

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



30 November 2007

**Case document No. 5**

**The Mental Disability Advocacy Centre (MDAC)  
v. The Republic of Bulgaria**  
Complaint No. 41/2007

**RESPONSE OF THE MDAC ON THE SUBMISSIONS  
OF THE GOVERNMENT ON THE MERITS**

Registered at the Secretariat on 29 November 2007



**APPLICANT'S RESPONSE TO THE BULGARIAN  
GOVERNMENT'S OBSERVATIONS ON THE MERITS  
(from 9 October 2007)**

**The Mental Disability Advocacy Centre**

**Against**

**The Republic of Bulgaria**

**Collective Complaint No. 41/2007**

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The Mental Disability Advocacy Centre (MDAC, *hereinafter* “the Applicant”) welcomes the comments of the Bulgarian Government (*hereinafter* “Respondent Government”) on the merits (*hereinafter* “the Government’s Comments”) of Collective Complaint no. 41/2007.

The Applicant would like to state its dissatisfaction over the paucity of a substantial reply presented in the Government’s Comments to the Collective Complaint. The following points will be elaborated below: first, the Government’s Comments do not adequately address the subject matter of the complaint- the lack of education of children with mental disabilities living in Homes for Mentally Disabled Children (*hereinafter* “HMDC”) due to discrimination in their respect. Many of the Government’s Comments relate to children with disabilities in general and do not focus on the specific situation of children with mental disabilities living in HMDC. Second, the Respondent Government submits information which is either irrelevant to the complaint, or which is inadequately detailed and referenced. The Applicant also notes that the Government’s Comments are inconsistent; arguments contradict each other and certain data presented in the Government’s Comments conflict with figures provided by other governmental bodies. This prompts the question of the credibility of the information provided and consequently the arguments raised based upon that information. In general, the Applicant found it difficult to follow the Respondent Government’s arguments given the unstructured nature of their response and the irregular terminology used therein- notably the term “*écoles d’assistance*”<sup>1</sup> which, to the knowledge of the Applicant, has no meaning in French, but which it assumes to signify “*écoles spécialisées*.”

In accordance with Rule 31§2 of the Rules of the European Committee of Social Rights (*hereinafter* “ECSR”), the Applicant hereby submits its response.

1. The failure of the Respondent Government to take adequate steps to ensure that education is accessible for children living in HMDC cannot be justified on account of economic or social causes, and amounts to discrimination.

In its comments, the Respondent Government explicitly admits that children living in HMDC do not receive an education.<sup>2</sup> The Government’s Comments state that children living in HMDC are not the only group of children who are not covered by the education system and refer to the high percentage of children of compulsory schooling age who do not attend school. It appears that the Respondent Government uses this to demonstrate that the lack of schooling for HMDC children is not the result of any difference of treatment or discrimination in their respect, given that they are not the only children who are denied their right to education.<sup>3</sup> This reflects the Respondent Government’s lack of understanding of its obligations and responsibilities in relation to Article E of the Charter.

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<sup>1</sup> For example, see Government’s Comments, p.5.

<sup>2</sup> Government’s Comments, p.1, §4.

<sup>3</sup> “Le gouvernement bulgare ne conteste pas qu’il y a un pourcentage élevé d’enfants à l’âge scolaire obligatoire qui ne sont pas couverts par le système de l’enseignement, ou qui par la suite ne font plus partie de ce système, mais ce pourcentage ne concerne pas seulement et uniquement des enfants d’handicaps mentaux et par conséquent, les prétentions concernant les politiques de discrimination appliquées ne sont pas fondées.” Government’s Comments, p.2.

First, the Respondent Government admits that HMDC children comprise only a part of the high percentage of children of compulsory schooling age who do not attend school. It simultaneously details various activities introduced to implement existing legislation and policy regarding compulsory schooling of children in Bulgaria; for example, organising and financing schools, supporting students including gifted students, and creating conditions for training and for professional qualifications.<sup>4</sup> An admission such as that given, sitting alongside details of implementation activities is incongruous. The fact that the Respondent Government readily admits that their action to secure schooling for children of compulsory schooling age still yields a large percentage of children not covered by the school system serves to reinforce the Applicant's assertion that such implementation is wholly inadequate.

Second, grouping HMDC children among the high percentage of children who do not receive schooling cannot answer the complaint of discrimination against them. It could also be the case that all children in this high percentage group are subject to discrimination in their right to education. Discrimination against one group does not preclude discrimination against another. The Applicant is aware that children of ethnic minority groups, most notably Roma, are often denied equal access to schooling in Bulgaria and make up a large proportion of children who are not guaranteed an effective right to education.<sup>5</sup> The Applicant is also aware of the action plans and strategies established by the Respondent Government aimed at the integration of Roma children in the education system;<sup>6</sup> nonetheless, as stated above, the Applicant remains conscious that practical implementation of these strategies is amiss.

Third, on the basis of the Respondent Government's arguments, it would appear that it interprets discrimination as requiring an element of intent and/or a positive act on its part (resembling direct discrimination). Intent and/or a positive act is not integral to discrimination as recently reiterated by the European Court of Human Rights;

“where it has been shown that legislation produces such a discriminatory effect, the Grand Chamber considers that, as with cases concerning employment or the provision of services, it is not necessary in cases in the educational sphere to prove any discriminatory intent on the part of the relevant authorities.”<sup>7</sup>

The ECSR makes it clear that the principle of non-discrimination inherent in Article E “is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.”<sup>8</sup> The Respondent

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<sup>4</sup> Government's Comments, p.1, §2.

<sup>5</sup> Conclusions 2005, Bulgaria, p.28; see also chapter on Bulgaria in EUMAP's 2007 report “Equal Access to Quality Education for Roma ” [http://www.soros.org/initiatives/roma/articles\\_publications/publications/equal\\_20070329/roma\\_20070329.pdf](http://www.soros.org/initiatives/roma/articles_publications/publications/equal_20070329/roma_20070329.pdf) (last accessed 27 November 2007).

<sup>6</sup> See the Bulgarian State Report submitted to the UN Committee on the Rights of the Child, “Measures undertaken and progress made by the Republic of Bulgaria in the Implementation of the Provisions of the UN Convention on the Rights of the Child” (consolidated second and third periodic report), *hereinafter* the “2007 State Report on implementation of the UNCRC”, CRC/C/BGR/2, §§103-109; to be examined at the UNCRC's 48th Session (May/June 2008), Annex 1.

<sup>7</sup> *D.H. and Others v. the Czech Republic* [GC], No. 57325/00, 14 November 2007, § 194.

<sup>8</sup> *Thlimmenos v. Greece* [GC], No. 34369/97, 6 April 2000, §44.

Government, however, defends itself from the charge of discrimination by arguing that it does not treat children from HMDC differently from other children. In so doing, it implicitly admits indirect discrimination. Indirect discrimination, as described by the ECSR, can 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 genuinely accessible by and to all”.<sup>9</sup>

In this connection, the Applicant draws attention to a 2007 decision by the Sofia District Court in which it was found that children with disabilities suffer discrimination on account of not having been integrated into mainstream schools. The court held that under article 71, paragraph 3 in connection to paragraph 1, item 2 of the *Law on Protection from Discrimination*<sup>10</sup>, “the Ministry of Education should stop its inaction in relation to its obligation to provide a supportive environment for the integration of children with special education needs and to refrain from repeating this violation again.”<sup>11</sup> The ruling states:

“According to the court, the Ministry of Education’s obligation to provide a supportive environment is a precondition to integrated schooling and therefore equality of education for children with disabilities would have been implemented only if such environment is assured in every school [...] the non-provision of such an environment is, in its essence, unequal treatment of children with disabilities on the grounds of their disability, because they are not given the opportunities which children without disabilities have.”<sup>12</sup>

Thus, contrary to what is being argued by the Respondent Government, a Bulgarian domestic court has already recognised that children with disabilities have been the object of indirect discrimination through the lack of action taken to provide a supportive environment catered to their special education needs.

In order to refute the charge of discrimination, the Respondent Government refers to social and economic causes in an attempt to justify its failure to educate HMDC children.<sup>13</sup> It is unclear to which social causes the Respondent Government is referring as this is not further elaborated. Nonetheless, the Applicant concurs that children with mental disabilities in HMDC have been deprived of their right to education on account of causes inherent to society. In effect, it is the prevailing prejudices and stereotypes in Bulgarian society which shape, to their extreme detriment, the treatment of HMDC children by the administration and society at large. As such, social causes both constitute

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<sup>9</sup> *Autism-Europe v. France*, Complaint No. 13/2000, Decision on the merits of 4 November 2003, §52; in reference to the case-law of the European Court of Human Rights, *Thlimmenos v. Greece* [GC], No. 34369/97, 6 April 2000, §44.

<sup>10</sup> *Law on Protection from Discrimination* (no. 86 of 30 September 2003, in force from 1 January 2004).

<sup>11</sup> Case 13789/06 before the Sofia District Court, 18 May 2007; Annex 2. This case was initiated by Bulgarian Lawyers for Human Rights and the Equality National Association for Human Rights of People with Disabilities.

<sup>12</sup> Case 13789/06 before the Sofia District Court, 18 May 2007; pp. 7-8, Annex 2.

<sup>13</sup> “Le gouvernement bulgare ne conteste pas, qu’une partie des enfants résidants dans les institutions d’enfants d’handicaps mentaux ne reçoivent pas un enseignement adéquat. Nous considérons que cette situation n’existe pas en résultat des principes discriminatoires présentés par le requérant, mas en résultat d’un ensemble complexe de causes économiques et sociales objectivement existant.” Government’s Comments, p.1, §4.

and generate discrimination against HMDC children and cannot be advanced as a reasonable or objective explanation for the Government's failure to ensure the exercise of their right to education.

The Respondent Government also attempts to invoke economic causes to defeat the complaint of discrimination. Although the rights guaranteed by the Charter are by their nature subject to progressive realisation, this does not mean that the State Parties can escape their responsibilities by simply alluding to economic constraints. The ECSR has previously established that:

“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>14</sup>

The Applicant reiterates that only 6.2% of HMDC children have been enrolled in either mainstream or special schools since 2002 and at this rate it will take 64 years for the Respondent Government to provide education to all HMDC children.<sup>15</sup> The Respondent Government neither refuted this figure nor provided alternative/updated data. An estimated 64 years cannot be considered a “reasonable time” in which to meet the requirements of progressive realisation within the ECSR standards.

In view of the foregoing, the Applicant submits that 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 the Respondent Government's failure to provide HMDC children with education contrary to Article E of the Social Charter. As such, the Respondent Government's argument should be disregarded.

2. The facts described in the collective complaint are based on well-documented research carried out by governmental bodies or NGOs actively working on the issues at hand.

The Respondent Government claims that most of the facts described in the Collective Complaint derive from research which is not sufficiently developed nor supported and is based on isolated examples. These claims are inaccurate. In fact, much of the information on which the Collective Complaint is based derives from the Respondent Government's own data.

The Applicant points out that most of the figures to which it refers come from reports of the State Agency for Child Protection (SACP). The SACP is a governmental body operational since 2001 and mandated by the Council of Ministers to, *inter alia*, carry out

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<sup>14</sup> *Autism-Europe v. France*, Complaint No. 13/2000, Decision on the merits of 4 November 2003, §53.

<sup>15</sup> Collective Complaint, §§ 55.2, 60.

monitoring of the situation of children living in specialised institutions for children with mental disabilities.

Non-governmental sources of information have been provided by NGOs, international and domestic, whose credibility and experience on the right to education of children with mental disabilities cannot be questioned;

- a. Bulgarian Helsinki Committee (*hereinafter* “BHC”) has been active in monitoring the human rights situation of closed institutions in Bulgaria in several priority fields, including education, since 1992.
- b. OSI EU Monitoring and Advocacy Program has been monitoring the development of human rights and rule of law standards of EU member states and candidate countries, particularly in relation to children and adults with intellectual disabilities, since 2001;<sup>16</sup>
- c. Save the Children has been present in Bulgaria since 1996. It works for the right of every child to live in a family environment, not to be discriminated against because of disability or ethnic origin and to have access to quality education.

In contrast to the comprehensive information and references presented in the Collective Complaint, the Applicant calls attention to the lack of concrete information by the Respondent Government- be that information general or specific.

For instance, the section entitled “Good Practices”<sup>17</sup> does not present detailed information on why these particular initiatives have been implemented, whether they were mandated by a government body, when they started to operate, how long they will be in operation, in what way and how often they are being evaluated, whether they are state sponsored, private or joint initiatives, how children are selected to participate in the programmes, how they are concretely reintegrated, and whether these pilot projects are to be implemented in other regions in Bulgaria, etc.

The Applicant has gone to lengths to ensure that the information described in the Collective Complaint is accurate and duly supported and cited. The same could not be said for the Government’s Comments. The Applicant therefore rejects the Respondent Government’s claim that the Collective Complaint consists of neither well documented nor quality information.

3. Bulgarian legislative measures, policies and budget do not adequately address education of children living in HMDC.

The Applicant notes, as mentioned above, that the bulk of action plans and strategies which are referred to in the Government’s Comments do not address the subject of the Collective Complaint- the violation of the right to education for HMDC children.

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<sup>16</sup> Their Bulgarian Report on the “Rights of People with Intellectual Disabilities: Access to Education and Employment” is one of 14 country reports on the rights of people with intellectual disabilities in Europe.

<sup>17</sup> “Bonnes Pratiques”, Government’s Comments, p. 9.



The Respondent Government provides minimal information on how *Decree No. 6 on the Education of Children with Special Needs and/or Chronic Diseases*<sup>18</sup> is being implemented. In fact, the Applicant points out that this decree hardly addresses the issue of mainstream education for HMDC children. Besides declaring that children with special education needs and/or chronic diseases are to be educated and integrated,<sup>19</sup> the remaining provisions and appendixes relate only to special schools.

No information is provided on how the Respondent Government has disseminated information on legislative and policy initiatives on education to the relevant stakeholders. Dissemination is an inexpensive exercise and a measure which should be automatic following the adoption of decrees, national action plans, and governmental policies. However, monitoring carried out by BHC revealed that some directors of HMDC were uninformed and unaware of the change in the legislative provisions of 2002 and consequently continued to treat the children as uneducable.<sup>20</sup> BHC's Assessment Report also highlights that despite the national plans and strategies adopted, the results were negligible.<sup>21</sup> For example, the Regional Inspectorates on Education (IRE) and the teams for comprehensive pedagogical assessment (EECP)<sup>22</sup> were established to evaluate the educational needs of disabled children and the needed support for their integrated education.<sup>23</sup> However, even three years after the plan was adopted, there still existed Homes where HMDC children had never been referred for assessments and there were very few concrete examples of children being integrated into schools<sup>24</sup> - the initiative being overlooked both by HMDC directors and the Inspectorates themselves.<sup>25</sup> A visit to Medven HMDC in 2007 revealed that of 42 children, only seven were being educated within the Home by a special education teacher from Sliven special school. These seven were the first to be involved in any educational activity, such activities having begun only in September 2007, i.e. five years after HMDC children were deemed educable and the Respondent Government had finally acknowledged their right to education.<sup>26</sup>

As stated by the ECSR, in order to comply fully with the Charter, it is not enough for states to enact the necessary legislation; they must take "practical action to give full effect

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<sup>18</sup> In August 2002, the Ministry of Education and Science issued Decree No. 6 which superseded the 1977 Instruction deeming children with mental disabilities uneducable. This Decree entitles children with any type of intellectual disability to study in special schools or mainstream schools of their parents' choice.

<sup>19</sup> According to Article 2 (1) of the Decree, children with special educational needs and/or chronic diseases are to be integrated in kindergartens and schools, *Decree No. 6 on the Education of Children with Special Needs and/or Chronic Diseases*.

<sup>20</sup> "Assessment Report on the Conditions and Perspectives of the Institutions for Children in Bulgaria and the progress made in implementing the governmental obligations under the UN Convention on the Rights of the Child", *hereinafter* the "BHC's Assessment Report", Bulgarian Helsinki Committee, November 2006, p. 66, Annex 3.

<sup>21</sup> BHC's Assessment Report, pp. 72-75, Annex 3.

<sup>22</sup> IRE: les Inspections régionales d'enseignement; EECP: Equipes pour l'évaluation complexe pédagogique. The acronyms are those provided in the Government's Comments, see p. 3 therein.

<sup>23</sup> See Government's Comments, pp. 3-4.

<sup>24</sup> BHC's Assessment Report, pp. 72-75, Annex 3.

<sup>25</sup> BHC's Assessment Report, see HMRCJ- Kosharitsa, Medven, Sofia, pp. 72-74, Annex 3.

<sup>26</sup> The director of the Home claimed that only these 7 children had been assessed and deemed educable by the IRE, but she could not show any documentation to this effect. The visit to Medven was undertaken by BHC lawyers on 9 November 2007.

to the rights recognised in the Charter”<sup>27</sup> The Respondent Government has clearly failed to do so.

Further, the few HMDC children who have been deemed capable to study in special schools have been exposed to “deficiencies and violations”<sup>28</sup> of the system. As stated by the Respondent Government in the 2007 State Report on the implementation of the UN Convention on the Rights of the Child (*hereinafter* “UNCRC”), these deficiencies and violations are the result of “the contradictory legal framework and the insufficient awareness of the staff”<sup>29</sup> In particular, as acknowledged by the Respondent Government, the diagnostic teams suffer from “their over workload but also of the lack of uniform standard methodology for evaluating the education needs of children. That is why legal acts are applied in a different manner, not always in full compliance with their provisions.”<sup>30</sup> The Applicant voices the same concern and dissatisfaction as the Respondent Government regarding the neglect of implementation on their part to provide education to HMDC children.

The Applicant also points out that the Respondent Government omitted to mention its *National Action Plan for Implementation of the Mental Health Policy of Bulgaria 2004-2012*. The European Commission was critical of this Action Plan stating that “the existing projects and priorities do not sufficiently meet the needs of the people in the institutions.”<sup>31</sup> Given that the National Action Plan has been underway for 4 years, information on how it is being developed, if at all, to bolster the situation of children with mental disabilities living in HMDC, would be appropriate.

The Applicant would like to bring the ECSR’s attention to how the state budget was engaged to improve education for children with special education needs. The Government’s Comments indicate that over the last two years, the bulk of finances spent went to the construction of accessible structures in schools. Based on the limited figures provided by the Respondent Government, only 0.04% of all the funds allocated to special education needs were spent on training teachers in special education within mainstream classrooms (carried out in early 2007). The remainder went to modifying schools to make them more accessible for children with physical disabilities.<sup>32</sup> In fact, the Respondent Government does not possess disaggregated statistics indicating the number of children with physical disabilities and those with mental disabilities, and an overarching approach is applied to both groups of children. The Applicant submits that it is imperative to differentiate the practical needs of children with mental health disabilities from those with physical disabilities. By conflating the two, as the Respondent Government has chosen to do so here, it has deflected attention from the lack of resources dedicated to children with mental health disabilities. Even if, as the Respondent Government asserts, it is constrained by economic factors in its provision of education for

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<sup>27</sup> *Autism-Europe v. France*, Complaint No. 13/2000, Decision on the merits of 4 November 2003, §53.

<sup>28</sup> 2007 State Report on implementation of the UNCRC, §122, Annex 1.

<sup>29</sup> 2007 State Report on implementation of the UNCRC, §122, Annex 1.

<sup>30</sup> 2007 State Report on implementation of the UNCRC, §122, Annex 1.

<sup>31</sup> “Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania”, European Commission, 26 September 2006, COM (2006) 549 final, also accessible at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2006/sept/report\\_bg\\_ro\\_2006\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2006/sept/report_bg_ro_2006_en.pdf) (last accessed 27 November 2007); p.21.

<sup>32</sup> Government’s Comments, p. 5.

children with disabilities, it has clearly chosen to accord children with physical disabilities significantly greater priority than children with mental health disabilities. It has budgeted and discriminated accordingly.

The Applicant would like to highlight another inconsistency in the Respondent Government's arguments. Refuting discrimination, the Respondent Government has pointed to economic factors to explain the lack of education for HMDC children. However, as seen in its Comments, despite the existence of general economic restraints, there is still a portion of the state budget which is allocated to education for children with disabilities. It is the responsibility of the Respondent Government to assign the priority areas which the budget will cover. Evidently, the Respondent Government attaches greater priority on making schools accessible for children with physical disabilities and in so doing has failed to make a commitment to taking concrete steps to provide education for HMDC children whose needs are markedly distinct. The Applicant submits that if the Respondent Government was seriously committed to the education needs of HMDC children, as asserted in its Comments, then this would be reflected in its budget.

The Respondent Government has clearly failed to integrate education for HMDC into all national action plans, policies and the state budget. Though declared a priority by the Respondent Government, the lack of steps taken to strategically subsume the issue on all levels (national, regional and municipal) and to financially commit to this goal indicate that education of HMDC children is not a priority in practice. As such, the Respondent Government's arguments in this respect should be viewed as little more than unsubstantiated rhetoric.

4. The education system does not dispose of adequate safeguards and monitoring mechanisms to ensure that children living in HMDC are being educated.

The Government's Comments provide limited information on what mechanisms are in place to verify that HMDC children are being educated.

On this point, the Respondent Government asserts that the State Agency for Child Protection (SACP) carries out a systematic study of the situation of children living in specialised institutions for children with mental disabilities on a yearly basis as part of general monitoring of children's rights in Bulgaria. A possible action which the SACP can take, should violations of children's rights be detected, is a recommendation for closure of an institution.

An illustrative example of the inadequacy of the implementation of this procedure is the case of Sveta Petka HMDC in Mogilino. In September 2006, the Evaluation Commission of the SACP indicated that the institution must be closed. Following this announcement, the SACP outlined specific actions to facilitate the closure by the Municipality. These actions included: training representatives of the Municipality; developing a methodology for the elaboration of a concrete plan for closure; and organising working meetings between representatives of the evaluation team, the municipality and a non-governmental organisation offering alternative services for disabled children from the institution.<sup>33</sup>

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<sup>33</sup> See SACP's news release "Reform of the Institutional Care in Bulgaria- Information about Mogilino Social Care Home", Annex 4.

However, it was only through the release of BBC documentary “Bulgaria’s Abandoned Children”<sup>34</sup> on Mogilino HMDC that the SACP became conscious of “drastic infringements of the rights of the children in the institution” and discovered that “the Municipality authorities did not follow the statement of the Evaluation Commission of 2006 and the closure plan for the institution.”<sup>35</sup> The Applicant considers that the SACP failed in its duty to follow up on recommended action regarding the situation of children’s rights and hopes that greater diligence is exercised in relation to future monitoring of institutions.<sup>36</sup>

In addition to the activities of the SACP, the Respondent Government refers to administrative and legislative provisions which purport to ensure that children are provided with an education. First, Administrative Order No RD09-355/13.03.07 is only briefly referred to. According to the Government’s Comments, this order authorised the Minister of Education and Science to select public servants of the Ministry and IRE who would draft the acts governing administrative breaches relating to education. The aim of this reference is, presumably, to infer that this is a preliminary step in establishing administrative penalties for breach of the *Law on the Integration of Persons with*

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- Informed the Ministry of Labour and Social Policy, the State Agency for Social Assistance and the municipal administration in Dve Mogili Municipality of the results of the evaluation;
  - Developed methods for elaboration of a project for closure of the institution;
  - Trained representatives of Dve Mogili Municipality and professionals from HMDC how to develop a project for closing the institution;
  - Provided methodological support in the process of elaboration of a concrete plan for institution closure including individual approach for transfer of each child and proposals for alternative employment of the institution’s personnel;
  - Organised a working meeting between representatives of the evaluation team, the municipality administration in Dve Mogili Municipality and a non-governmental organisation offering alternative services for disabled children from the institution.

<sup>34</sup> First aired on 13 September 2007 on BBC4, and on 18 November 2007 on BBC2, Annex 5. Also accessible at <http://video.google.com/videoplay?docid=-9176914173325307126> (last accessed 27 November 2007).

<sup>35</sup> SACP’s news release “Reform of the Institutional Care in Bulgaria- Information about Mogilino Social Care Home”, Annex 4. The SACP has elsewhere stated that the situation persisting at Mogilino “had been a result of decentralisation that had not been thoroughly thought out.”; United Nations Press Release “Committee examines reports of Bulgaria on Optional Protocols to Convention on Rights of the Child”, 46th Session, 24 September 2007, Annex 6.

<sup>36</sup> UNICEF is taking direct part in implementing the Government’s plan to close down Mogilino and has renewed calls for accelerated efforts to improve the child welfare system in Bulgaria, particularly the reliance on institutionalising children; UNICEF Statement on Mogilino, “UNICEF calls for enhanced efforts for deinstitutionalization and reform of the child welfare system in Bulgaria”, 15 November 2007, Annex 7. There has also been recent attention on the issue of institutionalized care of children in Bulgaria, including their educational needs, at the European Parliament, see <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2007-5705+0+DOC+XML+V0//EN&language=EN> and <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+P-2007-5711+0+DOC+XML+V0//EN&language=EN> (last accessed 27 November 2007).

*Disabilities*.<sup>37</sup> Closer examination of the provisions<sup>38</sup> reveals however that they do not relate to education and are, for the purposes of the Collective Complaint, irrelevant.<sup>39</sup>

The Applicant points out that it is Chapter 6 of the *Law on Public Education*,<sup>40</sup> (not Chapter 7 as incorrectly indicated in the Government's Comments)<sup>41</sup> which enumerates the administrative-punitive provisions which are dispensed for parents or guardians who do not ensure that children of compulsory schooling age attend school. Article 48 therein specifies that it is the responsibility of the respective municipal bodies to identify parents or guardians who are in breach of this. The Applicant questions the effectiveness of deferring such a responsibility to local municipalities because there is no incentive for the municipality to identify that children in HMDC are not receiving an education. Given the fact that resources for HMDC derive from the local municipality, fining directors for the lack of initiative taken to ensure that children living in HMDC are educated would amount to raising the municipality's own shortcomings in providing sufficient resources for this purpose. Certainly, taking action to ensure the education of HMDC children requires funding which the municipality would need to provide. Hence, without specific information on: how often this provision is invoked, in relation to whom (a parent/guardian, or director/guardian), the penalties incurred, and their enforcement procedures, the efficacy of these measures in practice remain unknown, unproven and uncredible.

The Respondent Government explicitly refuted the Applicant's claim that there is no monitoring of directors of HMDC.<sup>42</sup> Nonetheless, it failed to offer evidence of a monitoring system, nor did it refer to any mechanisms which perform a similar function. The penalties to which it did refer (penalties in relation to children of compulsory school age not attending school) do not take into account the special situation and vulnerability of children living in HMDC, nor is there mention of any enforcement mechanism. The Respondent Government refrained from supporting its contention with any concrete and effective assurances. Accordingly, the Applicant reiterates that the Respondent Government has not taken the steps to ensure that appropriate safeguards and monitoring mechanisms are in place to secure the right to education for HMDC children, and its argument to the contrary must be rejected.

5. There is no consistent governmental data which confirms that the number of children living in HMDC is decreasing.

The Applicant points out that most of the data provided in the Government's Comments are not relevant to the subject matter of the Collective Complaint. Information on Homes

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<sup>37</sup> *Law on the Integration of Persons with Disabilities*, (No. 81 of 17 September 2004, in force 1 January 2005).

<sup>38</sup> And specifically Articles 53(1), (2) and 54(1) of the *Law on the Integration of Persons with Disabilities*, (No. 81 of 17 September 2004, in force 1 January 2005).

<sup>39</sup> These provisions address breaches for employers who do not provide reasonable accommodation for persons with disabilities as set out in Article 25 of the same law (using resource grants to hire persons with durable handicaps), or for employers who refuse to announce such work places, or refuse, without good reason, to hire unemployed persons with durable handicaps.

<sup>40</sup> *Law on Public Education* (No. 153 of 23 December 1998; in force since 1 January 1999).

<sup>41</sup> Government's Comments, p. 5, §4.

<sup>42</sup> Government's Comments, p. 5.

for children and juveniles with physical disabilities, with intact intelligence, deprived of parental care, etc. are not the focus of the present complaint. Very little information was provided on HMDC children and no data whatsoever was offered on the exercise of their right to education. The Applicant questions why no concrete data was presented on how many HMDC children attend schools in the Government's Comments. It would be expected that such information would be integral to the provision of a comprehensive response to the Collective Complaint.

The Applicant wishes to bring to the ECSR's attention that any data provided in the Government's Comments concerning the number of children living in HMDC must be considered with caution as they conflict with statistics provided by other governmental bodies. The Applicant extracted data on the number of children living in HMDC from the bar graph<sup>43</sup> in the Government's Comments and compared it to statistics gathered from other governmental sources on the same subject. The comparison showed a number of discrepancies between the Government's Comments and other government sources and even discrepancies within the same governmental bodies.

The Applicant presumes that the statistics presented in the Government's Comments on the number of children living in different types of institutions are given in an attempt to demonstrate that there is progress in the deinstitutionalisation process and that children are being steadily removed from institutional settings where education is either non-existent or inadequate.

The graph on page 8 of the Government's Comments indicates that in 2006, approximately 1200 children were living in homes for children and youth with mental disabilities (IEJAM/IEAM) (the number of homes is not provided). This information not only conflicts with that provided by the SACP which disclosed 1310 children living in HMDC in 2006,<sup>44</sup> but also with figures from the Ministry of Labour and Social Policy<sup>45</sup> which counted 1618 children in the same year.

Further, more recently, in their 2007 State Report on implementation of the UNCRC, the Respondent Government indicates that as of 1 May 2007, 25 homes for children and juveniles with mental disabilities were operating, comprising 1,552 children,<sup>46</sup> whereas the SACP counted one more HMDC, but 359 less children who were living in them (26 HMDC, 1193 children with mental disabilities).<sup>47</sup> Moreover, in September 2007, the SACP counted 27 HMDC,<sup>48</sup> whereas information prepared by the Bulgarian Ambassador to the UK indicated that there remain 24 of such HMDC in Bulgaria.<sup>49</sup>

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<sup>43</sup> Bar graph entitled "Number of children in institutions under the authority of the municipality ("Le nombre d'enfants aux institutions sous le pouvoir municipal"), Government's Comments, p. 8.

<sup>44</sup> "Evaluation of the specialized institutions for children", SACP, October 2006, see BHC's Assessment Report, Bulgarian Helsinki Committee, November 2006, p.39, Annex 3.

<sup>45</sup> 1618 children as of 31 May 2006, "Child Protection Activities", MLSP, June 2006; see BHC's Assessment Report, Bulgarian Helsinki Committee, November 2006, pp. 38-43, Annex 3.

<sup>46</sup> 2007 State Report on implementation of the UNCRC, (CRC/C/BGR/2), §89, Annex 1.

<sup>47</sup> SACP's news release "Reform of the Institutional Care in Bulgaria- Information about Mogilino Social Care Home", Annex 4.

<sup>48</sup> United Nations press release "Committee examines reports of Bulgaria on Optional Protocols to Convention on Rights of the Child", 46th Session, 24 September 2007, Annex 6.

<sup>49</sup> Letter by Dr Lachezar Matev, Ambassador of Bulgaria to the United Kingdom in reply to a letter sent by the production team of the above mentioned BBC documentary "Bulgaria's Abandoned Children", Annex

In particular, the Applicant compared the figures which were calculated by the Respondent Government for submission to international monitoring bodies, considering that at least the data provided therein would be consistent. As stated above, the Government's Comments indicate that in 2006, 1200 children were living in HMDC. In the 2007 State Report on implementation of the UNCRC, it is submitted that 1552 children were living in HMDC. Either the number of children living in HMDC is on the rise, contrary to the Respondent Government's assertions that the number of children in institutions is consistently decreasing, or it was mistaken in the calculations provided to the ECSR. Alternatively, the Respondent Government may have erred in the figures provided to the Committee on the Rights of the Child, though the information provided in that periodic report is more recent, specific and itemised.

One explanation for the discrepancies is that HMDC are not necessarily closed but have been transformed into another type of institution. Children are then not being removed altogether from institutions but are simply being transferred between them, from one kind to another. Thus, information from the Ministry of Labour and Social Policy indicating that after 2003, six HMDC were closed, fails to show that in practice, three of these institutions were renamed and three were transformed into Homes for Juveniles with Mental Disabilities.<sup>50</sup> Another reason for the diversity of figures and also the alleged drop in the numbers of children living in HMDC is that authorities failed to include in their statistics children beyond the age of 18 who nevertheless remained in HMDC, contrary to previous practice.<sup>51</sup>

The Applicant considers that the information provided in the Government's Comments cannot be relied upon to demonstrate that the Respondent Government is taking serious steps to remove children from institutions. Increased efforts should be taken to coordinate data across Ministries and governmental bodies. As stated previously by the ECSR,

“when it is generally acknowledged that a particular group is or could be discriminated against, the state authorities have a responsibility for collecting data on the extent of the problem. The gathering and analysis of such data [...] is indispensable to the formulation of national policy.”<sup>52</sup>

Given the paucity of information provided by the Respondent Government and the manner in which it conflicts between and even within governmental bodies, the Applicant questions the reliability and credibility of the Respondent Government's arguments which are based upon it.

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8, also accessible at <http://www.bbc.co.uk/bbcfour/documentaries/features/bulgaria-embassy-letter.shtml> (last accessed 27 November 2007).

<sup>50</sup> For an in depth examination, see BHC's Assessment Report, Bulgarian Helsinki Committee, November 2006, pp.45-47, Annex 3.

<sup>51</sup> See BHC's Assessment Report, Bulgarian Helsinki Committee, November 2006, p.39, fn 16, Annex 3. The decrease of children in institutions could also be related to the lowered birth rate between 2002 and 2005; BHC's Assessment Report, p.41. See also, Bulgarian National Institute of Statistics : <http://www.nsi.bg/Population/Population.htm> (last accessed 27 November 2007).

<sup>52</sup> See *ERRC v. Greece*, Complaint no. 15/2003, decision of 8 December 2004, §27 and *ERRC v. Italy*, Complaint No. 27/2004, decision of 7 December 2005, §23.

## 6. Competence of the ECSR

The Respondent Government submits that it is beyond the competence of the ECSR to assess the implementation of obligations of other international treaties to which Bulgaria is a party.<sup>53</sup> In the Collective Complaint, the Applicant did not comment on the competences of the ECSR in relation to assessing the obligations of Bulgaria to other international instruments. The Applicant simply raised the valid point that 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>54</sup>

The Applicant submits that it is neither its role nor that of the Respondent Government to dictate what is within or beyond the competence of the ECSR. This is for the ECSR alone.

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<sup>53</sup> Government's Comments, p.12.

<sup>54</sup> See, for example, *World Organisation against Torture (OMCT) v. Greece*, Complaint no. 17/2003, decision of 26 January 2005, §31. See p.7-8 of the Collective Complaint.



## **Conclusion**

The Respondent Government does not adequately address the subject matter of the complaint nor does it provide any reasonable or objective justification for the failure to provide education to HMDC children, in breach of Article 17(2) and Article E of the Revised European Social Charter.

**For the reasons developed above, the Applicant asserts that the Respondent Government did not present well-founded arguments or evidence that the complaint should be dismissed as unfounded. The Applicant respectfully requests that the ECSR identify the failure of the Government in these respects and accordingly acknowledge the violations.**

Sincerely,

Barbora Bukovská  
Representative of the Applicant

In Budapest, 27 November 2007

## LIST OF ANNEXES

1. Bulgarian State Report submitted to the UNCRC, “Measures undertaken and progress made by the Republic of Bulgaria in the Implementation of the Provisions of the UN Convention on the Rights of the Child” (consolidated second and third periodic report), CRC/C/BGR/2, §§103-109; to be examined at the UNCRC’s 48th Session (May/June 2008)
2. Case 13789/06 before the Sofia District Court, 18 May 2007 (only available in Bulgarian)
3. “Assessment Report on the Conditions and Perspectives of the Institutions for Children in Bulgaria and the progress made in implementing the governmental obligations under the UN Convention on the Rights of the Child”, Bulgarian Helsinki Committee, November 2006
4. SACP’s news release “Reform of the Institutional Care in Bulgaria- Information about Mogilino Social Care Home”
5. BBC documentary “Bulgaria’s Abandoned Children”
6. United Nations Press Release “Committee examines reports of Bulgaria on Optional Protocols to Convention on Rights of the Child”, 46th Session, 24 September 2007.
7. UNICEF Statement on Mogilino, “UNICEF calls for enhanced efforts for deinstitutionalization and reform of the child welfare system in Bulgaria”, 15 November 2007
8. Letter from Dr Lachezar Matev, Bulgarian Ambassador to the UK, in response to a letter sent from the Production team of BBC Documentary “Bulgaria’s Abandoned Children”