mental health issues. Detention is anathema to therapy and rehabilitation. In detention lives get worse, and this has a knock on effect on social inclusion, family life, parenting, political participation, employment and therefore the overall economy.
 - b) Exploitation, violence and abuse pervade both systems. Many prisons and social care institutions in Bulgaria are Article 3 violation factories.
 - c) There are no effective domestic remedies available for violations in either system.
 - d) Bulgaria over-uses incarceration. There is a proper place for prisons in democratic societies, but no need for disability institutions.
 - e) Community alternatives are underused, although progress has been made on bail and non-custodial sentences.
15. The difference between the Neshkov and Stanev issues is that incarceration based on criminal activities has a legitimate role in society, whereas incarceration based on disability does not. The government should transform the social care system so that it is based on choice and control about where and with whom to live. It should develop community based services including supports so that no-one's legal capacity is ever denied. An institutionalised approach to disability is now anachronistic and should be moved to the archive room. Segregation people based on disability means that we as a society do not respect difference and accept people with disabilities "as part of human diversity and humanity"

4. Recommendations to the government

16. I invite the Committee of Ministers to urgently implore the Bulgarian Government to take the following actions:
 - a. Ensure the draft laws – on prisons, and on supported decision-making – make it onto the statute books at the earliest opportunity.
 - b. Stop the inflow into residential institutions, and create community support services to respect the right to live in the community for all people with disabilities.
 - c. Ensure that there is political leadership and budgetary allocations to implement the laws.
 - d. Ensure regular, independent and effective monitoring of prisons and of social care institutions
 - e. Ensure independent complaints handling mechanisms for both systems
 - f. Put in place effective remedies for victims of Article 3 violations in both systems, and view people who have suffered such violations as victims of torture so that they are provided with psychological, social, legal and medical support and rehabilitation.

17. I finish with a quotation from Rusi Stanev. On his way to Strasbourg to attend the oral hearing in his case in 2011 he said, “I’m a person, I’m not an object, I need my freedom.” I encourage your delegations to implore the Bulgarian government to make progress to ensure that prisoners and people with mental health issues or intellectual disabilities enjoy the full range of rights set out in the European Convention on Human Rights, so as to breathe life into the slogan that “Unity creates strength”.

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