

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**



12 March 2007  
**Case Document No. 1**

**Mental Disability Advocacy Center  
v. Bulgaria  
Complaint No. 41/2007**

# **COMPLAINT**

**registered at the Secretariat on 20 February 2007**



EUROPEAN COMMITTEE OF SOCIAL RIGHTS

Council of Europe  
Strasbourg, France

**COLLECTIVE COMPLAINT**

under Article D of the revised European Social Charter  
and Article 1(b) and 4 of the Additional Protocol to the European Social Charter Providing for  
a System of Collective Complaints

**The Mental Disability Advocacy Center**

**Against**

**The Republic of Bulgaria**

## **I. THE PARTIES**

### ***A. THE APPLICANT***

1. *Name:* **Mental Disability Advocacy Center (MDAC)**
2. *Established in:* **Hungary**
3. *Address:* **Rákóczi út 27/b, H-1088 Budapest, Hungary**
4. *Tel. No.:* **+36-1-413-2730 (tel.); +36-1-413-2739 (fax)**
5. *Statutory representative:* **Oliver Lewis, Executive Director**
6. *Legal representative:* **Barbora Bukovská, Legal Director**
7. *Address of representative:* **Barbora Bukovská, MDAC, Rákóczi út 27/b, H-1088 Budapest, Hungary**

### ***B. THE RESPONDENT GOVERNMENT***

8. **Bulgaria**

## II. SUMMARY OF THE COMPLAINT

- i. This complaint argues that children living in Homes for Mentally Disabled Children in Bulgaria receive no education. The failure to provide education to these children violates Articles 17(2) and Article E of the Revised European Social Charter, articles which have been ratified by Bulgaria.
- ii. The complaint reviews the relevant provisions of international law to demonstrate that State Parties to the Revised European Social Charter are required to provide education to all children living under their jurisdiction. The provision of education to all children necessitates, by definition, its provision without discrimination. An internationally acknowledged and prohibited ground of discrimination is disability.
- iii. International law does not contain explicit criteria on assessing the quality of different educational programs, as education systems are culturally sensitive and country-specific. However, education systems have to meet the requirements of availability, accessibility, adaptability and acceptability.
- iv. The complaint provides a description of the relevant Bulgarian legislation and the overview of the different administrative organs and physical institutions with responsibilities to care for disabled and/or abandoned children. Children living in Homes for Mentally Disabled Children were considered to be uneducable until 2002. In 2002 the relevant legislation was changed and the Bulgarian state obliged itself to provide education to these children.
- v. The state policy of education to all has not been implemented in practice. Only 6.2% of the children living in Homes for Mentally Disabled Children have been enrolled in schools. The current educational system in Bulgaria therefore clearly precludes access to education for such children in direct violation of their right to education on a non-discriminatory basis.
- vi. The complaint submits that Bulgarian schools are not adapted to accommodate the abilities and needs of children from Homes for Mentally Disabled Children. Bulgaria is therefore in direct violation of the right to education and directly discriminates, on the basis of disability, children from these homes. The Homes for Mentally Disabled Children make no provision at all for the education of their resident children. The 'treatment' they receive does not meet the requirement of acceptability as an educational program and cannot be considered as such. These Homes, operated by the state, directly violate the right to education and directly discriminate against resident children on the basis of disability.
- vii. The complaint submits that the Respondent Government cannot invoke the lack of resources or progressive realisation of rights as a defence for discriminating against children with disabilities in their access to education. The failure to provide education is a result of serious and unreasonable policy failures on the side of the Respondent Government and not because of (alleged) resource shortages.

### III. THE ALLEGED VIOLATIONS OF THE SOCIAL CHARTER

#### A) Admissibility

##### i. *Standing of the Mental Disability Advocacy Center*

9. The Mental Disability Advocacy Center (*hereinafter* “MDAC”) is an international non-governmental organisation, based in Budapest, Hungary, with participatory status with the Council of Europe. It is a Hungarian foundation registered under No. 8689 by the Decision No. 11. Pk.60797/2002/3 of the Metropolitan Court of Budapest (effective as of 24 October 2002). According to the registration documents and the MDAC Charter, the statutory representative of the organisation is the executive director, Oliver Lewis.
10. MDAC has had standing with the European Social Charter collective complaint mechanism based on the decision of the Committee of Ministers from 22 June 1995 for the period of 1 January 2005 to 31 December 2008 (see Attachment No. 1).
11. According to Article 3 of the Second Additional Protocol, international non-governmental organisations referred to in Article 1(b) may submit complaints only with respect to those matters regarding which they have been recognised as having particular competence. According to Article 4.3. of MDAC’s Charter, the objectives of the organization are to promote legal and other forms of advocacy for human and civil rights of people with mental health and/or intellectual disabilities, as well as to improve the quality of their lives by advocating public policies that promote community integration, self-determination and support of individuals with mental disabilities and their families.
12. Since July 2005, MDAC has been working extensively in Bulgaria on various issues related to rights of adults and children with mental health problems and intellectual disabilities, especially litigating cases of human rights abuses. The MDAC legal monitor is researching and litigating disability related cases on a daily basis. In November 2006, MDAC published a comprehensive report on specific issues related to the rights of people with disabilities (guardianship) which is followed up with further research and monitoring. MDAC’s legal research, direct work and experience in Bulgaria provide the basis for the compilation of this complaint.<sup>1</sup>

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<sup>1</sup> The analysis and conclusions in this collective complaint are also based on a number of internationally recognized reports that address the subject matter of the complaint. These are mainly, *Children in Institutions, volume 5: the Institutions for Children with Special Needs in Bulgaria, Bulgarian Helsinki Committee*, Sofia, 2002 (*hereinafter* “BHC 2002 Report”); *Rights of People with Intellectual Disabilities – Access to Education and Employment*, Bulgaria Monitoring Report, OSI EU Monitoring and Advocacy Program, Budapest, 2005 (*hereinafter* “EUMAP Bulgaria Report”); the *Report on the situation of the specialized institutions for children with disabilities*, Bulgarian State Agency for Child Protection, Sofia, 2005 (*hereinafter* “the State Agency 2005 Report”); *Alternative Monitoring Report on Bulgaria*, Save the Children UK, Sofia, October 2006 (*hereinafter* “Save the Children 2006 Report”); and *Report on the Monitoring of Homes of Mentally Disabled Children*, Bulgarian Helsinki Committee, Sofia, 2006 (*hereinafter* “BHC 2006 Report”). Copies of all reports are attached to this complaint.

The Applicant notes that the most comprehensive analysis of Homes for Mentally Disabled Children (*hereinafter* “HMDC”) has been conducted by the Bulgarian Helsinki Committee (*hereinafter* “BHC”). In 2002, the BHC visited and assessed all HMDC in Bulgaria using a standardised methodology. In 2006, the BHC repeated its earlier research, but the results have not been officially released yet. At the time of submitting this complaint, the BHC made available to the Applicant the reports concerning six HMDC.

*ii. Respondent Government*

13. The respondent, the Government of Bulgaria, ratified the Additional Protocol for a System of Collective Complaints on 7 June 2000. The Protocol entered into force on 1 August 2000.
14. This complaint is submitted in writing under Article 4 of the Additional Protocol and relates to Articles 17(2) and E of the Revised European Social Charter (*hereinafter* “the Social Charter”). These provisions were accepted by the Respondent Government upon the ratification of the Social Charter.

**B) Subject matter of the complaint**

15. The Applicant argues that the facts described in this complaint disclose violations of the right to education and protection from discrimination guaranteed by the Social Charter. Namely, the failure of the Respondent Government to provide education to children with moderate, severe or profound intellectual disabilities,<sup>2</sup> who live in Homes for Mentally Disabled Children in Bulgaria, **violates the obligations under requirements of Article 17(2) of the Social Charter independently and in conjunction with Article E of the Social Charter**. The violations of Article 17(2) and Article E are “so intertwined as to be inseparable<sup>3</sup>.”
16. The Applicant points out that this complaint does not address the extent and quality of education provided to children assessed as having mild intellectual disabilities, who are placed in the Bulgarian system of special schools. This certainly does not mean that the Applicant considers education provided in the system of special schools to comply fully with the requirements of Article 17(2) of the Social Charter. The Applicant believes that complete lack of education for children in Homes for Mentally Disabled Children in Bulgaria (“Дом за деца и младежи с умствена изостаналост”, *hereinafter* “HMDC”) presents issues different from that of the quality of education provided to children assessed as having mild disabilities. Moreover, the HMDC system is institutionally completely separated from the system of special schools and both systems fall under the authority of different Bulgarian ministries (HMDC belong under the authority of the Ministry of Labour and Social Policy, and special schools under the Ministry of Education). Problems

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The Applicant also notes that the State Agency 2005 Report was compiled based on visits to nineteen homes for children with disabilities (out of which 18 were HMDC and 1 was a Home for Children with Physical Disabilities and Intact Intellect), in which 1,159 children live.

<sup>2</sup> Note on terminology: According to the tenth edition of the World Health Organisation’s International Classification of Diseases (ICD-10), disabilities can be classified in four degrees according to their seriousness: mild, moderate, severe and profound. See International Classification of Diseases (ICD-10), World Health Organisation, 1990, available at <http://www.who.int/classifications/icd/en/>. Although the ICD-10, adopted in 1990, uses the currently outdated term “mental retardation”, its classification of “retardation” or “disabilities” into four subgroups is still valid. This classification is used by health and educational professionals around the globe, including Bulgaria, and therefore, it is also used in this complaint. The Applicant notes that some reports and court decisions cited in this complaint similarly use the outdated term “mental retardation”. This does not, however, diminish their credibility.

<sup>3</sup> See, *mutatis mutandis*, *Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits from 4 November 2003 (*hereinafter* “Autism-Europe v. France”), para. 47.

concerning each system differ, hence both institutions present significantly different challenges and cannot be considered together.

*i. The scope of Articles 17(2) and E of the Social Charter*

17. Article 17(2) of the Social Charter reads:

“With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

...

2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.”

18. The Applicant asserts that Article 17(2) requires the Respondent Government to provide *free primary and secondary education to all* children, including children with disabilities. Any exclusion of children with disabilities would have to be explicitly mentioned in the Social Charter. This interpretation of the Article 17(2) has been repeatedly confirmed by the European Committee of Social Rights (*hereinafter* “ECSR”) in general and specifically in respect to Bulgaria.

18.1. In particular, it has been recognised by the ECSR that Article 17(2) “covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Social Charter, particularly Article 7”.<sup>4</sup>

18.2. Additionally, in the framework of the periodic reporting procedure, the ECSR repeatedly required Bulgaria to report on the education of children with disabilities under Article 17(2) and commented on this issue.<sup>5</sup>

19. The right of people with disabilities to education is provided for also in other articles of the Social Charter, notably in Article 15(1) which Bulgaria has not ratified. Bulgaria has not ratified Article 17(1) of the Social Charter, which provides for broader protection of children than that inscribed in Article 17(2). Thus, the Respondent Government is not obliged to provide protection and special aid from the state for children temporarily or definitely deprived of their family’s support; or to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, assistance, education and training they need.<sup>6</sup> Nevertheless, this does not preclude consideration of the relevant

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<sup>4</sup> See, *the Digest of the Case Law of the ECSR*, prepared by the Secretariat of the ECSR, March 2005, available at [http://www.coe.int/t/e/human\\_rights/esc/2\\_ECSR\\_European\\_Committee\\_of\\_Social\\_Rights/Digest.pdf](http://www.coe.int/t/e/human_rights/esc/2_ECSR_European_Committee_of_Social_Rights/Digest.pdf), (last accessed on 13 February 2007) (*hereinafter* “the Digest”), p. 77.

In Bulgaria majority is attained at the age of 18.

<sup>5</sup> In the framework of the periodic reporting procedure, the ECSR repeatedly required Bulgaria to report on the education of children with disabilities under Article 17(2) and commented on this issue. See *European Committee of Social Rights: Conclusions 2005 (Bulgaria)*; available at [http://www.coe.int/t/e/human\\_rights/esc/3\\_reporting\\_procedure/2\\_recent\\_conclusions/1\\_by\\_state/Bulgaria\\_2005.pdf](http://www.coe.int/t/e/human_rights/esc/3_reporting_procedure/2_recent_conclusions/1_by_state/Bulgaria_2005.pdf) (last accessed on 13 February 2007) (*hereinafter* “ECSR Conclusions 2005: Bulgaria”).

<sup>6</sup> Article 17(1) of the Charter.



disability-specific education issues under Article 17(2) and does not exempt the Bulgarian state from providing education to children with disabilities.<sup>7</sup>

20. Article E of the Social Charter requires states to secure all rights set forth in the Social Charter without discrimination

“on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

Although Article E does not explicitly list disability among protected grounds, the list of prohibited grounds is not exhaustive. Moreover, according to the case law of the ECSR, disability is “adequately covered by the reference to ‘other status’.”<sup>8</sup>

21. Additionally, Article E does not only prohibit direct discrimination but also all forms of indirect discrimination. According to the ECSR:

“such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are generally accessible to all.”<sup>9</sup>

22. Taken in conjunction with Article 17(2), Article E requires that the right to free primary and secondary education be provided to all children without discrimination. Exclusion of children with disabilities from the protection of Article 17(2) would run counter to the requirements of Article E and would circumvent the whole purpose of Article 17, which is to secure the right to education of all children. Therefore it has to be examined whether children with intellectual disabilities in Bulgaria suffer a discriminatory denial of education as compared to children without such disabilities.

## ***ii. The right to education and equality of educational opportunities in international law***

23. The Applicant submits that applicable human rights treaties as well as customary international law supports its arguments under the Social Charter that the Respondent Government is obliged to provide primary education to *all* children, including children with disabilities.

24. International treaties: The ECSR has repeatedly stated that the Social Charter is a living instrument, which must be interpreted in accordance with developments in the national laws of the Council of Europe member states as well as relevant international instruments.<sup>10</sup> In this respect, the Applicant points out that Bulgaria has ratified a number of international treaties that recognise the right to education and the right to equality of educational opportunities (through a combination of provisions relating to a general right to non-discrimination and a specific right to non-discrimination in education). Those include for example:

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<sup>7</sup> See, *mutatis mutandis*, *European Roma Rights Centre v. Bulgaria*, Complaint No. 31/2005; decision on admissibility from 10 October 2005, para 9.

<sup>8</sup> See *Autism-Europe v. France*, para 51.

<sup>9</sup> See *Autism-Europe v. France*, para. 52.

<sup>10</sup> See, for example, *World Organisation against Torture (OMCT) v. Greece*, Complaint no. 17/2003, decision of 26 January 2005, para 31.

- the UN Universal Declaration of Human Rights;<sup>11</sup>
- the International Covenant on Economic, Social and Cultural Rights (*hereinafter* “ICESCR”);<sup>12</sup>
- the European Convention for the Protection of Human Rights and Fundamental Freedoms (*hereinafter* “ECHR”);<sup>13</sup>
- the UNESCO Convention against Discrimination in Education.<sup>14</sup> It should be noted that virtually since its inception, the focus of UNESCO has been on inclusive education.

24.1. In the context of children, the right to equal opportunities in education is specifically reiterated and reaffirmed in the Convention on the Rights of the Child (*hereinafter* “CRC”).<sup>15</sup> The right to education is set out in Articles 28 and 29 of CRC. Article 28 recognizes the right of the child to education, and imposes a duty on states to progressively provide free primary education. When Article 28 of the CRC is read in conjunction with Articles 2 and 14 of the ICESCR, it is clear that states have a duty to provide free primary education to the maximum extent of their available resources. Article 2 of the CRC ensures that children enjoy their human rights "without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status" - thus, guaranteeing the right to education to all children.

25. In the regional context, the Respondent Government should also follow the Council of Europe’s Committee of Ministers’ Recommendation (1992)6 on a coherent policy for people with disabilities, the aim of which is to enable “all people who are disabled or are in danger of becoming so, regardless of their...degree and severity of disablement” to “exercise their rights to full citizenship and have access to all institutions and services of the community including education.<sup>16</sup>” Also, the Respondent Government should implement the Council of Europe’s Disability Action Plan 2006 – 2015.<sup>17</sup> This important Council of Europe policy document establishes a Europe-wide strategy to combat disability discrimination and emphasises access to education for children with disabilities in mainstream settings. It aims to ensure that “all persons, irrespective of the nature and degree of their impairment, have equal access to education” and “that disabled people have

<sup>11</sup> Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948); Article 2 and Article 26(1).

<sup>12</sup> International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976; Article 2(2) and Article 13.

<sup>13</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953, *as amended by Protocols respectively*; Article 14 and Article 2 of Protocol 1.

<sup>14</sup> Convention against Discrimination in Education, 429 U.N.T.S. 93, adopted by the *General Conference of UNESCO* on 14 December 1960, *entered into force* May 22, 1962.

<sup>15</sup> Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2 1990. The Convention explicitly prohibits discrimination on the grounds of disability, recognises the right to education of children with disabilities and provide for free primary education for all (see in particular Articles 2(1), 23 and 28 of the Convention).

<sup>16</sup> See Recommendation (1992)6 of the Committee of Ministers to Member States on a Coherent Policy for People with Disabilities, adopted by the Committee of Ministers from 9 April 1992, part I.2., available at <https://wcd.coe.int/com.instranet.InstraServlet?Command=com.instranet.CmdBlobGet&DocId=602412&SecMod e=1&Admin=0&Usage=4&InstranetImage=43361> (last accessed on 13 February 2007).

<sup>17</sup> Recommendation (2006)5 of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015.

the opportunity to seek a place in mainstream education by encouraging relevant authorities to develop educational provision to meet the needs of their disabled population.”<sup>18</sup>

26. Customary international law: Customary international law develops from generally accepted practices which nations follow out of a sense of legal obligation.<sup>19</sup> The two critical elements for the existence of a customary norm of international law are a uniform practice adhered to generally by states and their belief that the practice is required by international law. Unlike treaties and conventions, a rule of customary law binds even those states which have never formally recognized it. A state is bound to customary international law unless it shows its opposition to that rule from the time of the rule's inception.<sup>20</sup> National and international courts have relied on international treaties and declarations as well as national constitutions and laws to assist them in determining whether a practice has crystallized into a customary norm.

Widely ratified and adopted human rights conventions and declarations as well as domestic legislation<sup>21</sup> concerning the right to education support the conclusion that certain aspects of the right to education have joined the corpus of customary international law.<sup>22</sup> These aspects also include the right to equality of educational opportunities. Bulgaria is a party to major human rights treaties guaranteeing the equal opportunities mentioned above (see above, para. 24), as well as the Convention on the Rights of the Child. Bulgaria did not enter reservations to the above treaties and has never opposed educational rights in the treaties which the UN has implemented. Therefore, considering the widespread uniformity of language of international instruments pertaining to educational rights and the fact that Bulgaria has never opposed the recognition of this right, customary international law appears to require equal opportunities for all, including children with disabilities.

### *iii. The scope of the right to education and equality of educational opportunities*

27. Although international treaties providing for the right to equality of educational opportunities do not explicitly determine the substance of the right to education, some authoritative guidance is provided by the UN Committee on Economic, Social and Cultural Rights (*hereinafter* “CESCR”) and by successive UN Special Rapporteurs on the Right to Education<sup>23</sup>. Given the similarity of the rights covered by the ICESCR and the Social

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<sup>18</sup> *Ibid.*, Article 3.4.2 ii..

<sup>19</sup> Article 38(1) of the Statute of the International Court of Justice instructs the Court to apply *inter alia* “international custom, as evidence of a general practice accepted as law” in the resolution of disputes submitted to it. The main evidence of customary law is to be found in the actual practices of states, and the ICJ has suggested that a customary rule must be based on a “constant and uniform usage.” See Black’s Law Dictionary (7th ed. 1999) p. 391.

<sup>20</sup> See Rebecca Wallace, *International Law* 25-26, Sweet & Maxwell Ltd., 1997, 1996, p. 25-26. Barry E. Carter & Phillip R. Trimble, *International Law*, Little, Brown & Co., 1994, p. 134-36.

<sup>21</sup> Many European states specifically guaranteed equality of opportunities in the exercise of the right to education in their Constitutions and/or national laws. See, for example, constitutions of Cyprus, Spain, Ireland, Poland, Denmark, Finland, Hungary or Slovakia.

<sup>22</sup> Cf. Hodgson, D., *The Human Right to Education*, (1998), Ashgate, p. 62; C. de la Vega, ‘The Right to Equal Education: Merely a Guiding Principle or Customary International Legal Right?’ (1994) 11 *Harvard Black Letter Law Journal* 37; Knight, S., ‘Proposition 187 and International Human Rights Law: Illegal Discrimination in the Right to Education’ (1995) 19 *Hastings International and Comparative Law Review* 183.

<sup>23</sup> The UN appointed a special rapporteur on the right to education to “report on the status, throughout the world, of the progressive realization of the right to education... and the difficulties encountered in the implementation of this right.” Commission on Human Rights Res. 1998/33, P 6, in U.N. Econ. & Soc. Council [ECOSOC], Official Records 1998, Supp. No. 3, Commission on Human Rights, Report on the 54th Session, ch. II(A), at 124-26, U.N. Doc. E/CN.4/1998/177 (April 24, 1998). Katarina Tomaševski was appointed the first rapporteurship

Charter and similar roles of the CESCR and the ECSR systems in the authoritative interpretations of respective treaties, the Applicant considers that the opinion of the CESCR should carry particular weight in ascertaining the relevant characteristics of the right to education under the Social Charter.

28. The CESCR has elaborated an authoritative interpretation of the right to education under the ICESCR in its General Comment No. 13 on the Right to Education. In this General Comment, the CESCR lays down that in order to meet international standards, any education provided by states must satisfy the criteria of availability, accessibility, acceptability and adaptability.

28.1. The principle of *availability* means that “functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology.”<sup>24</sup>

28.2. To satisfy the requirement of *accessibility*, “educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the state party”.<sup>25</sup> Non-discrimination is an important aspect of accessibility and requires education to “be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds”.<sup>26</sup>

28.3. In terms of *acceptability*, “the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13(1) [of the ICESCR] and such minimum educational standards as may be approved by the State”.<sup>27</sup> According to Article 13(1) of the ICESCR, “education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. ... [Further] education shall enable all persons to participate effectively in a free society, [and] promote understanding, tolerance and friendship among all nations.”<sup>28</sup>

28.4. In order to satisfy the requirement of *adaptability*, the education provided by states “has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.”<sup>29</sup>

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in 1998. In 2004, Vernor Munoz Villalobos was appointed as Special Rapporteur, U.N. Doc. HR/CN/1102 (Aug. 30, 2004).

<sup>24</sup> CESCR General Comment No. 13: the Right to Education, para 6.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Article 13(1) of the ICESCR.

<sup>29</sup> CESCR General Comment No. 13: the Right to Education, para 6.

29. In each of these categories, states should respect, protect, and fulfil the right to education. It is also clear from these criteria that the term ‘education’ is used in international instruments to refer to formal institutional instruction.

30. Of special relevance to children with disabilities is the principle of adaptability. It has been noted by the UN Special Rapporteur on the right to education that “education has to be adapted to each child rather than forcing children to adapt to whatever schooling has been designed for them.”<sup>30</sup> Also, according to the Special Rapporteur, “the objective of inclusiveness, that is, integration of learners with disabilities in mainstream schools has imposed upon schools and teachers the need to adapt to learners with divergent abilities and needs.”<sup>31</sup>

31. The Special Rapporteur also referred to a number of domestic court decisions that can be used in determining the content of the provision of education on a non-discriminatory basis to children with disabilities. For example, the Supreme Court of Canada has stated that the exclusion of a disabled person from mainstream society is a product of societal constructions based on the “mainstream” attributes to which disabled persons will never be able to gain access.<sup>32</sup> The Supreme Court of Canada explicitly stated that discrimination is caused by

“failure to make reasonable accommodation, to fine-tune society so that its structures and assumptions do not result in the relegation and banishment of disabled persons from participation.”<sup>33</sup>

The Court held that the central purpose of non-discrimination is the recognition of the actual characteristics and the condition of a disabled individual, and reasonable accommodation of these characteristics.<sup>34</sup>

32. As to the form of education most appropriate to children with disabilities, the Special Rapporteur cited a decision of the German Federal Constitutional Court which concluded that a general exclusion of disabled children from mainstream schools cannot be constitutionally justified and that

“education should be integrated, providing special support for disabled pupils if required, so far as the organizational, personal and practical circumstances allow this. This reservation is included as an expression of the need for the State to consider all the needs of the community in carrying out its duties, including the financial and organizational factors.”<sup>35</sup>

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<sup>30</sup> Katarina Tomaševski (UN Special Rapporteur on the Right to Education), *Right to Education Primers No. 3. Human rights obligations: making education available, accessible, acceptable and adaptable*, 2001, p. 31.

Available at [http://www.right-to-education.org/content/primers/rte\\_03.pdf](http://www.right-to-education.org/content/primers/rte_03.pdf) (last accessed on 13 February 2007).

<sup>31</sup> *Ibid.*, p. 32

<sup>32</sup> Supreme Court of Canada, *Eaton v. Brant County Board of Education*, [1997] 1, S.C.R., 241, para. 67. Cited in Katarina Tomaševski, *Right to Education Primers No. 3*, see supranote 30, p. 32,

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> Federal Constitutional Court of Germany, Decision of 8 October 1997, 1 BvR 9/97. Cited in Katarina Tomaševski, *Right to Education Primers No. 3*, see supranote 30, p. 33.

33. The Special Rapporteur also stressed the need to apply human rights correctives to resource allocation within the governmental obligation to ensure that funding is available for education of children with disabilities.<sup>36</sup>
34. In order to meet these international standards, any ‘education’ provided by the Respondent Government must satisfy the requirements of availability, accessibility, acceptability and adaptability, notwithstanding the national cultural specifics of educational system. In particular, it has to be adapted to meet the specific needs of children with disabilities and to be accessible to ensure their inclusion in the education system.

***iv. The right to “education” with respect to children with moderate, severe and profound intellectual disabilities***

35. As attested by the international treaties mentioned above, all children, irrespective of their disability, can benefit from education. The issue has also been a subject of governmental studies, legislation and litigation in many jurisdictions, for example the United Kingdom, Ireland, Denmark, France, USA and Australia. It is not possible to provide a comprehensive review of available studies and case law in this complaint. Thus, the Applicant provides examples which illustrate case law and studies in support of the arguments outlined herein.
36. In Ireland, various reports commissioned by the government in the latter half of the 20th Century concluded that education of children with severe and profound disabilities is both possible and beneficial.<sup>37</sup> The most influential report, the so-called 1983 “Blue Report”, criticized the history of exclusion of children with disabilities from education and training, attributed to “a very narrow definition of education” under which it was felt that certain children’s disabilities were so great that they could not benefit from the curriculum in schools. The report stressed that such practice had been outdated and that there was a world-wide awareness that education could be of help on maximising human potential even for the most disabled people.<sup>38</sup>
37. In the United Kingdom, considerable material had been available supporting the belief that even profoundly disabled children can benefit from education tailored to their personal needs, for example the UK Change from Health to Education (1971), the Warnock Report (1978)<sup>39</sup>, many Acts of Parliament and governmental policy documents.
38. In the United States, educational programs for “moderately mentally handicapped” children were introduced as early as in the first half of the 20<sup>th</sup> Century (for example in St. Louis in

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<sup>36</sup> Katarina Tomaševski, *Right to Education Primers No. 3*, supranote 30, p. 33.

<sup>37</sup> See for example, *the Report of the Commission of Inquiry on Mental Handicap*, Dublin 1965; the *Report of Working Party to the Minister of Education and Minister for Health and Social Welfare on the Education and Training of Severely and Profoundly Mentally Handicapped Children in Ireland* (“The Blue Report”) January 1983; and the *Report of a Review Group on Mental Handicap Services* (July 1990, Lilac Report).

<sup>38</sup> The Blue Report, Chapter 4. Cited in *Paul O’Donoghue v. Minister for Health*, supranote 40.

<sup>39</sup> Department of Education and Science (1978): *Special Educational Needs* (The Warnock Report). London: HMSO. Report by the Committee of Enquiry into the Education of Handicapped Children and Young People. The Report was the largest ever investigation into special education in England, Scotland and Wales and put the issue of integration of disabled children in ordinary schools onto a national agenda. In particular it defined “special educational needs” in terms that took it beyond the former concepts of special and remedial education, so that it can be taken to include all children and young persons whose educational needs cannot be met by the classroom teacher without some help.

1914, in New York City in 1929, or in St. Paul, Minnesota in 1934).<sup>40</sup> In the early 1950s public school programmes were introduced for “the trainable mentally handicapped”, that is for those with an IQ below 50, previously regarded as uneducable.<sup>41</sup> The 1975 Education of All Handicapped Children Act made the provision of free appropriate education for all children compulsory, no matter how severe or profound their disability.<sup>42</sup>

39. Education of children with intellectual disabilities has been the subject of litigation in many jurisdictions. For example, in the *O’Donoghue case*, the Irish High Court considered whether the state was obliged to provide primary education to an eight-year-old child with a profound intellectual disability. On the basis of available expert evidence, the High Court held, that all children are educable and that all children, regardless of “ability,” have a constitutional right to a free primary education. The Court refused to be drawn into narrow definitions of education, preferring instead a definition that allowed education to be child-centred and targeted to maximize the particular child’s potential. Further, the Court concluded that for children with disabilities it is desirable that education begin as early as possible given the proven efficacy of early intervention. The Court recognized that for children with severe disabilities it was quite conceivable that primary education might continue until the age of eighteen; and that ideally it should “continue as long as the ability for further development is discernible.”<sup>43</sup>
40. The extent of provision of education to children with profound intellectual disabilities was addressed by courts in the United States as early as in 1971. For example, in *PARC v. Pennsylvania*, the federal District Court held that all disabled persons are “capable of benefiting from a programme of education and training; that most are capable of achieving self-sufficiency and the remaining few, with such education and training are capable of achieving some degree of self-care.”<sup>44</sup> In *Mills v. Board of Education*, a case brought on behalf of children with severe intellectual disability, the US District Court found that a school district cannot exclude any exceptional children from public education, even if the school district has insufficient funds to provide such services.<sup>45</sup> In 1988 the US Supreme Court in its *Honig v. Doe and Smith* case, held that states have an obligation educate all disabled children, regardless of the severity of their disabilities.<sup>46</sup>

#### **v. The Bulgarian system of education for children with intellectual disabilities**

41. In order for the ECSR to determine that children, assessed as having moderate, severe and profound intellectual disabilities, living in Bulgarian HMDC do not receive education, contrary to Articles 17 and E of the Social Charter, the Applicant first outlines the legislative framework governing the right to equal opportunities in access to education and then analyses the existing practice.

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<sup>40</sup> Cited in *Paul O’Donoghue v. Minister for Health, The Minister for Education and the Attorney General* (1996) 2 I.R. 20, High Court of Ireland, p. 41. See Attachment 9 to this complaint.

<sup>41</sup> *Ibid.* It has to be noted that according to the ICD-10, an IQ below 50 (precisely between 35 and 49) refers to moderate intellectual disability (or “moderate mental retardation”).

<sup>42</sup> See the US Public Law 94-142 (S. 6); Nov. 29, 1975, Education for All Handicapped Children.

<sup>43</sup> *Paul O’Donoghue v Minister for Health, The Minister for Education and the Attorney General* (1996) 2 I.R. 20, at 60-70.

<sup>44</sup> *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania*, 334 Fed. Supp. 1257, (E.D. PA 1972).

<sup>45</sup> *Mills v. Board of Education of District of Columbia*, 348 F.Supp. 866 (D. DC 1972).

<sup>46</sup> *Honig v. Doe*, 484 U.S. 305, 317 (1988).

a) *The legislative framework*

42. Although there has been no legislation broadly making discrimination against children illegal, the Bulgarian Constitution contains several provisions generally denouncing inequities between its citizens. Article 6 of the Constitution provides that all persons are born free and equal in dignity and rights, and that all citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status or property status.<sup>47</sup> Article 53 of the Bulgarian Constitution recognises the universal right to education. The National Education Act of 1991 continues this theme by expressly providing for equality of opportunity in education amongst the children of Bulgaria.<sup>48</sup> Furthermore, distinctions in the quality or quantity of education between children on account of their "race, nationality, sex, ethnic or social origin, religion or social status," are also prohibited by the National Education Act.<sup>49</sup>
43. Prior to 2002, education of children with disabilities was regulated by the 1977 *Instruction No. 6 on the placement of children and pupils with physical or mental disabilities in special schools and special educational disciplinary establishments* of the Ministry of Education and the Ministry of Health Care. This Instruction ordered that children with mild intellectual disabilities be educated in special schools, while denying education to those with moderate, severe and profound intellectual disabilities, who were classified as uneducable. Consequently, such children did not have access to education of any kind.
44. In August 2002, the Ministry of Education and Science issued the *Decree No. 6 on the Education of Children with Special Needs and/or Chronic Diseases*, which superseded the 1977 Instruction. This Decree entitles children with any type of intellectual disability to study in special schools or mainstream schools of their parents' choice. According to Article 2 para. 1 of the Decree, children with special educational needs and/or chronic diseases are to be integrated in kindergartens and schools. This Decree is in force at the time of submitting the complaint.
45. In order to implement the Decree No. 6, the Government adopted the *National plan for integration of children with special educational needs or/and chronic diseases in the educational system (hereinafter "National Plan")* which subsequently set the timeframe of integration for the period of 1 January 2004 to 1 January 2007.<sup>50</sup>
- 45.1. Activity 2 of the National Plan requires that by 31 June 2005, the Social Assistance Agency (Child Protection Departments), the Regional Inspectorates on Education and the municipalities identify for integration children with disabilities under the age of 18 in all municipalities. The funding for this activity was to be provided by respective responsible bodies (the Social Assistance Agency, the Regional Inspectorates on Education and the municipalities).

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<sup>47</sup> Constitution of the Republic of Bulgaria, adopted on 12 July 1991, Article 6.

<sup>48</sup> *The National Education Act*, adopted by Grand National Assembly of the Republic of Bulgaria, promulgated State Gazette No. 86/18.10.1991 (*hereinafter* "NEA"), Article 4.

<sup>49</sup> *Ibid.*

<sup>50</sup> *National plan for integration of children with special educational needs or/and chronic diseases in the educational system*, Governmental Decision 894 from 22 December 2003.



- 45.2. Under Activity 4 of the National Plan, by February 2004, the Regional Inspectorates on Education and the municipalities were to "set up teams for complex pedagogical assessment at the Regional Inspectorates on Education to assess the educational needs of the disabled children and needed support for their integrated education". These teams were also supposed to provide psychological support to the parents as well as inform and consult them on deciding what kind of school their child would attend. The activity was to be completed in March 2004.
- 45.3. Activity 6 of the National Plan envisioned an assessment of the special kindergartens and schools in order to set up resource centres for supporting integrated education. Within this activity, by December 2004, the Social Assistance Agency and teams for complex pedagogical assessment at the Regional Inspectorates on Education were obliged to conduct research and analysis of "the situation of homes for children and youth with mental retardation, of Social Vocational Training Boarding Schools in order that the children in them be involved in the educational system".
- 45.4. Although the National Plan was supposed to impact HMDCs it has never been implemented in respect to them and only very few changes were introduced into the HMDC since 2002 in terms of education.<sup>51</sup> Despite the policy proclamations, little has changed in reality for children in institutional care: the majority of children in HMDC still have no access to the educational system and are considered uneducable.<sup>52</sup> Moreover, there has not been any official public reporting and evaluation of the result from the implementation of the de-institutionalisation plan.<sup>53</sup>
46. In December 2005, the Respondent Government adopted the *Action Plan on equal opportunities for people with disabilities 2006-2007* which guarantees access to quality education for people with disabilities. According to the Action Plan, the Minister of Education and the mayors of the municipalities must ensure that every child of preschool and school age is enrolled in the educational system.<sup>54</sup> Although this task was supposed to be carried out within the existing budgets of the authorities, the Action Plan contained neither deadlines nor details of resource re-allocation, meaning that the Action Plan remains unimplemented.

*b) Institutional care for children with special needs / intellectual disabilities*

47. In Bulgaria, children with disabilities are cared for in different types of institutions according to their level of disability and social conditions.

- a) homes for medical-social care are institutions under the authority of the Ministry of Health. They provide care to children up to the age of three, who were abandoned by

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<sup>51</sup> See, for example, the State Agency 2005 Report; Save the Children 2006 Report; or *Human Rights in Bulgaria in 2004*, Annual report of the Bulgarian Helsinki Committee, March 2005, Sofia; available at <http://www.bghelsinki.org/upload/resources/hr2004-en.doc> (last accessed on 13 February 2007) (*hereinafter* "BHC Annual Report 2004").

<sup>52</sup> See the *BHC Annual Report 2004*, p 29; the *Save the Children 2006 Report*, p. 8.

<sup>53</sup> *The Save the Children 2006 Report*, p. 11.

<sup>54</sup> *Action Plan on equal opportunities for people with disabilities 2006-2007*, Activity 4, and specifically, sub-activity 4.1.

their parents. According to available data, in the year 2000 the number of these children was 3,379, out of which 30% had disabilities<sup>55</sup>;

- b) special schools are schools for children with intellectual disabilities. They are under the authority of the Ministry of Education. There are 74 special schools in Bulgaria. Additionally, there are four classes for children with intellectual disabilities in mainstream schools<sup>56</sup>. At the beginning of the 2004-2005 school year, the total number of children attending special schools was 8,526;<sup>57</sup>
  - c) day-care centres are non-educational institutions under the authority of the Ministry of Labour and Social Policy. They provide some therapeutic and educational services for children with moderate, severe or profound disabilities whose parents care for them. There are 16 such centres in large Bulgarian cities, with an overall capacity of 455 children;<sup>58</sup>
  - d) social educational boarding schools are institutions under the authority of the Ministry of Labour and Social Policy. They cater for young persons with disabilities over the age of 14. These institutions have a capacity to house 1,627 people.<sup>59</sup>
  - e) homes for mentally disabled children (HMDC) are institutions under the authority of the Ministry of Labour and Social Policy. They contain children over the age of two years. The children have been assessed predominantly as having moderate, severe or profound disabilities, and who have been abandoned by their parents or whose parents died. They function as year-round residential institutions where children spend all of their time until they reach the age of 18, after which most of them are usually placed in Homes for Adults with Intellectual Disabilities, although some remain in HMDC even after the age of 18. Prior to 2002 there were 30 HMDC in Bulgaria. In 2005 two of them were closed (Dzhurkovo and Dobromirci HMDC). However, the majority of the children from those homes were transferred to other institutions and the closure of the two homes did not result in the reduction of the number of institutionalised children.<sup>60</sup> In 2006, there were 3,042 children living in HMDC;<sup>61</sup>
48. The focus of this collective complaint is the 28 HMDC across Bulgaria. One of the central arguments is that education is not provided in the institutions, and that the government has done little to provide education to the children in schools. Since 2002 there has been no significant decrease in the numbers of children housed in the HMDC.<sup>62</sup>

48.1. For example, the State Agency 2005 Report which analysed the entry and exit figures in 18 HMDC in 2003–2004, found the following:

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<sup>55</sup> *The BHC 2002 Report*, p. 4.

<sup>56</sup> *The State Agency 2005 Report*, p. 2.

<sup>57</sup> *Ibid.*, p. 3.

<sup>58</sup> *The BHC 2002 Report*, p. 4.

<sup>59</sup> *The BHC 2002 Report*, p. 4.

<sup>60</sup> *The Save the Children 2006 Report*, p. 8.

<sup>61</sup> See data of the Agency for Social Assistance, ref. № 92-37/22.02.2006, from March 2006, cited in *Save the Children 2006 Report*, p 7 and 13.

<sup>62</sup> *The State Agency 2005 Report*, p.2.

- in 2003, in total there were 41 new admissions to HMDCs, while 45 children left the system<sup>63</sup>;
- out of 45 children leaving the examined HMDCs, 18 were transferred to other HMDCs and 8 reached the age of 18 and were transferred to homes for adults with disabilities.

Therefore, only 19 children actually left the examined institutions. This represents a mere 1.6% of children living in the 18 examined HMDCs. Out of these 19, two children were adopted, two were sent to their relatives, and 14 were “reintegrated”.<sup>64</sup> The Report does not specify the nature of this integration and where those children live at the moment. As they are not with their families or foster parents, it is most likely that these 14 “reintegrated” children were placed into institutions for children without disabilities.

49. It has been documented that if a child is placed in a HMDC, there is a high probability that the child will be institutionalised for life. The majority of those children can only be expected to be transferred from one institution to another, finally ending up in institutions for adults, thus as one governmental body itself admits, “they are destined to spend the whole of their life in an institution”.<sup>65</sup> The Respondent Government has been repeatedly criticised for a failure to adopt a systematic plan on how to reduce the numbers of institutionalised children. However, instead of closure of the institutions and increasing resources dedicated to the development of a nationwide network of adequately-funded, professionally staffed alternative services, the Respondent Government has taken the approach of strengthening and re-structuring institutional warehousing and thus perpetuating social exclusion of people with disabilities.<sup>66</sup>

### *c) Background to HMDC*

50. Before bolstering its claim that the Respondent Government has failed its Social Charter obligation to ensure that children in HMDC receive education, the Applicant wishes to make some brief observations about the HMDC, their historical purpose and the diagnostic process under which children are placed in the HMDC. In doing so the Applicant seeks to assist the ECSR in contextualising the merits of the complaint.

50.1. The HMDC were set up to provide basic services, such as accommodation and food, for children with severe disabilities abandoned by their parents. Provision of education has never been their aim, and nor has integration of the children into mainstream society. Indeed few if any children placed in HMDC have been integrated into society through adoption or by achieving independent living.<sup>67</sup> After reaching the age of 18, HMDC children mostly continue living in similarly isolated institutions for adults with disabilities. It has been observed that “once the children fall into the system of social institutions, they almost never get out of them again”,<sup>68</sup> or that for the majority of children with disabilities “the exit from one type of home

<sup>63</sup> *The State Agency 2005 Report* indicates that there were 105 children admitted to the examined HMDC - but as 64 of them were transferred from other institutions, thus, there were only 41 new admissions.

<sup>64</sup> *Ibid.*, p. 2.

<sup>65</sup> *The State Agency 2005 Report*, p. 8.

<sup>66</sup> *The Save the Children 2006 Report*, p. 8-11.

<sup>67</sup> *The State Agency 2005 Report*, p. 2.

<sup>68</sup> *The BHC 2002 Report*, p. 18.

is the entrance to the next one and they are destined to spend the whole of their life in an institution”.<sup>69</sup>

- 50.2. The Applicant wishes to stress out that the HMDC also contain some children with mild or no disabilities. The HMDC are structured more as shelters for children growing up in extreme poverty or as “resource centres for social services used for satisfying social needs”.<sup>70</sup> As noted above, prior to 2002 children placed in the HMDC were considered uneducable under the law and thus no efforts were made to provide them with any form of education. As the HMDC housed children with a wide range of disabilities, the classification of all of them as “uneducable” was therefore rarely, if ever, related to their real individual educational capacities. It was a blanket formula imposed on all children placed in the HMDC.
- 50.3. Children are placed into HMDC in an outdated and arbitrary manner. Assessments of a child’s (alleged) disability are both inappropriate and inadequate, often limited to a simple psychiatric examination,<sup>71</sup> without the involvement of psychologists or educational professionals. As the government agency itself points out, this purely medical assessment fails to assess the child’s educational and developmental needs and fails to explore non-medical care, such as psycho-therapy that could stimulate the child’s attention, concentration, memory, fine motor skills, cognitive development, emotions, social skills and contacts.<sup>72</sup> When they were first placed into the institutions, many children were not diagnosed or misdiagnosed, yet their initial diagnosis has typically been their first and only one.<sup>73</sup> The number of children that are the subject of re-diagnosis is “insignificant”,<sup>74</sup> and the fact that re-evaluation rarely takes place only adds weight to the Applicant’s argument that it is not the aim of the institutions to educate and care for the children so that they can be integrated into society.

#### *vi. Analysis of the Social Charter violations*

51. According to the ECSR, “the aim and purpose of the Social Charter, being a human rights instrument, is to protect rights not merely theoretically, but also in fact”.<sup>75</sup> Thus, rights recognised by the law must be fully implemented to meet the Social Charter’s requirements and those of other international instruments.
52. The Applicant submits that the Respondent Government violated its obligations under Article 17(2) and Article E of the Social Charter by:
- a) failure to integrate children with moderate, severe or profound disabilities into mainstream schools – here, the Applicant requests the ECSR to examine the Bulgarian educational system under the requirements of availability, accessibility, acceptability and adaptability, as defined by the CESCR’s General Comment 13 (see above, para. 28); and further or in the alternative,

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<sup>69</sup> *The State Agency 2005 Report*, p. 8.

<sup>70</sup> *The BHC 2002 Report*, p. 7.

<sup>71</sup> *The BHC 2002 Report*, p. 11.

<sup>72</sup> *The State Agency 2005 Report*, p. 4.

<sup>73</sup> *The BHC 2002 Report*, p. 11.

<sup>74</sup> *The State Agency 2005 Report*, p. 5.

<sup>75</sup> *International Commission of Jurists v. Portugal*, Application no. 1/1998, 10 September 1999, para. 32.

- b) failure to meet the requirement of acceptability of education provided to children with moderate, severe or profound disabilities in HMDC; and
- c) there being no possible justification of these violations for reasons such as lack of resources or the progressive realisation of rights.

These allegations will be examined in turn.

*a) Failure to integrate HMDC children with disabilities into mainstream schools*

53. Legislative change in 2002 gave parents of disabled children an opportunity to request enrolment of their children in mainstream schools. It also obliged the Regional Inspectorates on Education (state bodies) to set up teams for complex pedagogical assessment of the educational needs of children and for necessary support of the integration process. The Applicant submits that this policy has never been implemented in regard to children living in HMDC. Since 2002, only a tiny number of HMDC children were integrated into mainstream primary schools. This has been recognised by a variety of sources.

53.1. According to the State Agency 2005 Report, in 2005, 39 (3.4%) of children living in the visited homes were enrolled in special schools (where they receive substandard education); and 85 children were enrolled in mainstream schools – out of whom 53 children had with no disabilities and lived in the Lukovit Home for Children with Physical Disabilities and Intact Intellect.<sup>76</sup> Analysis of this data show that in 2005, in the institutions visited by the State Agency, only 32 children with intellectual disabilities were integrated into mainstream primary schools, which represents 2.8% of children living in the visited homes. Even if their placement in special schools was considered satisfactory to fulfil the Respondent Government's obligations<sup>77</sup>, the ratio of children from the HMDC enrolled in schools fails to meet the requirements of international law to provide primary school education to all children.

53.2. According to the Bulgarian Helsinki Committee's 2006 Report, based on visits to six HMDC in 2006, only the following numbers of HMDC children were enrolled in mainstream schools: 4 children from Ilakov Rut, 7 (out of 55) from Gorna Koznica, 1 in Tri Kladenci, none in Sofia, 17 (out of 69) in Mezdra, and all 24 children in Turnava.<sup>78</sup> Combined, these numbers are wholly insufficient to meet the above described requirements of provision of education for all.

53.3. Moreover, in practice, even children officially enrolled in schools do not receive education to satisfy international requirements. For example, although 7 children from the HMDC Gorna Koznica are enrolled in a special school in the village of Lozno, they are taught separately from their peers and receive only basic training in

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<sup>76</sup> *The State Agency 2005 Report*, pp. 4-5. As note above, *the State Agency 2005 Report* is based on visits to 19 institutions housing children with disabilities, housing in total 1,159 children.

<sup>77</sup> As noted above, see para. 16, this complaint does not address the unsatisfactory quality of education provided to children in special schools.

<sup>78</sup> *The BHC 2006 Report*. The fact that all children from Turnava home were enrolled in mainstream schools can be attributed to personal initiative of the director only. Cf. below, para 55.2.1.

dressing and hygiene.<sup>79</sup> Children are placed in a classroom with a teacher but have no textbooks or teaching materials, are only given “magazines from the 1970s and children colour books”, and they “were not able to show any knowledge they learned” in the school.<sup>80</sup>

- 53.4. Some children are denied enrolment to schools solely for reasons related to staff convenience. For example, in the past, several children from Ilakov Rut Home had expressed a wish to study, but they were refused by the director allegedly for the reason that they had not yet reached the age of 14.<sup>81</sup> This happened despite the fact that they were clearly educable: although they had never attended school, they “were able to write their full names and their age”.<sup>82</sup>
54. These data and examples prove that despite the legislative changes, the prospects of children with disabilities living in HMDC to be provided education are still grim and that the Respondent Government has failed in its obligation under the Social Charter to provide education to all children living in Bulgaria.
55. At the same time, when the Respondent Government’s obligations are assessed according to the criteria of the CESCR’s General Comment 13, the analysis clearly shows serious failures and shortcomings in terms of accessibility and adaptability (see above, para. 28).
- 55.1. **Availability:** this does not appear to be a problem in Bulgaria. The country has a satisfactory number of educational establishments and adequate capacities in terms of staff. They are sufficient to provide education to all children in the country, and the enrolment of children with disabilities into these schools would not require expanding their capacity.
- 55.2. **Accessibility:** it’s the Bulgarian government’s (in)actions fall far short of the basic requirement to make education accessible to everyone without discrimination. Children living in HMDC do not have access to education on a non-discriminatory basis. There are no obstacles for non-disabled children to participate in education, and parents have the legal obligation to ensure the regular attendance of their children in schools.<sup>83</sup> In 1996-2004, the net primary school enrolment rate in Bulgaria was 90%<sup>84</sup> while only 6.2% of HMDC children are enrolled in schools and only 2.8% are enrolled in mainstream schools (see above, para. 53.1.). These statistical discrepancies clearly give rise to an inference of discrimination based on disability for which the Respondent Government is directly responsible. The Respondent Government has failed to take sufficient care to account for, and overcome predictable cultural, historical and/or other obstacles and stigma faced by children with disabilities receiving treatment in HMDC. The Applicant demonstrates the Government’s failure in this regard by the following:

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<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> See the NEA, Article 47.

<sup>84</sup> The *UNESCO State of the World’s Children 2006 report: Excluded and Invisible*, UNESCO, 2005, available at [http://www.unicef.org/publications/files/SOWC\\_2006\\_English\\_Report\\_rev\(1\).pdf](http://www.unicef.org/publications/files/SOWC_2006_English_Report_rev(1).pdf) (last accessed on 13 February 2007).

55.2.1. Failure to enforce the new legislation in HMDC. As noted above, based on 2002 legislation, children who were previously considered uneducable can be enrolled into schools upon the request of their parents. Parents have to ask for a medical assessment by filing an application with the Regional Medical Expert Committee which then assesses the type and level of support the child would need if educated in the school chosen by the parents. As the vast majority of children living in the HMDC were abandoned by their parents, only their legal guardians can initiate the diagnostic process. Legal guardians of these children are the directors of the HMDC. Most of these people – all state employees - are unaware of this possibility and have not initiated reassessments.<sup>85</sup> In the majority of the HMDC, staff are not acquainted with legislation in the area of child protection and the priorities of the governmental policy related to deinstitutionalisation of children.<sup>86</sup> For example, the BHC 2006 Report, which documented discussions with six HMDC directors at the beginning of 2006, revealed that the director of the Ilakov Rut Home “was surprised by any question about education. ... She does not have any contacts with the Regional Inspectorate on Education and did not provide any information to them”.<sup>87</sup> In the Tri Kladenci Home, “the Regional Inspectorate on Education did not ask for any information about the children in the home, nor did the director provide information to any educational authorities”.<sup>88</sup>

Additionally, the Respondent Government failed to create a proper mechanism of control over the HMDC directors: there are no penalties imposed on those directors who fail to initiate a reassessment process and no director has ever been reprimanded by any state organ for failing to enrol children into schools. Thus, integration takes place solely on the personal initiative of HMDC directors and only very few of them are willing to make an extra effort and initiate the enrolment process while receiving no support from other state organs.<sup>89</sup> Without the necessary support and control, it is highly unlikely that directors will either initiate or continue integration programmes.

55.2.2. Failure to provide sufficient mechanisms for integration. The cooperation between different state bodies to implement proper education and deinstitutionalisation of children is inadequate. This clearly and directly affects the quality of the child care and educational services. For the majority of children, no assessment or action plans have been developed. Without such plans there is no way that planning can take place which would lead to a child receiving adequate care and education.<sup>90</sup>

55.2.3. Failure to introduce guidelines to effectively circumscribe individual discretion in the diagnostic process. Under the 2002 legislation, the aim of the diagnostic process should logically be to assess what kind of support a child will need when studying at the school of their parents’ choice. In

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<sup>85</sup> *The EUMAP Bulgaria 2005 Report*, p. 61.

<sup>86</sup> *The State Agency 2005 Report*, p. 9.

<sup>87</sup> *The BHC 2006 Report*

<sup>88</sup> *Ibid.*

<sup>89</sup> *The BHC 2006 Report*.

<sup>90</sup> *Ibid.*

practice, however, the diagnostic process still (wrongly) focuses on determining whether a child can go to school. The diagnostic commissions still declare children “uneducable”, or deny them the chance to be examined and educated even in special schools.<sup>91</sup> In terms of Bulgarian law this is unlawful. In terms of modern approach to education it is nonsense. There does not appear to exist any unified standards for making such sweeping “diagnoses”. The records from diagnostic examinations do not mention any internationally-accepted classification such as the United Nations ICD-10<sup>92</sup> which suggests that the ICD-10 instructions (including the use of IQ tests) were not used for determining diagnoses.<sup>93</sup> Some members of the diagnostic commissions are unaware of the 2002 law that children with moderate and severe disabilities can and should be integrated into mainstream schools.<sup>94</sup> Also, according to some parents who attended diagnosis meetings with their children, diagnostic commissions are “not competent to diagnose and treat a child with severe and profound intellectual disabilities”.<sup>95</sup>

In the view of the foregoing, the Applicant maintains, and invited the ECSR to take the view, that the Bulgarian school system is not accessible to children with intellectual disabilities living in HMDC.

55.3. **Acceptability:** in general, the Applicant considers the quality of education provided in Bulgarian mainstream schools satisfactory to meet the criteria of acceptability. Highly unsatisfactory and deficient is the education provided in special schools that are not, however, examined in this complaint.

55.4. **Adaptability:** The Applicant alleges that the Respondent Government has failed to satisfy the requirement of adaptability of educational programs in Bulgaria and any activity in this regard has been strictly formal.

55.4.1. Although in 2002 the Respondent Government adopted legislative framework for integration (see above, para 54), it has failed to modify the educational process and environment in mainstream schools to accommodate children with special needs. There is broad agreement that mainstream schools are not yet prepared to provide education for children with intellectual disabilities in terms of staff training and teaching materials.<sup>96</sup> Mainstream schools lack curricula, textbooks and resources to adjust the school environment. Their teachers are generally not offered any training in special education, nor do they have experience of teaching children with special needs.<sup>97</sup>

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<sup>91</sup> Ibid. See also *the EUMAP Bulgaria 2005 Report*, p. 44.

<sup>92</sup> International Classification of Diseases is the World Health Organization’s standard diagnostic classification for all general epidemiological and many health management purposes, including mental disorders, currently in its tenth edition (ICD-10).

<sup>93</sup> *The EUMAP Bulgaria 2005 Report*, p. 43.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid., p. 44.

<sup>96</sup> *The EUMAP Bulgaria 2005 Report*, p. 39.

<sup>97</sup> *The EUMAP Bulgaria 2005 Report*, p. 52-53.



55.4.2. Mainstream schools lack the funding and equipment to meet the needs and interest of children *without* disabilities, leaving much to be desired for the education of children with intellectual disabilities, which would require an entirely new approach in education.<sup>98</sup> In the absence of any specialised approach, mainstream schools can provide meaningful education only for those children who can keep pace with their classmates who do not have learning difficulties. Others have no option but to remain in the HMDC or day-care centres without any education at all.

Therefore, it is clear that the Respondent Government does not meet the requirement that school environments must be adapted to the needs of children with disabilities.

*b) Failure to satisfy the requirement of acceptability in HMDC provided education*

56. It has been recognised by the UN education body UNESCO, that when providing education for children with disabilities enrolment in mainstream schools should be the preferred option.<sup>99</sup> Nevertheless, it is theoretically possible to provide education outside the mainstream school system. Therefore, the Respondent Government might try to justify their failure to enrol children in mainstream schools with the claim that they are educated in the HMDC as such. Anticipating that the government will mount this defence, the Applicant vigorously contests this claim and argues that education programs provided to children in HMDC do not meet the requirement of acceptability for the following reasons.

56.1. HMDC are not educational institutions that would be a part of the school system. Those HMDC children living there who are not enrolled in mainstream schools receive treatment based on the “*Programs for activities, correctional and compensatory and educational activities with children at the age of 3 to 18 years, who are moderately/heavily mentally retarded in the social institutions*” developed by the Bulgarian Ministry of Labour and Social Policy (*hereinafter* “the Programs”). These Programs were developed and have been used since 1997, when children in HMDC were still officially considered uneducable, and the Programs have not been amended since then, despite the 2002 legislative changes.<sup>100</sup> The Programs consist of “activities related to development of speech abilities (imitation of sounds and pronunciation of sounds), knowledge about the environment, basic maths, basic literacy, labour education, physical education, and arts”<sup>101</sup> and it is difficult to assess the extent to which they contribute to developing children’s abilities. The government’s own inspectorate body takes the view that the Programs cannot be considered an “educational” program as they do not comply with any Bulgarian educational standards; children treated according to them are still

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<sup>98</sup> *The EUMAP Bulgaria 2005 Report*, p. 53.

<sup>99</sup> See Review of the Present Situation of Special Needs Education, UNESCO, 1995, available at <http://unesdoc.unesco.org/images/0010/001026/102688e.pdf> (last accessed on 13 February 2007). See also *Autism-Europe v. France*, para 49; *European Committee of Social Rights: Conclusions 2003 (Bulgaria)*, p. 52, available at [http://www.coe.int/t/e/human\\_rights/esc/3\\_reporting\\_procedure/2\\_recent\\_conclusions/1\\_by\\_state/Bulgaria\\_2003.pdf](http://www.coe.int/t/e/human_rights/esc/3_reporting_procedure/2_recent_conclusions/1_by_state/Bulgaria_2003.pdf) (last accessed on 13 February 2007).

<sup>100</sup> *The EUMAP Bulgaria 2005 Report*, p. 37.

<sup>101</sup> *The State Agency 2005 Report*, p. 4.

considered uneducable and are neglected by the education system.<sup>102</sup> Moreover, the Programs are outside of the review of the Ministry of Education as it has no responsibility, control or supervision over their implementation and it does not perform any inspections in the HMDC.<sup>103</sup>

56.2. Children do not receive any education in HMDC. This fact has now been well documented using first hand testimony, for example:

56.2.1. The Bulgarian Helsinki Committee 2006 Report documented that in the Ilakov Rut HMDC, researchers “saw two groups of children aged 4 to 20 gathered in two living rooms watching television. The first group was for 15 children with the most severe intellectual disabilities. Only one of them was able to speak. The second group was of 20 children and only one educator was counting with them from 1 to 10 when the team of BHC entered the room. Some of the children wanted to be given sheets of paper and pens to write down their names”.<sup>104</sup> The children allegedly told the researchers that they wanted to study but were refused by the HMDC director.<sup>105</sup>

56.2.2. According to the BHC 2006 Report, in the Tri Kladenci home, the children were considered uneducable, although one of the staff members “teaches some of the children to write and read and some of the girls at 18, 19 years of age were able to count to 100, to calculate, to write and read. The girls said they started studying these skills when they were at 7, 8, 9 years of age and they said no regular classes were ever conducted”.<sup>106</sup>

56.2.3. British Sky News TV Channel reported that when its journalists visited Bulgarian HMDC, they found children sitting around a table between breakfast and lunch, unsupervised, at the time when, officially, rehabilitation was supposed to take place. According to the educators the children were “waiting for their lunch”; and there was no attempt to hide the fact that no rehabilitation was taking place.<sup>107</sup>

56.2.4. According to the State Agency 2005 Report, children with profound disabilities are considered to be “purely medical cases”,<sup>108</sup> and nobody is taking care of them.<sup>109</sup> Those children who cannot walk are “confined to their dormitories, are not exposed to any education or personality development activities” and support of the staff is limited “to providing them food and helping them with their hygiene”.<sup>110</sup>

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<sup>102</sup> Ibid., p. 5.

<sup>103</sup> *The BHC 2002 Report*, p. 3

<sup>104</sup> *The BHC 2006 Report*.

<sup>105</sup> *The BHC 2006 Report*.

<sup>106</sup> Ibid.

<sup>107</sup> Sky News Report *Fighting for Bulgaria's children*, from 5 May 2006, available at [http://www.sky.com/skynews/video/videoplayer/0\\_31200-bulgaria\\_p11148.00.html](http://www.sky.com/skynews/video/videoplayer/0_31200-bulgaria_p11148.00.html) (last accessed on 13 February 2007). See attachments 7 and 8 to this complaint.

<sup>108</sup> *The State Agency 2005 Report*, p. 5.

<sup>109</sup> Ibid., p. 12.

<sup>110</sup> Ibid.

56.3. HMDC lack staff capable to provide children with education.

56.3.1. The duties of HMDC staff are limited to taking care of the children with respect to their basic needs – food, clothes, daily hygiene and addressing the emotional needs of the children. Duties do not extend to training and integration.<sup>111</sup> The staff consist mostly of untrained support staff (taking care of basic physiological needs of children) and “educators” or “supervisors” who provide some other help to children but no teaching or therapy.<sup>112</sup> HMDC only rarely employ teachers trained in special education and therapy, the majority of staff have no specific training, and the percentage of qualified staff is far less than the percentage of the support staff.<sup>113</sup>

56.3.2. The HMDC also lack sufficient experts, such as speech therapists, psychologists, physical therapists and social workers, on whom the physical and psychological development of children is directly dependant. Moreover, in the majority of HMDC the staff are not provided with methodological assistance; there are no post-graduate qualification courses taken and they do not participate in continuous professional development, that is, there are no services or systems for enhancing what qualifications they do have.<sup>114</sup>

56.3.3. Claims have been raised that one of the reasons for the low quality of staff is related to the location of the HMDC: they are located within or sometimes outside remote towns and villages that do not provide opportunities for professional development.<sup>115</sup> Allegedly, in many cases the only available people to work in the homes are villagers without any qualifications. The locations of the HMDC are, however, certainly not the main reason why the children living in them are denied education. For example, the HMDC in Sofia, which theoretically has the best opportunities for hiring experts and cooperating with a wide variety of educational establishments, is one of the least progressive of HMDC. The Sofia HMDC employs no special teachers and none of its children receive education.<sup>116</sup> Additionally, salaries of HMDC staff are among the lowest paid in the country and teachers who work in the HMDC cannot include the years during which they worked there to the years relevant for their pension calculation.<sup>117</sup>

56.4. Denial of secondary education. Because HMDC are not educational institutions, children do not have the possibility of receiving a diploma attesting completion of primary school education. Therefore, they are legally prohibited entering secondary

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<sup>111</sup> *The State Agency 2005 Report*, pp. 3-5.

<sup>112</sup> *Ibid.*, p. 5.

<sup>113</sup> *The BHC 2002 Report*, p. 15. See also *the State Agency 2005 Report*, which revealed that in the visited institutions, 47% of all staff were orderlies (unqualified support staff), 24% were medical staff (nurses), 25% were “educators” and the number of social workers and other specialists (rehabilitation therapists, movement therapists, etc.) was as low as 8% of the staff; see *the State Agency 2005 Report*, p. 5.

<sup>114</sup> *The State Agency 2005 Report*, p. 9.

<sup>115</sup> *Ibid.* See also Sky News Report *Children’s conditions in Bulgaria*, from 4 May 2006, interview with Ivanka Christova, Deputy Minister of Labour and Social Policy available at [http://www.sky.com/skynews/video/videoplayer/0,,31200-kids\\_p11850,00.html](http://www.sky.com/skynews/video/videoplayer/0,,31200-kids_p11850,00.html) (last accessed on 13 February 2007).

<sup>116</sup> *The BHC 2006 Report*.

<sup>117</sup> *The BHC 2002 Report*, p. 15.

schools, with attendant damage to their opportunities to secure adequate employment and economic advancement.<sup>118</sup>

57. The Applicant believes that the practice described above clearly reveals a violation of the international requirement of acceptability of educational opportunities, and invites the ECSR to make such a finding.

*c) No objective justification for the violations*

58. In view of the foregoing, the Applicant submits that the Respondent Government has violated its obligation to provide education to all children without discrimination. The Applicant further submits that there is no objective justification to this violation.

59. Although the rights guaranteed by the Social Charter are by their nature subject to progressive realisation, State Parties cannot escape their responsibilities by referring to resource shortages. As the ECSR has previously established

“When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allow it to achieve the objectives within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities.”<sup>119</sup>

60. The Applicant reiterates that under Bulgarian law, children with moderate, severe and profound disabilities have been entitled to education since 2002. Nevertheless, Bulgaria, now a Member State of the European Union, has not undertaken any concentrated effort to provide them with such. As indicated above, since the adoption of the 2002 legislation, only 6.2% of children were enrolled in either mainstream or special schools (see above, para. 55.2.) - that is only 1.6% children per year. If the Respondent Government maintains this speed in implementing its obligations, it will take the government 64 years to provide education to all HMDC children. The Applicant submits that this cannot be considered a “reasonable time” to meet the requirements of progressive realisation within the ECSR standards.

61. The Applicant argues that even the limited progress so far has happened despite, not because of, governmental action. The number of children enrolled in schools varies and the integration of HMDC children is taking place as a result of the personal initiatives of directors who receive minimal support, or coordination and oversight from state authorities. There are no safeguards put in place to keep the current initiatives should the HMDC directors who have been progressive in enrolling children in schools decide to discontinue the reforms, or even withdraw the children from the schools. At the same time, there are no sanctions imposed on those directors who fail to implement the educational policy (see above, para. 55.2.1.).

62. The failure to satisfy the obligations under the Social Charter cannot be attributed to the lack of available resources of the Respondent Government. As explained above, the Respondent Government has the legislation and policy in place that provides for equality of

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<sup>118</sup> *The EUMAP Bulgaria Report*, p. 37; *the BHC 2002 Report*, p. 15.

<sup>119</sup> See *Autism-Europe v. France*, para. 53.

educational opportunities. The full implementation of this policy would not subject the Bulgarian treasury to any difficulties and could be conducted with minimal additional resources allocated to the educational system. The Applicant bases this assertion on the following.

- 62.1. The Bulgarian system of compulsory primary education had been established for decades. In last several decades, there has been a documented decrease in birth rates and consequently a constant decrease in children enrolled in primary schools.<sup>120</sup> Thus, the capacity of schools has increased.
  - 62.2. As explained above (see para. 55.2. of this complaint), the Respondent Government has failed to create control and enforcement mechanisms for the implementation of the legislation. The Applicant submits that provision of information to directors of HMDC and creating awareness about the current legislation has zero resource implications and thus cannot be explained by alleged resource difficulties. It is an obligation of the Government to make sure that those responsible are aware of the adopted legal framework.
  - 62.3. The Applicant reiterates that a number of HMDC children have no or only mild intellectual disabilities, and the number of children with severe disabilities in the institutions is minimal (see above, para 50.2.). Thus, the resources necessary for hiring special teachers for those children would be low. In order to give effect to their right to education and equality of educational opportunities, the Applicant asserts that all that is needed is for the Respondent Government to ensure that there is widespread awareness of the official recognition of the educability of all children with disabilities, for children to be enrolled in schools, and for additional support in the form of teachers trained in special education to be provided to such schools.
63. In view of the foregoing, the Applicant submits that the HMDC children have suffered discrimination in their enjoyment of the right to education. The Applicant has also shown that there exists no reasonable and objective explanation for failure to integrate children with disabilities to mainstream schools and provide children with disabilities with education, contrary to Article E of the Social Charter.

### **C) Conclusions**

64. **The failures described in this complaint and the evidence attached hereto establish violations of Article 17(2) of the Social Charter independently and in conjunction with Article E of the Social Charter. In view of the foregoing, the Applicant hereby requests the European Committee of Social Rights to find that the Respondent Government has violated the Social Charter.** The Applicant also requests the Committee to uphold its previous Conclusions from the periodic reports submitted by the Respondent Government concerning Article 17 of the Social Charter.<sup>121</sup>

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<sup>120</sup> See, for example, the statistics on population and demographic processes, issued by the Bulgarian National Statistical Institute, available at [http://www.nsi.bg/ZActual\\_e/Population05.htm](http://www.nsi.bg/ZActual_e/Population05.htm) (last accessed on 13 February 2007).

<sup>121</sup> Reviewing Bulgaria's compliance with the Article 17(2) of the Charter in 2003, the Committee found that "...children with intellectual disability living in [HMDC] receive virtually no education or training. The Committee notes that the situation is not in conformity with the Revised Charter, as children with disabilities are

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not guaranteed an effective right to education". *European Committee of Social Rights: Conclusions 2003 (Bulgaria)*, p. 52. In 2005, the Committee repeated its findings by concluding that "children with disabilities are not guaranteed an effective right to education. *European Committee of Social Rights: Conclusions 2005 (Bulgaria)*, p. 44, available at [http://www.coe.int/t/e/human\\_rights/esc/3\\_reporting\\_procedure/2\\_recent\\_conclusions/1\\_by\\_state/Bulgaria\\_2005.pdf](http://www.coe.int/t/e/human_rights/esc/3_reporting_procedure/2_recent_conclusions/1_by_state/Bulgaria_2005.pdf) (last accessed on 13 February 2007).

### **III. DECLARATION AND SIGNATURE**

*I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.*

15 February 2007, Budapest

Applicant

Oliver Lewis  
Executive Director of MDAC

Representative

Barbora Bukovská  
Legal Director of MDAC

#### IV. LIST OF ATTACHMENTS

1. Letter to Mental Disability Advocacy Center on the consultative status standing with the European Social Charter collective complaint mechanism based on the decision of the Committee of Ministers from 22 June 1995 for the period of 1 January 2005 to 31 December 2008;
2. Children in Institutions, volume 5: the Institutions for Children with Special Needs in Bulgaria, Bulgarian Helsinki Committee, Sofia, 2002;
3. Report on the situation of the specialized institutions for children with disabilities, Bulgarian State Agency for Child Protection, Sofia, 2005;
4. Rights of People with Intellectual Disabilities – Access to Education and Employment, Bulgaria Monitoring Report, OSI EU Monitoring and Advocacy Program, Budapest, 2005;
5. Alternative Monitoring Report on Bulgaria, Save the Children UK, Sofia, October 2006;
6. Report on the Monitoring of Homes of Mentally Disabled Children, Bulgarian Helsinki Committee, Sofia, 2006;
7. Children's conditions in Bulgaria, Report by Sky News, 4 May 2006;
8. Fight for Bulgaria's children, Report by Sky News, 5 May 2006;
9. *Paul O'Donoghue v Minister for Health, The Minister for Education and the Attorney General* (1996) 2 I.R. 20.