

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



21 June 2007

Case document No. 3

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

**RESPONSE TO THE GOVERNMENT'S
OBSERVATIONS ON THE ADMISSIBILITY**

Registered at the Secretariat on 19 June 2007

**APPLICANT'S RESPONSE TO THE BULGARIAN
GOVERNMENT'S OBSERVATIONS ON ADMISSIBILITY**

1. (from 21 May 2007)

The Mental Disability Advocacy Centre

Against

The Republic of Bulgaria

Collective Complaint No. 41/2007

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In a letter dated 23 May 2007, the European Committee on Social Rights (“the ECSR”) provided the Mental Disability Advocacy Center (“the Applicant”) with the Written Observations of the Government of Bulgaria on the admissibility of collective complaint No. 41/2007 and invited the Applicant to submit any comments in reply. The Applicant reviewed the Government’s Observations and hereby, in accordance with Rule 29§2 of the Rules of the ESCR, submits their response.

The objections to admissibility raised by the Respondent Government are as follows:

1. The complaint is manifestly ill founded *ratione materiae* as the matter complained of falls outside the scope of Article 17(2) of the Revised Charter; and
2. The Applicant is recognised as having a particular competence in relation to Article 15 of the Revised Charter which is not a provision to which the Government engaged itself to undertake.

In relation to these objections, the Applicant submits the following responses:

- 1. Article 17(2) of the Revised Charter applies to all children and adolescents, including those with mental disabilities**

The Respondent Government argues that the rights of persons with disabilities,

including the right to education, are regulated under Article 15 of the Revised Charter and not in Article 17(2). They state that Article 17(2) establishes the rights of children and adolescents to social, legal and economic protection.

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The Applicant considers that the fact that the provision of education for persons with disabilities is stipulated under Article 15, does not preclude a consideration of disabled children's educational issues arising under Article 17(2) which guarantees the right of children and adolescents to education.

The Respondent Government states that the Applicant's complaint cannot be deemed admissible as it would constitute a violation of their will; that is, that each State party is free to choose by which additional articles and paragraphs of Part II of the Revised Charter it is bound. In the current complaint, the Applicant is not attempting to impose duties upon the Respondent Government which it has not undertaken, but seeking the Respondent Government's accountability for the right it has engaged to provide. It is true that the right to education for children with mental disabilities is provided for in Article 15, an article by which the Respondent Government is not bound, however, the same right is also enshrined in Article 17(2) and the Respondent Government has undertaken to guarantee this right.

In its case law, the Committee has recognised that many provisions of the Charter, though different in personal and material scope, partially overlap with respect to several aspects of certain rights. This overlap, however, does not preclude rights under different articles but advances identical notions.¹ In the same way, the right to education of children with mental disabilities comes under the protection not only of Article 15, but also of Article 17(2).

The Applicant submits that Article 17(2) does not delineate which groups of children and adolescents are covered by its provisions, and thus all children and adolescents are entitled to the rights therein.

The Committee has already examined the situation of children with mental disabilities within the scope of Article 17(2); in 2003 the Committee found that

“... children with intellectual disabilities living in institutions [HMDC -Homes for Mentally Disabled Children] ... receive virtually no education or training. The Committee notes that the situation is not in conformity with the Revised Charter, as

¹ Complaint No. 31/2005, *European Roma Rights Centre v. Bulgaria*, Decision on the Merits, §17.

children with disabilities are not guaranteed an effective right to education.”²

In 2005, the Committee reviewed Bulgaria’s compliance with Article 17(2) observing “the very high number of children with disabilities in special schools, the very low educational attainment of these children, as well as the lack of education for certain children with intellectual disabilities in institutions”, and once again the Committee concluded that the situation was not in conformity with this provision.³

As Articles 15 and 17(2) do not preclude one another, and given that the Committee has time and time again reviewed Bulgaria’s compliance to provide an effective right to education for children and adolescents with disabilities (with particular attention on children with intellectual disabilities) within the scope of Article 17(2), the Applicant submits that the subject of the complaint falls wholly within this provision and cannot be deemed inadmissible *ratione materiae*.

2. The Applicant’s particular competence includes and goes beyond issues arising under Article 15 of the Revised Charter, and also includes issues in respect of Article 17(2)

The Applicant, Mental Disability Advocacy Centre, is an international non-governmental organisation with participatory status with the Council of Europe. The Applicant was registered by the Governmental Committee of the European Social Charter with standing to submit collective complaints starting from 1 January 2005 for a period of four years.⁴

Under Article 3 of the Second Additional Protocol to the Charter, the international non-governmental organisations referred to in Article 1(b) may submit complaints with respect to those matters regarding which they have been recognised as having particular competence.

In its observations, the Respondent Government acknowledged that the Applicant has particular competence in the field of activity which concerns Article 15 and it was advanced that the Applicant should be permitted to submit complaints coming under this article. Though the Respondent Government did

² Conclusions 2003, Bulgaria, p.52

³ Conclusions 2005, Bulgaria, p. 26

⁴ See attachment 1 of Applicant's complaint registered on 20 February 2007.

not expressly state that the Applicant does not have competence in the field of Article 17(2), it was inferred from their statement that Article 15 completely covers the Applicant's field of competence.

It is not contested that the Applicant's field of activity covers Article 15 which includes the right to education for persons with mental disabilities. However, given that Articles 15 and 17(2) overlap⁵ concerning their protection of the right to education for children with disabilities, the Applicant therefore submits that it is also particularly qualified to bring a complaint concerning Article 17(2).

According to Article 4.3 of Applicant's Charter, the objectives of the organisation are "to promote legal and other forms of advocacy for human and civil rights of people with mental health and/or developmental disabilities, as well as to improve the quality of life for these individuals by advocating public policies that promote community integration, self-determination and support of individuals with mental disabilities and their families."

Seeing that the right to education is a human and civil right which is essential to improving quality of life and promoting community integration and self determination, the subject of the complaint falls wholly within the field of activity of the Applicant. The Applicant's particular competence on the subject of the complaint is also outlined in its mission statement:

"The Mental Disability Advocacy Center advances the human rights of children and adults with actual or perceived intellectual or psycho-social disabilities. Focusing on Europe and central Asia, we use a combination of law and advocacy to promote equality and social integration."⁶

To this end, the Applicant has been active in ensuring that children with mental disabilities are able to exercise their right to education through various advocacy activities and legal actions. For example, the Applicant has issued a formal position paper on a child's right to education⁷, and has been engaged in cases concerning the right to education in countries where it works.

Furthermore, with regard to Bulgaria, the Applicant's Bulgarian legal monitor

⁵ The occurrence of overlapping of protections was recognised by the Committee- see Complaint No. 31/2005, *European Roma Rights Centre v. Bulgaria*, Decision on the Merits, §17.

⁶ Also available online: <http://www.mdac.info/mdac/about.html>

⁷ See Attachment A to this document.

participated in a working group, upon invitation of the Bulgarian Ministry of Education and Science, to reform regulations governing how children with mental disabilities are assessed for placement in mainstream or special schools. The Applicant's Bulgarian legal monitor is also in active collaboration with local NGOs concerning children's education issues.

It is clear that the Applicant's legal status and practice both confirm its particular competence concerning the right to education of children with mental disabilities, as protected not only by Article 15, but also Article 17(2).⁸

Finally, the Applicant's field of competence cannot be limited to Article 15 of the Revised Charter. Article 15 enunciates the specific protections provided to persons with disabilities, however it cannot be deemed that persons with disabilities are *only* entitled to the rights therein. Implying this, in itself, admits a violation of Article E as the Respondent Government is bound to secure the enjoyment of the rights in the Charter without discrimination on any grounds. Hence, precluding the right to education of children with disabilities from the provision concerning the right to education of all children amounts to discrimination and cannot be a valid ground for dismissing a complaint.

The Applicant has demonstrable competence in respect of the right to education of children with mental disabilities, and the Committee has deemed that protection of this right is covered by Article 17(2).

For the above reasons, the Applicant asserts that no claims presented by the Respondent Government are sufficient to dismiss the complaint as inadmissible. The Applicant respectfully requests that the ECSR rejects the Respondent Government's objections, declares the collective complaint admissible and reviews it on the merits.

Sincerely,

⁸ The Committee's practice is to consult both legal statutes and areas of activities in order to determine whether an organisation has particular competence within the meaning of Article 3 of the Second Additional Protocol: see Complaint no. 8/2000, *Quaker Council for European Affairs v. Greece*, Decision on Admissibility, §9; Complaint No. 17/2003, *World Organisation Against Torture v. Greece*, Decision on Admissibility, §§ 2, 6; Complaint No. 30/2005, *Marangopoulos Foundation for Human Rights v. Greece*, Decision on Admissibility, §12.

Barbora Bukovská
Representative of the Applicant

In Budapest, 19 June 2007

MDAC position paper
A child's right to education

Adopted by the MDAC Board on 22 April 2007

That every child has the right to an education cannot be disputed. Neither can it be disputed that every child has the right to an education without discrimination. Many children however, particularly those with disabilities, are segregated in their education, are denied not only the right to non-discrimination in that education but also the right to education itself.

MDAC believes that every child is educable, and without compelling reasons to the contrary, their education should be provided in a mainstream setting.⁹ MDAC therefore seeks to challenge the discriminatory segregation of children with actual or perceived intellectual disabilities or psycho-social (mental health) disabilities and to challenge the widely-held belief that some children are unworthy of education at all.

The provision of basic education and literacy for all are among the most important contributions that can be made to the development of the world's children. This has been recognised by the international community for many years. Indeed, 'the right to education' is so frequently heard and so clearly and repeatedly stated in human rights texts, that its existence cannot be denied. Nonetheless, poverty, government inertia, conceptual disagreement and an increasing acceptance of education as simply serving the needs of human capital, leads to the presumption that there will be some children in the world today who might be surprised to learn that they have a right to education.

Unfortunately many children born in Europe and central Asia and labeled with an intellectual disability would not only be surprised that they too have a right to education but would also, understandably, refuse to believe it. Understandable, because once labeled, they are often stereotyped, often sent to abusive institutions, assumed to require 'special' (and separate) education or, incorrectly classed as 'uneducable', assumed to require no education at all.

It is now recognised that children with disabilities are subject to discrimination generally. In the sphere of education this discrimination is particularly severe, because without education a person is denied any possibility of participation in society. Human rights texts oblige states to acknowledge the particular needs of children with disabilities and to

⁹ MDAC is supported in its belief by international law, intergovernmental organisations and the United Nations expert, its Special Rapporteur on education.

ensure that they have effective access to education and training. They have been interpreted by United Nations bodies as requiring for each individual child an education that is available, accessible, acceptable, and adaptable. More specifically for children with disabilities, fulfillment of the right to education requires it to be inclusive.

Inclusive education is based on the principle that all children should learn together wherever possible, regardless of difference. Inclusion has been shown to limit marginalisation, misconceived stereotyping, prejudice and discrimination. It challenges the appropriateness of segregated education both on grounds of effectiveness as well as from the perspective of respect for basic human rights.

Governments have the primary legal obligation to respect, protect and fulfill a child's right to education. Their obligation is to establish and adequately resource an inclusive education system. To do this successfully, the active, non-discriminatory involvement of additional people - parents, teachers and civil society organisations, are essential if inclusive education is to become a reality. Many of these groups share and perpetuate misconceptions about disability generally, the belief that children with disabilities must either 'adapt' to mainstream schools and/or that segregated schools are appropriate. All efforts at government level to implement a paradigm shift towards inclusive education, must therefore include measures to break these misconceptions down.

MDAC can neither ignore the intellect a child possesses, nor accept a situation where children are arbitrarily denied education, their dignity and the opportunity to participate in society. What might prove to be a rudimentary level of education does not and cannot render it unworthy of protection.

MDAC continues to challenge the denial of children's education at the international, regional and domestic levels. These challenges will continue until children with disabilities are accorded their right to education, as full and equal members of society.

Where can we find the right to education?

Universal Declaration of Human Rights 1948 (United Nations)

Article 26: Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory

UNESCO Convention against Discrimination in Education 1960 (United Nations)

Article 4: The States Parties to this Convention undertake to formulate, develop and apply a national policy which, will tend to promote equality of opportunity and of treatment... and in particular (a) to make primary education free and compulsory

International Covenant on Economic, Social and Cultural Rights 1966 (United Nations)

Article 13: Primary education shall be compulsory and available for all

Convention on the Rights of the Child 1989 (United Nations)

Article 23(1): States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

Article 23(3): Recognizing the special needs of a disabled child, assistance ... shall be designed to ensure that the disabled child has effective access to and receives education ... in a manner conducive to the child's achieving the fullest possible social integration and individual development...

Article 28(1): States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity they shall in particular

(a) Make primary education compulsory and available free to all

Convention on the Rights of Persons with Disabilities (United Nations)

Article 24: Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, State Parties shall ensure an inclusive education system at all levels and life long learning directed to:

- (a) The full development of human potential and sense of dignity and self-worth and the strengthening of respect for human rights, fundamental freedoms, and human diversity;
- (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- (c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

- (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) Reasonable accommodation of the individual's requirements is provided;
(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as member of the community. To this end, States Parties shall take appropriate measures, including:

(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximise academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measure to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Protocol No. 1 to the European Convention on Human Rights, 1952 (Council of Europe)

Article 2: No person shall be denied the right to education

Revised European Social Charter –1996 (Council of Europe)

Article 12: 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 ... to (2) provide children and young persons a free primary and secondary education...

