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Item reference: Addendum to an Action Plan (12/06/2024)

Communication from Bulgaria concerning the case of NENCHEVA AND OTHERS v. Bulgaria (Application No. 48609/06)

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Communication de la Bulgarie concernant l'affaire NENCHEVA ET AUTRES c. Bulgarie (requête n° 48609/06)  
**(anglais uniquement)**

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DGI

12 JUIN 2024

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

## ADDENDUM TO THE ACTION PLAN

*(Nencheva and Others v. Bulgaria)*

**June 2024**

The following information is provided, based on a detailed analysis,<sup>1</sup> made upon commission under a Norwegian Financial Mechanism – funded project, implemented by the Ministry of Justice. The analysis includes, among others, historical recount of the process of deinstitutionalization and recapitulation of capacity of current residential care facilities, issues of supervision and control over residential care facilities, status of representation of children, including those with disabilities, in residential care, and legislative proposals thereto.

### ***1. Development of the process of deinstitutionalization for the period 2019-2024***

The gradual closure of all homes for specialised health and social care for children (*DMCTD*) and the provision of social and integrated health and social services for children with disabilities were among the objectives of the updated Action Plan of 2016 of the National Strategy on the Vision for Deinstitutionalization of Children in Bulgaria 2016-2020. This objective was further put in the adopted Social Services Act, which provides for the closure of all institutions for accommodation of children with disabilities on the territory of the country and respectively regulates a number of social services for such children. However, such full closure will only be possible when all children in them are placed elsewhere. In the period 2019-2022, there were 12 such homes operating on the territory of the country, where children with disabilities were accommodated. At the beginning of 2024 four such establishments still exist and function: those in Stara Zagora, Kardzhali, Varna and Pleven. They are managed by the Ministry of Health and are about to be closed, and finding lasting alternative solutions for children with disabilities placed in these homes is one of the priority tasks of the child protection system in the country.

In this regard, the state strategic framework is aimed at building centres for complex services for children with disabilities and chronic illnesses. Previously, in 2012-2015 the Ministry of Health built eight family-type centres for children with disabilities needing constant medical care, with a capacity of eight children in each: in Sofia, Pernik, Montana, Gabrovo, Targovishte, Rousse and two in Plovdiv. In 2018 the Ministry of Health planned 20 more centres for specialised health and social care for children with disabilities needing constant medical care and 6 centres for specialised health and social care for children with high risk conduct and need for special healthcare, six of which are already built. Currently there are 10 centres for complex care for children with disabilities and chronic diseases again under the Ministry of Health<sup>2</sup>, which are medical institutions for qualified medical care and social services for children with medico-social risk. These centres provide and take over part of the functions of the old homes in the care of children with severe disabilities, namely:

<sup>1</sup> <https://humanrights.bg/Contents/Item/Display/32142>

<sup>2</sup> <https://www.mh.government.bg/bg/ministerstvo/vtorostepenni-razporediteli/centrovete-za-kompleksno-obsluzhvanena-deca-s-uvrezhdaniya-i-hr>

conducting early and ongoing diagnosis, treatment, medical and psychosocial rehabilitation. The existing capacity of foster families and existing residential facilities to receive the remaining children is also being investigated by the Social Assistance Agency. In this regard, although not all centres planned by the Ministry of Health have been built yet, at present all children with disabilities are practically provided with the necessary care.

Pursuant to the above strategic framework and the concluding provisions of the Social Services Act, in June 2023 the Ministry of Health formed inter institutional working groups to develop specific plans for the closure of the facilities in Stara Zagora and Kardzhali. For each child placed therein, a plan for exiting the home and preparation of the child for reintegration in a family environment or for the use of a social service is being prepared under the direction of the Social Assistance Directorate. The closure process is also being supported by a Council in the Ministry of Labour and Social Policy, with units in each of the localities where the homes are located, which is also to prevent the placement of children in these institutions. The placement of children in the Kardzhali home has already been stopped, and the same process is ongoing for the other three localities. Thus, measures are available to ensure that transfers of children with serious disabilities and health problems out of medico-social care homes, which are due to close, are carried out in a way that minimises the risks to their health.

According to the latest amendments to the Social Services Act, the four homes, which are still functioning, should be closed by 31.12.2024, which would lead to the finalization of the process of deinstitutionalization of children with disabilities placed in an institution and the provision of alternative care in a family or family-like environment for them. As for support available for the care of children whose condition requires ongoing medical care, since a large number of the children placed in such homes have serious health problems requiring specialized care, their exit from the homes is being carried out, accompanied by a detailed assessment of their needs, a preparatory period for the children themselves and precisely planned follow-up care. According to the Social Assistance Agency, in case of identified need for specialized medical expertise, a team of specialists is formed at national level – psychiatrist, neurologist, traumatologist, pediatrician, etc., depending on the diagnosis of the child, which carries out a complementary assessment of the need for specialized medical care, if necessary.

In addition, a number of social services have been introduced that support the process of deinstitutionalization and improve conditions for the care of children with disabilities in a family environment. According to current legislation, social services for children with disabilities include: 1) "early intervention on disabilities for children" in terms of specialized support for children with disabilities and children at risk of developmental problems who are up to 7 years of age and for their families; early identification of risks to children's health and development, implementation of early impact measures to improve the condition and development of children and to build skills for their upbringing; 2) "substitute care" as a specific activity that provides support to parents of children with lasting disabilities, families of relatives, foster families; 3) "assistant support" which is intended for children with lasting disabilities (from 2021 municipalities successfully provide this service).

Furthermore, according to the Ministry of Labour and Social Policy, a significant increase should also be noted in the number of social services for children and families – from 241 in 2010 to 675 at the end of August 2023. As of 31.08.2023, a total of 2,980 children and young people with disabilities use social support services provided in day care centres for children and young people with disabilities. In addition, for about 27,000 children with lasting disabilities living in a family environment, their families receive monthly allowances under the Family Allowances for Children Act. It should also be pointed out that, according to Social Assistance Agency's data, as of 31.08.2023, a significantly increased number children and young people with disabilities are raised in the family-type placement centres (*ЦХСТ*): 1,427 users are accommodated all in all in 122 family-type placement centres with a capacity of 1,595. These data are a clear indicator of a sustainable strategic policy of the state, which aims to ensure the exit of children with disabilities from institutions and the provision of alternative care for them.

In addition, children with disabilities and children for whom alternative care is provided outside the family are among the target groups of the Action Plan adopted by Decision of the Council of Ministers No 879 of 9.11.2022 in implementation of Council Recommendation (EU) 2021/1004 of 14 June 2021 establishing a European Child Guarantee (2030)<sup>3</sup>. For the implementation of the measures included in the plan, financial support is provided both from the state budget and under the European Social Fund+ through the Human Resources Development and the Education Operative Programmes for the programming period 2021-2027. The Education Programme concentrates its efforts on ensuring access to quality and inclusive pre-school and school education, whereas the Human Resources Development Programme – on social inclusion and combating child poverty. The first two-year operational plan for the period 2023-2024, in implementation of the long-term plan with specific activities, indicators, responsible institutions, funding, etc., has been finalized and approved by the Managing Authority of the Human Resources Development Programme<sup>4</sup>.

In conclusion, the undertaken legislative changes, as well as the strategic national framework for deinstitutionalization of children with disabilities, outlined by the Vision for the Deinstitutionalization of Children in Bulgaria give a serious impetus to the process of deinstitutionalization of children with disabilities placed in institutions through the provision of alternative care. The trend is a predominance of the care for these children in a close to family environment.

## ***2. Supervision and control over family-type centres for children with disabilities***

After the entry into force of the Social Services Act in 2020, the control and monitoring of the social services in Bulgaria is done by the Agency for the Quality of Social Services, while the State Agency for the Protection of Children monitors the observance of children's rights. The Ombudsman, the Social Assistance Agency, the Inspectorate of the Ministry of Health, the Medical Audit Executive Agency are also performing inspections.

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<sup>3</sup> <https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=1591>

<sup>4</sup> <https://www.mlsp.government.bg/uploads/35/sv/action-plan-reducing-poverty-2023-2024.pdf>

In 2019-2022 the State Agency for the Protection of Children performed a number of planned and thematic checks, including on topics like the quality of care for children in family-type centres for children with disabilities. No violations have been established.

The Agency for the Quality of Social Services only started its activity at the end of 2020, so the information on its checks covers 2021-30.09.2023, when 63 inspections were performed. Planned inspections covered ensuring the rights of children, placed in such centres, where no omissions or violations were established, but only documentary problems. Three signals for bad or unprofessional conduct towards the children were checked, but were not confirmed. A signal about violence to one client on the part of the other led to measures raising the capacity of those working in the respective centre. A signal about violence towards a child led to the dismissal of the guilty official.

The Ombudsman also performed checks in its capacity as National Preventive Mechanism. In January 2021 an inspection on the part of the Ombudsman led to recommendations for children being taken out of the old institutions for children with disabilities to be adequately prepared for the transfer.

As for the role of the Prosecutor's Office, in 2020-2023 the Supreme Administrative Prosecutor's Office worked on two signals, concerning, respectively, the control over the standards for social services, executed by the Social Assistance Agency, and violation of the rights and interests of children in a daycare centre for children with disabilities. No signal was confirmed.

### ***3. Representation of children with disabilities before institutions***

According to the analysis, on which the present addendum is based, the representation of children with disabilities before institutions requires a comprehensive view of the current legislative framework, which can be improved in order to better ensure the protection of children with disabilities, especially those who are placed in residential care facilities and where there is lack of interest on the part of parents or a conflict of interest or lack of care on the part of directors of residential services. A number of legislative measures have been proposed to improve such representation:

First of all, a case should be defined at the legislative level in which parents but also the other legal representatives of a child (custodian or guardian) are disinterested in the child, regardless of whether, like in most cases, the child is disabled, or not. Such a legal definition would significantly contribute to the development and further improvement of the independent representation of children in residential care. According to the analysis, such a regulation can be introduced in the Child Protection Act by creating a legal definition of the term "lack of interest" as a pre-requisite to create a legal mechanism for the urgent representation of children, including those with disabilities. Such a hypothesis could also include cases where the director of a residential care service, who can act as a representative by law of a child placed therein, is in conflict of interest with the child or does not provide adequate care.

Secondly, in view of the analysis, an existing good practice can be taken into account in order to set up the immediate representation of children in the above cases, namely the representation of unaccompanied children seeking international protection pursuant to Art. 25 of the Asylum and Refugees Act. Under that provision, unaccompanied minor or underage foreign children who seek or have been granted international protection and are located on the territory of the Republic of Bulgaria shall be represented by properly trained and specifically designated lawyers from the legal aid register of the National Legal Aid Bureau. This practice is already showing good results and could, upon appropriate adaptation and detailed regulation in the Child Protection Act, provide representation of children in residential care before institutions in cases where their legal representatives (parents, guardians or custodians) are disinterested in them and do not take care of them.

Furthermore, where the above mechanism for urgent representation is not required, legislative measures enhancing the representation of children could still be taken. The cases of guardianship or custody under the Family Code, already expanded with the cases of unaccompanied foreign children, could also cover children, including those with disabilities, placed in an institution or in residential care, whose legal representatives are disinterested in them. The same is valid for expanding the cases of special representation under the Family Code. Thus, in cases where the legal representatives of the child are disinterested in him/her, the legal possibility should be created for a special representative to take care of the rights of the child concerning his/her health and treatment, respectively to have the power to submit signals and complaints to various institutions.

Special representatives under the Civil Procedure Code and Criminal Procedure Code should also be able to be appointed for children whose legal representatives are disinterested in them. For the Criminal Procedure Code, where amendments in this direction have already been introduced, the following hypotheses should be additionally incorporated: when the parent, guardian or custodian has been disinterested in a child who, in addition to being a victim, could also be only a witness in criminal proceedings; also, if the criminal proceedings have not been completed and/or have been opened after the death of an injured child. Thus, existing amendments, coupled with the proposed urgent representation mechanism, including before opening criminal proceedings, and the incorporation of further hypotheses of special representation in the Criminal Procedure Code, should be able to ensure the effective use of the remedies available to the victim in criminal proceedings in all situations where such use could be relevant to ensure effective investigations and to avoid violations similar to the one found in the *Nencheva* case.

According to the analysis, it is important to also note that it is necessary to provide measures and mechanisms to improve the communication of children with disabilities in the conduct of legal proceedings in which they participate. Good examples in this direction are assistive technologies for augmentative and alternative communication (AAC).

## **Conclusion**

As a result of the above, it can be pointed out that substantial measures are being taken by the state to accelerate the process of deinstitutionalization by closing the institutional care

establishments for children with disabilities and providing alternative care for them in a close to family environment, providing social and health support. Control of family-type accommodation centres for children with disabilities is also carried out regularly and effectively by various state institutions. Legislative measures, proposed by the above analysis, are currently under consideration by a working group at the Ministry of Justice discussing the enhancement of procedural rights of persons with disabilities.

Based on the above, the Government would therefore respectfully request the transfer of the *Nencheva* judgement from enhanced to standard procedure of supervision. They will keep the Committee of Ministers duly informed of any further developments.