

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



23 May 2007

Case document No. 2

Mental Disability Advocacy Centre (MDAC) v. Bulgaria
Complaint No.41/2007

**OBSERVATIONS OF THE GOVERNMENT ON
ADMISSIBILITY**

Registered at the Secretariat on 21 May 2007

**Written observations of Bulgaria on the admissibility of Collective
Complaint No. 41, lodged against Bulgaria by the Mental Disability
Advocacy Centre (Hungary)**

The government of Bulgaria makes the following submissions on the admissibility of the complaint which the Mental Advocacy Centre (Hungary) filed with the Council of Europe on 20 February 2007 under the system of collective complaints provided for in the Additional Protocol to the European Social Charter (revised).

As regards the complainant's allegation that Bulgaria has contravened Article 17.2 and Article E of the revised Charter, we take the view that the right of persons with disabilities to independence, social integration and participation in the life of the community, in particular the right to education, is governed by Article 15.1 of the revised Charter, not Article 17.2, which establishes the right of children and young persons to social, legal and economic protection.

Article 15

The right of Persons with disabilities to independence, social integration and participation in the life of the community.

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1. *to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;*

Article 17

The right of children and young persons to social, legal and economic protection

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 cooperation 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.*

As, under the Act ratifying the revised Charter, Bulgaria is not bound by Article 15 of the Charter, we invite the European Committee of Social Rights, with all due respect, to dismiss the complaint as ill-founded for that reason, and not to find it admissible and examine its merits.

When a complaint is made against a state on a ground which does not match the subject matter of the complaint, we take the view that to allow the complaint and examine its merits provided there is another explicit provision whose

subject matter does match the complaint would result in a procedural imbalance and create a situation in which the same issues could give rise to different defence guarantees.

Secondly, a broad interpretation of the application of and rights deriving from Article 17.2 of the revised Charter interferes with a Party's wish as well as right under Article A.1c to select the articles and paragraphs of Part II of the revised Charter by which it will be bound. Such an interpretation would call in question the possibility under Part III of the revised Charter of accepting only some of the provisions of Part II.

At the same time we would point out that under Article 3 of the Additional Protocol, international non-governmental organisations mentioned in Article 1b and Article 2 may submit complaints, under the procedure laid down in those articles, only in respect of those matters regarding which they have been recognised as having particular competence.

The Mental Disability Advocacy Centre is an international non-governmental organisation based in Budapest, and its field of activity is protection of the human rights of people with mental problems in central and eastern Europe and central Asia. The centre seeks to improve quality of life for people with mental disabilities by instituting legal proceedings, conducting investigations and making international representations.

Given the matters in which the Mental Disability Advocacy Centre is recognised as having particular expertise, we take the view that it should file complaints based on Article 15 of the Charter. Article 15 fully covers that international organisation's field of activity and the subject of the complaint.

In the absence of legal grounds for a collective complaint by the Mental Disability Advocacy Centre, the complaint should be treated as ill-founded and therefore dismissed.