

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**



2 October 2007

**Case document No. 4**

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

## **GOVERNMENT MEMORIAL ON THE MERITS**

Registered with the secretariat on 1 October 2007



## **Response of the government of Bulgaria to collective complaint no. 41 of the Mental Disability Advocacy Centre (Hungary) against Bulgaria**

In recent years education has become increasingly established as one of the great social issues. Most Bulgarian citizens consider education to be a new national priority. There is also growing agreement on the need to redefine Bulgaria's educational objectives, particularly for school and pre-school education, to take account of the new requirements of a global and dynamic economy and the challenges of a highly competitive labour market.

The right to education is a fundamental principle that is enshrined in article 53, paragraph 1 of the Bulgarian Constitution. The fact that Bulgarian education is compulsory to the age of 16 reflects this principle. The state encourages education by organising and financing schools, supporting gifted pupils and students and creating suitable conditions for vocational training and qualification.

Article 6, paragraph 2 of the Constitution establishes the key principle of equality for all citizens before the law. It admits no restriction of rights or privileges on grounds of race, nationality, ethnic group, sex, origin, religion, education, beliefs, political affiliation, personal or social status or financial circumstances. This basic principle is enlarged on in a series of laws and other legal provisions, in accordance with the constitution and the country's obligations under international law. It also applies to the application of national and local policy on education. Bulgarian legislation gives citizens the same opportunities for and right of access to education.

The Bulgarian government does not dispute that some of the young people who live in institutions for mentally disabled children do not receive adequate education. We consider that this is the result, not of the discrimination alleged by the complainants but of a complex series of objective economic and social causes. The government is making determined efforts to deal with the problems facing school and pre-school education in Bulgaria. It is seeking to identify and give priority to problems that particularly concern society and for which solutions are urgently need, so that Bulgaria can offer mentally disabled children schools that are modern, accessible and enabling. In response to the problems identified, it is developing practical measures with relevant timetables for implementation and financing and an appropriate legal framework.

The complaint concerns allegations that the right to education of mentally disabled children living in institutions has been breached and that they are directly discriminated against on account of their disability. It is also claimed that government policy does not guarantee than access to education, constituting direct discrimination against mentally retarded children with no parents to care for them. The legal and practical steps taken by the Bulgarian government are described below.

Most of the situations described and claims made in the collective complaint are based on insufficient and unsubstantiated evidence, or on individual and

isolated cases. The Bulgarian government does not deny that a high percentage of children of compulsory school age are not covered by or subsequently drop out of the education system but this percentage is not made up exclusively of mentally disabled children and therefore claims that a policy of discrimination is applied are unfounded.

The government wishes to respond to the allegations made in the complaint, and at the same time confirm its commitment to securing the objective of providing mentally disabled children with proper education. We hope to benefit from international experience in this area.

The government's policy is to create favourable conditions for the education of children with special educational needs, including ones who are mentally handicapped, to develop their full potential and encourage their social inclusion and integration, whether they live with a family or are placed in a specialised institution for children.

Under the Constitution and the Education Act, which are the main national sources of law on the subject, every child enjoys an unconditional right to education. Both domestic legislation and the Convention on the Rights of the Child prohibit any restrictions or privileges with respect to the right to education, based on race, nationality, ethnic or social origin, sex, religion or social circumstances. Education is compulsory to the age of 16 and primary and secondary education in state and municipal schools is free. Under the Education Act, children start school in the year in which their seventh birthday falls. Children may start school at the age of six if this is justified by their physical and mental development and their parents or guardians give their approval. A corollary of the right to education is the right to be taught in a school or via a form of education freely chosen. Pupils receive free schooling as a basis for their education and for developing their interests and abilities.

Under the state education system, all children benefit from the same conditions, but the regulation implementing the Education Act provides for individual and autonomous education for gifted children. There are also special safeguards for the education and schooling of children with disabilities, that is children with special educational needs, as well as ones suffering from chronic illnesses or deviant behaviour, or who are deprived of parental care.

The trend is towards integrating most children with disabilities into mainstream schools where other pupils of their age are taught. The Education Act requires schools to create the conditions for the integration of children suffering from chronic illnesses or with special educational needs into the public school system while its implementing regulation states that nursery, primary and secondary schools shall provide for the integrated education of these same groups of children. There is thus a legal basis for the integrated education and vocational training of pupils and students with special educational needs.

For the first time, the Vocational Training and Education Act created a clear legal basis for the vocational training of students with special educational needs. According to their wishes, and without having to sit a special entrance

examination, they are guided towards jobs and occupations that are not contraindicated by their state of health. Vocational education and training programmes are organised for children with special educational needs, according to their state of health and social circumstances. A list of occupations suitable for children with chronic illnesses and physical and sensory disabilities has been approved. There are also vocational education and training programmes for mentally retarded children. There are vocational training programmes for children with sensory disabilities. There are also good practices for the vocational and integrated training of mentally disabled children and children with sensory impairments. Daily and, in certain cases, individual teaching are used.

The policy of equal access to education is also embodied in other documents:

The Disabled Persons' Integration Act

Regulation No. 6 on the education of children with special educational needs and/or chronic illnesses (published on 30 August 2002)

The national plan for integrating children with special educational needs and/or chronic illnesses into the national education system (approved by the government on 22 December 2003)

The national child protection programme

National strategies, plans and programmes for integrating persons with disabilities.

Government education policy is to reduce the number of special schools and increase the number of children with special educational needs in mainstream schools while at the same time allocating new functions to special schools, which will continue to educate children with serious or multiple disabilities, and developing appropriate methods and specialisms to assist the process of educational integration. Integrating special needs children into mainstream nursery, primary and secondary schools calls for a series of measures to create the right setting and conditions for their education, particularly a physically accessible environment, the possibility of individual teaching programmes, and the availability of school textbooks and other written material, technical resources and equipment and specialist staff qualified to work with children with disabilities in a mainstream educational setting. These are the main features of the steps Bulgaria is taking to integrate children with special educational needs into the ordinary school system.

#### 1. Training of children with special educational needs in a mainstream educational environment

Under the plan for integrating children with special educational needs and/or chronic illnesses into the national education system and the legislation governing the education system, the gradual introduction of integrated teaching throughout the country started in early 2004. Over the last three years, the regional educational inspectorates have set up educational assessment teams, who make the initial assessment of disabled children and direct them towards the most appropriate form of education. Once the opportunities for integrated education are exhausted, and with the written agreement of the parents or

guardians, the assessment teams refer children with special educational needs to specialist schools. One of the assessment teams' responsibilities is to collect information from medical and social institutions on children and young persons of compulsory school age with mental disabilities in order to assess their educational needs, with a view to directing them towards and integrating them in the most appropriate form of educational provision. This process is already successfully under way in many regions, but it is still not fully and generally applied.

Apart from the educational assessment teams, specialist teams have been set up in all the nursery and general schools in the various educational inspectorates in which special needs children have been integrated.

Training has been organised for assessment team specialists, school heads, psychologists, educational counsellors, teachers, and representatives of local government and child protection agencies on the integration of and work with children with special educational needs in a normal school environment. National and regional conferences and seminars have been held on positive examples and support for integrated education.

To help create a supportive environment for integrated teaching, the ministry of education and science has prepared and ratified an individual teaching and development programme for children with special educational needs, a description of the duties of the "resource teacher" post and instructions on the working methods of educational assessment teams. Twenty-eight resource centres have been opened to assist the teaching and education of these special needs children, to which have been recruited 685 resource teachers, rehabilitation therapists, speech therapists and psychologists to assist the 3765 pupils already integrated into the system.

As a result of the establishment of such a support environment, the number of special needs children integrated into the general educational system, and of resource teachers and other specialists to assist this integrated teaching, is continuing to rise. In the 2004-2005 school year, 717 children received integrated education, assisted by 129 resource teachers and other specialists. By 2005-2006 number of children had risen to 1538, and of resource teachers to 223, while in 2006-2007 the equivalent figures were 4400 pupils and 635 resource teachers and specialists.

The critical fact to note is that the number of children in special schools is in constant decline. In the 2001-2002 school year, there were 17 563 pupils in such schools, compared with 9532 in 2006-2007. Education ministry policy is to reduce the number of special schools and increase the number of special needs children who are integrated into the mainstream system, while at the same time giving the remaining special schools new functions geared towards educating children with serious or multiple disabilities and supporting integrated education using appropriate methods and specialisms.

Seven hundred and seventy general and 183 nursery schools include pupils with special educational needs.

In 2006 building work to improve access was carried out in 88 general schools, at a total cost to the state of BGN 750 377. By early 2007, 400 teachers had been trained to work in mainstream schools with children with special educational needs, at a cost to the state of BGN 180 440. In 2007, the ministry of education and science has made a further BGN 3 000 000 available for architectural work to improve accessibility. The national education centre and its regional branches will provide training for teachers in nursery and general schools to enable them to work with special needs children.

## 2. Optimising the network of schools for mentally disabled children

In 2006, a full inspection was carried out of all the country's social assistance schools. The purpose of the inspections was to assess these schools and optimise their network, review existing arrangements for moving pupils out of these schools and integrating them into general and occupational schools and identify ways of redirecting these schools' human resources towards assisting children to integrate into the mainstream system. Following this inspection over the period June - August 2006, 10 social assistance schools were closed and a further three were closed in 2007. Most of their pupils transferred to the mainstream sector.

Under Article 53, paragraphs 1 and 2, and Article 54, paragraph 1 of the Integration of Disabled Persons Act and Order RD09-355/13.03.2007 laying down the conditions for and guaranteeing the integration of disabled persons in nursery, mainstream and social assistance schools in the general education system, and in senior schools, the ministry of education and science has appointed officials of the ministry and the regional educational inspectorates to identify administrative breaches of the regulations in the educational sphere.

The directors of all specialist childcare institutions in which children and young persons of compulsory school age with different disabilities are living must provide the relevant information to regional inspectorates and take the necessary steps to secure these children's integration into the education system. Part 7 of the Education Act, on administrative and criminal liability, requires municipal officials to report parents and legal custodians and guardians who are in breach of their obligation to ensure that their children of compulsory school age attend school.

Bearing in mind the measures and steps taken, as specified above, we do not agree with the complainant's allegations that there is no supervision of directors of institutions for mentally disabled children.

Each year, the national child protection agency carries out a systematic study of the children living in specialist institutions for the mentally disabled, as part of the general oversight of the social assistance system and the rights of children in Bulgaria.

There is no real evidence to support the claim that the residents of institutions for mentally disabled children are likely to remain institutionalised for the whole

of their lives. Indeed, the Bulgarian government's policy is to expedite children's departure from institutions and steps are being taken to prevent admission to such institutions. The points made below support this contention.

A series of measures have been taken in recent years to improve disabled children's quality of life. Most of the emphasis has been on the social integration of disabled children and their families, with the help of community social services, social assistance, guaranteed access to education and so on.

The Child Protection Act details relevant protective measures, such as special care for children with disabilities. These are children who require special support, depending on their individual needs and capacities. Once children have been identified as disabled, the child protection section of the social assistance directorate assesses their individual needs, the degree of risk and their parents' capacity to look after them. Individual case files are then prepared to record the facts and circumstances observed and action plans are drawn up setting out the ongoing work required with each child. The main emphasis is on work with families to help them to care for and raise their children in accordance with their particular disabilities. Social workers advise parents on how to carry out their parental role and inform them of the real risk attached to their child's abandonment and reception into a specialist institution. Later they help parents to choose the most suitable form of education for their children, including nursery and general schooling. Information is provided about available social services. Social assistance directorates encourage parents and their children to play an active part in choosing the most appropriate social services. The interests of the child are of paramount importance in the corresponding choice of provision.

The social services are governed by the Social Assistance Act and its implementing regulations. They provide assistance and make it easier for persons to maintain an independent life style. The social services are based on social work and assist individuals to carry out daily activities and achieve social integration. The relevant services are provided in specialist institutions and in the community.

The reform of social services gave priority to developing services in the community. The aim is to protect children's right to live in a family environment, prevent admission to specialist institutions and expedite children's departure from these institutions. Community social services provide a number of extremely important services for disabled children and young persons, including day centres, sheltered accommodation and rehabilitation and social integration and similar centres.

Day centres provide a range of social services during the day or over the week, including meals, the satisfaction of daily needs in such areas as health, education and rehabilitation, and the organisation of leisure activities and personal contacts.

Rehabilitation and social integration centres also provide various social services in conjunction with rehabilitation, including social and legal advice, vocational

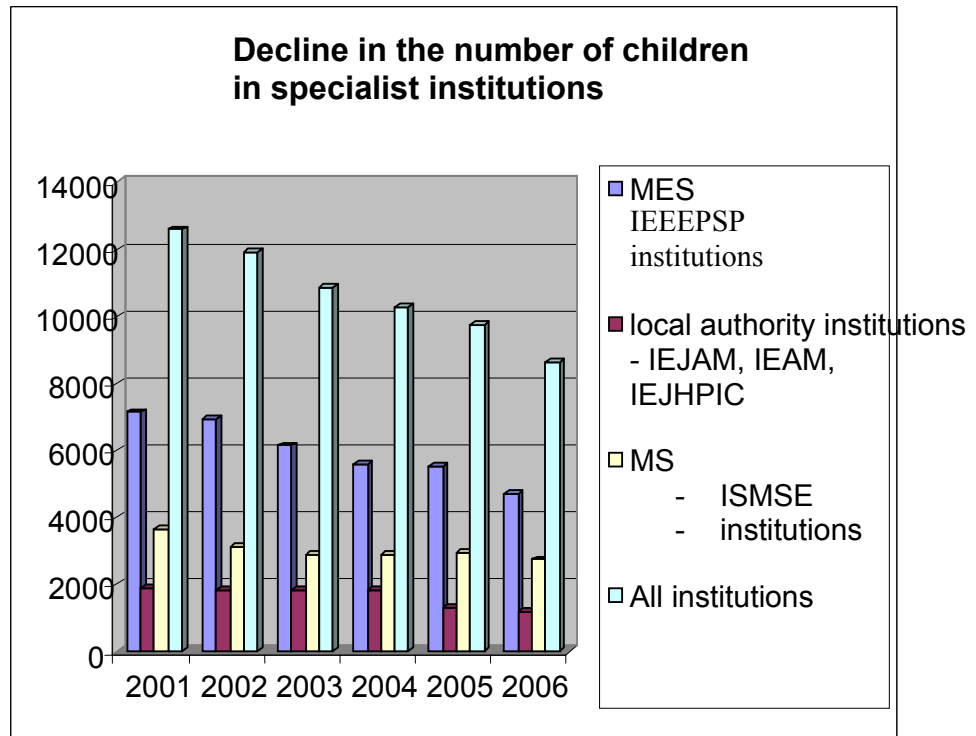


training and educational activities, guidance and the preparation and application of individual social integration programmes.

Sheltered accommodation offers mentally disabled young people an opportunity for independent living, with professional assistance. By 31 July 2007, there were 43 sheltered residencies in operation. There are also 42 day centres in Bulgaria for disabled children and young persons, and 36 rehabilitation and social integration centres, serving both children and elderly persons with disabilities.

Ten social services centres have been built under the ministry of labour and social policy's reform project to improve children's well-being in Bulgaria. These are associated with public support centres, mother and baby units and centres for working with street children. The centres again offer a wide range of social services, including advising and assisting families with bringing up their children, preventing children's admission to residential institutions and educating those concerned in how to lead an independent life. Most of the clients of these centres are disabled children and their families. By 31 July 2007, there were 12 public support centres, 7 centres for working with street children and 10 mother and baby units.

In recent years, as a result of the child protection system that has been developed and brought into operation, the application of child protection measures and the activities of the social services, there has been a continuous downward trend in the number of children in specialist residential institutions. By late 2006, there were 8 653 children in such institutions, a decline of 31.4%, or 3 956, compared with 2001. Compared with 2005 the decline was 1 123 children, or 11.5%, and it was 15.9% lower than in 2004.



*IEEEPSP – institutions for the education and upbringing of children without parental care;*

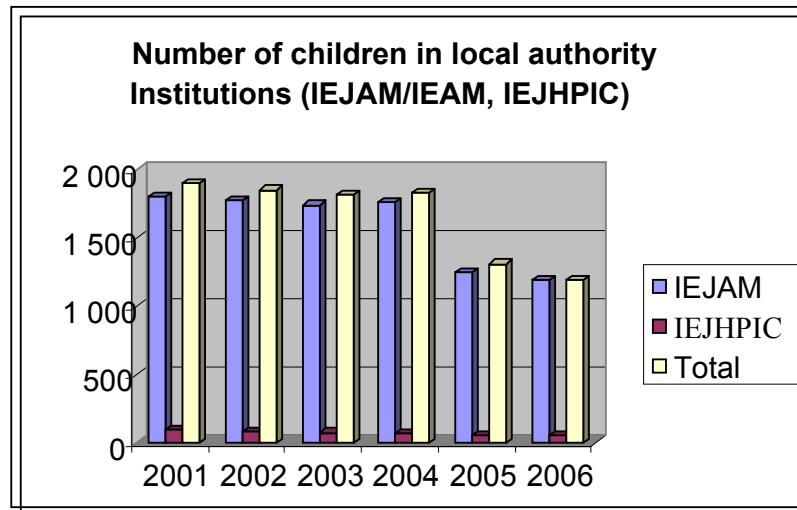
*IEJAM - Institutions for mentally disabled children and young persons;*

*IEAM - Institutions for mentally disabled children;*

*IEJHPIC - Institutions for physically disabled children and young persons with no mental disorder;*

*ISMSE – Institutions providing medical and social care for children.*

Institutions for disabled children were decentralised in 2003 and are now run by local authorities.



Accommodating children in specialist institutions is only acceptable as an extreme case when all the options for raising and looking after those children in a family setting have been exhausted.

In 2006, changes to the child protection legislation introduced the notion of professional foster families, to offer children at risk a family environment. This has extended the options for preventing the reception of children into specialist institutions, thus making it easier to reduce the number of residents of such institutions. In particular, priority will be given to placing disabled children with professional foster families.

Children with disabilities are also defined as a special group under the regulation implementing the Social Assistance Act and decree 5/30.05.2003 on eligibility for heating allowances. Individuals and families whose income is below the differentiated minimum income are entitled to social allowances. The differentiated minimum income is based on the guaranteed minimum income with a correction factor or percentage that varies according to the group in which an individual falls. This correction factor is higher for children with disabilities, to offer better social protection for the families caring for them, and for the children themselves.

The Family Assistance Act offers various forms of aid to disabled children, irrespective of the family's income and whether the child is attending school. The correction factor or percentage for the monthly allowances of disabled children to the end of secondary education but not beyond the age of 20 is doubled. If a permanent disability is identified in a child before the age of two, the family is granted a single additional allowance. In the case of families raising a disabled child, the monthly allowance normally payable to the age of one continues to be paid until the child is two.

In addition, to improve the social situation of disabled persons, including disabled children, the Integration of Disabled Persons Act introduced a monthly social integration allowance.

This is intended to cover additional costs for education, transport, medicines and so on. In 2006, 18 456 children received this allowance.

The monthly disabled child's allowance, which is 70% of the minimum wage, also makes a major contribution to preventing the abandonment of disabled children. Parents, adoptive parents, close relatives and foster families who raise children with permanent disabilities are all entitled to the allowance. In 2006, it was paid to the families of 24 165 children.

The supply of medical products, technical resources and aids to daily living is one of the most important aspects of rehabilitation, whose basic aim is to secure maximum autonomy for persons with disabilities and their integration into society. This form of individual assistance creates real conditions and opportunities for disabled persons, and more specifically disabled children, to lead normal everyday lives, communicate, travel and engage in sport, cultural activities and other forms of leisure.

### **Good practices**

One example of a good practice is the education ministry project, entitled "teachers for disabled children". The aim is to integrate disabled children with special educational needs into the mainstream educational system. It also offers work for unemployed teachers. The latter undertake a three-month training course covering the knowledge and skills required to work with disabled children, including preparing the children for integration, in appropriate conditions, into ordinary mainstream schools and helping them to cope with the necessary study requirements. The government meets the cost of these teachers' salaries and social insurance costs for between 12 and 36 months. The project encourages employers, state schools and municipal schools in the public education system to make posts available. The project includes the following aspects:

- identifying the teaching and education needs of children with various forms of disability;
- determining the required skills and qualifications to enable teachers to work with disabled children;
- determining the necessary forms of education for these children, after obtaining their parents' agreement;
- preparing individual teaching and development programmes adapted to the specific needs and abilities of the children concerned;
- guiding children with various forms of disability towards the most suitable forms of teaching, education and social integration;
- providing the right technical and organisational conditions for children covered by the project in their normal areas of residence.

The initiative has been publicised in the media, by public bodies and through other channels of information. The partners include counties, municipalities, governmental and non-governmental organisations and other interested institutions, through the signature of agreements, conventions and contracts. An assessment is made at the end of each year of the implementation of the

project and it is proposed to include the updated project in the national action plan for employment in the following year. It has been in operation since 2003 and according to figures available at 31 May 2007, an average of 367 disabled children per month benefit from such teaching.

The national child protection agency, in conjunction with the foundation "Each Child", has launched a project on equal access to education in the municipality of Haskovo. The aim is to assist children with special educational needs to become integrated into mainstream education by developing social services, setting up multidisciplinary teams, training resource teachers, drawing up and applying individual teaching plans and giving the public better information on the problems of disabled children. The project has enabled such children to attend one general and two nursery schools in the town of Haskovo and there has been a positive change in the attitude of the local community towards disabled children. The professional skills of education professionals have been improved and an effective model of institutional co-operation in the integration process has been established.

Another positive example is the project run by the Aleko Konstantinov school in Sofia, entitled "working together for the integrated teaching of disabled children". The voluntary association "Together" is collaborating in the project, with financial assistance from the "Tulip" foundation – which co-ordinates the activities of the united Dutch foundations for central and eastern Europe in Bulgaria. The aim is to create an environment that facilitates the integrated teaching of children with disabilities. A measure of the project's success is that 50 disabled children are integrated into mainstream schools, where they study alongside their other classmates. Parents, teachers and pupils all have a positive view of this integration process, and since it started parent involvement has risen.

In 2007, the national child protection agency and UNICEF developed a joint project and signed an agreement on regional training in all the country's communities on the "observing the rights of the child" programme, which is concerned with projects on the future development of children's institutions, using an appropriate methodology.

### **What next?**

To improve the legal framework in this area, in 2003 the government approved the national strategy for equal opportunities for persons with disabilities. Its preparation included contributions from more than 50 representatives of 22 non-governmental organisations and disabled persons' associations. The strategy reflects European standards on equality for and non-discrimination towards disabled persons. It proposes a radical change in the philosophy of social protection and a change of policy towards improving disabled persons' quality of life and social integration. It is entirely concerned with the integration of persons with disabilities and their acceptance as people with a range of capacities and skills. It is compatible with national experience in this domain and with European Union recommendations and practices, United Nations rules on equal

opportunities for disabled persons, the UN Convention on the Rights of the Child and other fundamental international documents.

To implement the national strategy, in a decision recorded in protocol 53/15.12.2005 the government approved an equal opportunities action plan for disabled persons for 2006-2007. The plan includes seven operational objectives, geared towards improving the quality of life and social integration of disabled persons, in accordance with European trends in the equality field. The government decision also requires six-monthly and annual reports on the plan's implementation.

In conjunction with the implementation of activities identified in the national equal opportunities strategy for disabled persons, Council of Europe recommendations, good practices of EU member states and the principles set forth in the UN Convention on the Rights of Persons with Disabilities, Bulgaria is now ready to adopt its 2008-2015 equal opportunities action plan for disabled persons.

This lays down practical measures required to overcome all the obstacles – psychological, educational, social, cultural, occupational, financial and architectural – to the social integration, on an equal footing, of persons with disabilities. The plan has been drawn up in accordance with the basic legislation, research and national strategy documents, including the national equal opportunities strategy for disabled persons, the joint memorandum on social integration in Bulgaria, the national report on social protection and integration strategies in Bulgaria, 2006-2008, the operational programme "development of human resources", 2007-2013, the national school education and pre-school education and preparation programme, 2006-2015, the action plan to reduce the number of pupils of compulsory school age who have left school, 2007-2009, and the national plan to integrate children with special educational needs and/or chronic illnesses into the national education system.

The following steps have been taken to ensure that disabled persons receive a proper and useful education:

- a new system for diagnosing children with special educational needs and directing them towards the mainstream education system;
- information campaigns to create a more positive attitude among the various communities – teachers, pupils, the children and young persons concerned and parents – towards inclusive education;
- creating the right conditions for a positive school environment, enabling special needs children to integrate into the general school system and nursery schools, through improved architecture, retraining of teachers, appropriate education standards and school material and equipment, and teacher support;
- optimising the special school system;
- providing mainstream schools with the necessary resources to take in pupils with mental disabilities.

Under the Child Protection Act, the National Assembly must approve the national children's strategy, which will be in force for ten years, by the end of this year. The strategy is an expression of the commitment of Bulgarian society,

represented by its government, to laying down certain fundamental principles for improving the well-being of children in Bulgaria. It will be a clear and categorical statement of the determination of the country's executive and legislature to improving the quality of life of Bulgarian children and their families.

The child protection strategy will be based on certain fundamental principles from the UN Convention on the rights of the Child regarding children's place in society, their right to live in a family environment, their entitlement to conditions that enable them to exercise their rights effectively and a reduction in the risk of poverty among children. It will cover all spheres of social life that might influence children's well-being, and in particular the family environment, medical services, education, rest and leisure, alternative forms of care, standard of living and social assistance, protection from child exploitation and abuse, special protection measures, children's right to express their opinions and to have an identity, and protection against discrimination.

During the strategy's period of validity, the reform of the education system will continue to ensure that it fully meets the required standards of accessibility and quality, bearing in mind the growing importance of education in securing children's social inclusion and optimising human resources. As part of this commitment to offering Bulgarian children access to a high standard of education, particular attention will be paid to extending the take-up and quality of preschool education and integrating children with special educational needs into the mainstream system. In order to adapt to the needs of these children, efforts will continue to establish the right sort of supportive environment, including appropriate social and architectural arrangements, individual teaching programmes, teams qualified to undertake complex educational assessments, both shared and special educational resources and equipment, and appropriate teaching materials.

## **CONCLUSIONS**

We wish to state that the Bulgarian government does not deny that there are still problems surrounding the school education of mentally disabled children but we do challenge certain unsupported conclusions in the complaint and the claims that these are the consequence of discrimination against disabled children regarding their access to education and the failure of Bulgarian government policies.

The facts, measures and actions described show that the policy on the education of children with mental disabilities is fully compatible with their individual needs and abilities.

The honouring of commitments arising from international treaties, other than the revised Social Charter, to which Bulgaria is a party is outside the jurisdiction of the European Committee of Social Rights and we do not therefore comment on these alleged breaches of our obligations.

Regarding the requests made in the collective complaint, our position is as follows:

Bulgarian legislation offers sufficient safeguards to make discrimination inadmissible and to protect the right of all children to access to education.

The Bulgarian government has a consistent and clearly thought out policy on the integration of children living in special institutions, which extends to its education policy. This is an ongoing process, the visible results of which will become evident in the long term and which will require considerable financial resources.

Bearing in mind the points made above and having regard to Bulgaria's economic situation, the government fully intends to secure improvements to the education system, with two key policy objectives – equal access and a high standard of teaching.

It hopes to achieve the Charter's objectives within a reasonable period of time, with observable progress and the fullest possible use of available resources.

The Bulgarian government therefore invites the European Committee of Social Rights:

1. to recognise its efforts to secure equal access to education;
2. to note the legal and practical steps that have been taken to overcome the problems of offering children living in residential establishments for the mentally disabled access to schooling, and the government's political commitment to ensuring that these are implemented and put into practice, in accordance with the objectives of the revised Social Charter and subject to available resources;
3. to reject the application of the Mental Disability Advocacy Centre as unfounded.

The Bulgarian government is fully prepared to provide any additional information that the complainant or the Committee may request, including the participation of a government representative at the Committee's deliberations, to ensure that there is a detailed examination of the facts and a fair conclusion.