

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

3 March 2023

Case Document No. 1

Eurochild v. Bulgaria
Complaint No. 221/2023

COMPLAINT

Registered at the Secretariat on 14 February 2023



Eurochild

Putting children at
the heart of Europe

COMPLAINT TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

This complaint relates to the lack of effective early childhood education and care treatment in Bulgaria. The complaint is lodged by Eurochild against Bulgaria for violation of Articles 11, 13, 14, 17, 27 and 30 of the revised European Social Charter, read alone or in conjunction with the nondiscrimination clause in Article E. Bulgaria does not fulfil its obligations under the revised European Social Charter (hereinafter “the revised Charter” and “the Charter”) with regard to the right of children to appropriate education and health protection for their early development.

I. PARTIES:

1. Complainant:

1.1. Eurochild is a network of organisations and individuals working with and for children in Europe that strives for a society where all children and young people grow up happy, healthy, confident and respected as individuals in their own right. It was established in 2004 by a group of organisations formerly working together in the European branch of the International Forum for Child Welfare. Eurochild works closely with the European Union, as protecting children's rights is among the EU's aims and values. A major achievement of the network was its contribution to the European Commission Recommendation 2013/112/EU on investing in children. Eurochild also supports the work of the Council of Europe and the UN Committee on the Rights of the Child. This complaint is signed by Marie-Louise Coleiro Preca and Tanya Ward in their capacity of a legal representative of the organization.

2. Contracting state:

2.1. The Republic of Bulgaria has signed the revised European Social Charter on 21st September 1998 and has ratified it on 07th June 2000, with the Revised Charter entering into effect on 1st August 2000. In accordance with Part IV, Article D, paragraph 2, of the Charter, Bulgaria accepts the supervision of its obligations under this Charter following the procedure provided in the Additional Protocol to the European Social Charter providing for a system of collective complaints of 9 November 1995.

2.2. In accordance with the declarations contained in the instrument of ratification of the revised Charter deposited by Bulgaria on 7th June 2000, Bulgaria considers itself bound by all the articles of Part II of the revised Charter and hence, can be subjected to the procedure of collective complaints lodged against it.

II. ADMISSIBILITY OF THE COMPLAINT:

1.1. In accordance with Article 4 of the Protocol, by which Bulgaria is bound, the complaint has been submitted in writing and concerns Articles 11, 13, 14, 17, 27 and 30 of the Charter, provision accepted by Bulgaria when it ratified this treaty on 07th June 2000, and to which it has been bound since its entry into force on 1st August 2000.

1.2. Separately, this Complaint is aligned with Articles 1 b) and 3 of the Protocol as Eurochild is an international non-governmental organisation, registered as an association that is governed by the legislation of Title III of the Belgian Law of 27th June 1921 relating to non-profit-making associations, international-non-profit-making associations and foundations. It has a consultative status with the Council of Europe and as such is included on the list, established by the Governmental Committee, of international non-governmental organisations that are entitled to lodge complaints before the Committee.

1.3. As regards the particular competence of Eurochild in the matter of the complaint, it should be noted that, according to its Statutes, the aims and objects of Eurochild are:

“to promote the welfare and rights of children and young people’ through:

- *producing, developing and sharing information on policy and practice;*
- *monitoring and influencing policy development at the European level;*
- *developing interest groups and partnerships between members in European countries;*
- *developing partnerships with other European associations that share common goals;*
- *influencing and making recommendations to international institutions such as the European Commission, the European Parliament, the Council of Europe and the United Nations;*
- *supporting and developing the capacity of members;*
- *empowering children and young people to make their views heard.”*

Based on the above, the Complaint is signed by an organization whose aims are directly linked to the subject matter of the allegations made and hence, is competent to lodge its grievances before the European Committee on Social Rights (“Committee”).

1.4. The complaint is signed by Marie-Louise Coleiro Preca and Tanya Ward, designated to represent Eurochild pursuant to its Statutes. Therefore, the condition provided for in Rule 23 of the Rules should be considered as having been fulfilled.

1.5. For these reasons, we urge the Committee to accept this Complaint as admissible and to rule on its merits..

III. SUBJECT MATTER OF THE COMPLAINT:

1. Legal regulation of early childhood development in Bulgaria

1.1. The legal framework of Bulgaria does not contain a special legal act that guarantees the individual entitlement to full-time early childhood education and care for small children. On the contrary, the legal provisions that tackle the subject (if any) are scattered between certain isolated articles from the Preschool and School Education Act (effective as of 1st August 2016), the Health Act and the Social Services Act. The rest of the applicable national law also does not elaborate on the specific measures of the State adopted to ensure that all small children have full access to early child educational facilities designed to meet their needs. This approach is further reconfirmed by the content of Ordinance No

26 of 18.11.2008 on the organization and operation of nurseries and children's kitchens and the health requirements thereto. The Ordinance specifies that nursery groups can be opened in the kindergarten for children from 10 months / in accordance with the current practice of admission to nurseries, and not from 3 months of age, as in the Health Act / up to three years of age, and that those children enrolled in the nursery groups are raised, educated, socialized and trained according to standards for early childhood development, adopted by an ordinance of the Minister of Health and the Minister of Education and Science. However, this standard has not yet been implemented as part of the applicable statutory even though a draft ordinance elaborating on the matter was submitted for public discussion on March 7, 2017. In light of this, there is still not a single unified act that binds the State or Municipal authorities to ensure an adequate level of services targeting small children and designed to ensure their development. Separately, there is still not a single legal act that incorporates the standards for early childhood development which should be binding on the state authorities. On the contrary, the only additional legislative acts that add up to the list of measure adopted by the State in the field comprise of several municipal ordinances that specify admission to kindergarten and the nurseries operating thereto.

- 1.2. It should be noted though that as of 12th March 2021 the Council of Ministers has adopted an Ordinance on the terms and procedure for the provision and payment of funds from the state budget to compensate parents for the education and training of their children who have not been accepted in state or municipal kindergartens or schools due to lack of vacancies ("Ordinance to compensate parents". This Ordinance, though applicable for children above 3 years of age, is indicative of the fact that the State has serious gaps and substantial failures in ensuring that all children have full access to the necessary and appropriate facilities that ensure their physical and mental health. The adoption of such a national ordinance tantamounts to a recognition on behalf of the Bulgarian state that there unequivocally is a significant lack of vacancies in early childhood education and care facilities throughout the country.

2. Early childhood education and care as enshrined in the European Social Charter

- 2.1. By virtue of Article 16 of the Charter child-care services, particularly for infants, must exist in sufficient numbers to meet families' needs, in addition they must be affordable and accessible to all. They must offer a high standard of service (ratio of staff to children, staff training, suitable premises etc).
- 2.2. Article 27 of the Revised Charter provides inter alia, that there should be a possibility for either parent to take parental leave. It also obliges states to promote child day care services and other child-care arrangements.
- 2.3. The above provisions are binding on the State of Bulgaria which has failed to implement them effectively and therefore is liable for the breaches as a result thereof.

IV. EVALUATION OF THE SITUATION IN BULGARIA:

- 1. Evaluation of the existing factual situation in the country:**

1.1. The Applicant shares the view that the State has the right to decide on the direction and contents of its family and child policy but emphasises that it may thereby not violate the human rights defined in the Charter and the UN Convention on the Rights of the Child. By its lack of direction and non-efficient policy that is not aligned with the best interest of children, the State of Bulgaria has *de facto* breached its commitments under the Charter to ensure the regulation and implementation of early childhood education and good care that is of good quality, affordable, accessible and available. The purpose of the present Complaint is to highlight the violations by the Bulgarian state of certain rights guaranteed by the revised European Social Charter in the way small children are treated within the Bulgarian health and educational system. Reports by a number of organisations, observations made on the ground and statements collected from social workers and minors concerned directly themselves lead us to the following findings:

1.1.1. *Early childhood education and care is managed by local authorities, and is not part of the State's responsibilities, between the ages of 0 – 3. Between the ages of 3 – 6/7 it becomes part of the responsibilities of the Ministry of Education and Science. Kindergartens are institutions within the pre-school and school education system for raising, education, and socialization of children from age of 3 up to the age of 7 (entering first year of their academic education) in line with the state pre-school education standard. Children aged 2 can also enter kindergarten in line with the conditions and rules of the Law on Pre-School and School Education. Kindergartens are municipal or private. Public kindergartens can be opened as an exception to the Ministry of Defense or on the grounds of an international treaty. Kindergartens to the Ministry of defense are aimed to raising, education and socialization of children of military and civil personnel of the Ministry. Central kindergarten is a municipal kindergarten, which is situated in the closest settlement of the municipality or a neighboring municipality, where children from the settlements with no kindergarten or a school providing mandatory pre-school education are raised, educated, and socialized. Education and training of children in kindergartens is organized and provided in line with the Pre-school Education State Standard. School readiness is assessed at the end of pre-school education stage by comparing acquired learning outcomes with the learning outcomes described in the standards. Notwithstanding the above though, there is a serious lack of adequate facilities where small children can be enrolled that would be depicted below and elaborated further.*

1.1.2. *According to the statistics, the participation rates in early childhood education and care in the age group of 1- to 3 and from 3- to 5-years old are low in Bulgaria, close to 22 %. For comparison in Sweden, approximately 95% of 3- to 5-year old children participated in early childhood education and care in 2014. In Finland the corresponding rate was 73.8%. According to the OECD's Programme for International Student Assessment (PISA)¹, Bulgaria performs worse than most other EECA countries in its students' academic performance and the State's expenditure on education is far less than the OECD average. The participation rate in early childhood education and care is exceptionally low in Bulgaria in international comparison². The difference to the other*

¹ <https://pisa.byregion.oecd.org/bulgaria/#section-2>

² https://www.oecd.org/els/soc/PF3_2_Enrolment_childcare_preschool.pdf

European countries is particularly significant. One of the explanations for the above discrepancies can be the less-advantageous socio-economic background of the parents of those children. Bulgarian children (0- to 2-year-olds) in early childhood education and care use it for an average of somewhere between 20 to 22 hours per week, which is exceptionally low]. As shown in a report prepared by the World Bank,³ having attended at least a 2-year pre-primary education program increases PISA math scores by an average of 7 points relative to having attended one year or none at all. The effect of ECE is greatest for low achievers (10 points on average) and students who speak a different language at home (19 points on average). Global evidence shows that providing quality preschool education is important for promoting children's social, emotional, physical, and cognitive development; it also increases school readiness, which helps learning (Heckman and LaFontaine 2010; Heckman 2008; Engle et al. 2011). Nevertheless, such education and the facilities required for its conduct are not present in the country regardless of the commitments for their provision.

1.2. At the same time, there is a universal entitlement to early childhood education and care (ECEC) which should ensure that every child has an enforceable right to benefit from ECEC. However, in its most recent report on the Structural Indicators for Monitoring Education and Training Systems in Europe⁴ the European Education and Culture Executive Agency reports that ECEC is compulsory in Bulgaria from the age of 5, though ECEC should be provided to all children below that age should their parents wish them to be enrolled in such activities. This has not been the case currently in the country though as there is a substantive gap between the limited places where ECEC is provided and the exceedingly bigger number of children who wish to be enrolled. According to Eurydice Report, 2019, in Bulgaria only less than 10 % of all children under the age of 3 are enrolled in any form of ECEC. The country is also lagging behind in reaching its target 95 % of all children that are 4 years of age and above to visit any form of pre-schooling activities, while this per cent currently is 83.9 %.

1.3. As reported by the Independent Evaluation Group of the World Bank in 2018: "Several factors curtail access of the most disadvantaged children to critical early childhood development (ECD) interventions, which undermines their prospects for attending and succeeding in school, reaching their potential, and escaping poverty. In particular, the number of available places...constrains their access to preschool education."⁵ The Government has adopted the Ordinance to compensate parents whose children are not enrolled in kinder gardens, but the possible compensations to be paid in no way address the need for those children to attend professional educational facilities that educate them both academically and socially. At the same time, the text of the Ordinance is discriminatory as de facto it does not allow compensations to be paid to children, having been born in the second part of

³<https://documents1.worldbank.org/curated/en/112391468006618583/pdf/913210WP0P14620garia00LINE0Sep%2026.pdf>

⁴ European Education and Culture Executive Agency, Eurydice, Parveva, T., Motiejunaite, A., Noorani, S., et al., Structural indicators for monitoring education and training systems in Europe 2021 : overview of major reforms since 2015, 2021, <https://data.europa.eu/doi/10.2797/95349>

⁵ <https://documents1.worldbank.org/curated/en/758411532018432539/pdf/124861-PPAR-P100657-P166293-PUBLIC.pdf>

the year. The unreasonably narrow scope of the Ordinance effectively further creates unequal treatment for parents of children under the age of three who are practically deprived of any type of care for their children.

- 1.4. At the same time, the Government is in no way supporting any type of private initiatives that parents have in order to fill up the existing gaps in ECEC provided by the State. Not only there are no concrete measures that support such private initiatives, but they are restricted and practically stopped by authorities adopting a *numerous clausus* application of the law. To exemplify such statement, one of the privately organized parents' cooperatives offering ECEC for children above 2 years has been effectively stopped under the pretext that the facility that was being used for the purpose was not designated officially as a day-care centre for children. At the same time, the Government is not offering parents with different means to fill this gap.
- 1.5. The problem depicted above is clearly demonstrated in the most recent publication of the National Statistic Institute according to whose data⁶ only **215 666** children out of **375 351 children** has been visiting kindergartens for 2020/2021. Of those 215 666 children only 7 550 are below 3 years of age. The above clearly outlines the problem with access to ECEC and the lack of adequate governmental support and political will for solving it. In some municipalities, socio-economic factors and the lack of kindergarden places have a negative impact on the percentage of those enrolled in nurseries and kindergartens. According to National Statistic Institute data, in the 2019/2020 school year the number of available places at a national level exceeds the number of children whereby the following ratio applied with 108 children competing for 100 place. Despite the fact that this does not appear as strikingly serious, parents often do not find a place for their child. The reasons are the uneven distribution of early childhood education and care institutions in cities and their insufficient capacity.
- 1.6. The biggest problem is in Sofia, where according to data there are 98 places for even 100 children, but despite these data in recent years about 10,000 children remain outside the system of admission to nurseries, kindergartens and compulsory preschool education. In this sense, the abolition of the kindergarten fee that has been recently approved as measure by the State will not solve the problem for the lack of places at least in the next few years and therefore it is imperative to modernize existing infrastructure and build new ones - mainly in Sofia, Plovdiv and Varna. At the same time, the authorities do not take into account the proposals of non-governmental organizations working in the field of education and early childhood development to ease the licensing regime for kindergartens and to recognize alternative forms that provide quality care but are not part of "the official "education system. For example, in Sofia, according to the register of public facilities at the Sofia Health Inspectorate, there are about 90 private children's centers that meet the same hygiene requirements

⁶ <https://www.nsi.bg/bg/content/3417/%D0%B4%D0%B5%D1%86%D0%B0-%D0%B2-%D0%B4%D0%B5%D1%82%D1%81%D0%BA%D0%B8%D1%82%D0%B5-%D0%B3%D1%80%D0%B0%D0%B4%D0%B8%D0%BD%D0%B8-%D0%BF%D0%BE-%D0%BE%D1%80%D0%B3%D0%B0%D0%BD%D0%B8%D0%B7%D0%B0%D1%86%D0%B8%D1%8F-%D0%BD%D0%B0-%D1%83%D1%87%D0%B5%D0%B1%D0%BD%D0%B8%D1%8F-%D0%BF%D1%80%D0%BE%D1%86%D0%B5%D1%81-%D0%B8-%D0%BC%D0%B5%D1%81%D1%82%D0%BE%D0%BD%D0%B0%D0%BC%D0%B8%D1%80%D0%B0%D0%BD%D0%B5>

and provide pre-school training for children, but have not passed the licensing regime and are not entered in the state register. Meanwhile about 30 parental cooperatives operate without a licensing regime, in which about 400 children are enrolled. According to approximate data, a total of 1,500 children are covered in the so-called alternative forms, but their parents are not entitled to any support from the state. The problem with those institutions though stem from the fact that they are not *strictu sensu* regulated by the law and as such are often subject to a number of inspections which hinder their day-to-day operations and threaten to impose them sanctions irrespective of the lack of special regulation in the field.

- 1.7. It should be emphasized that there are no statistics on the number of children admitted at the national level, as kindergartens are municipal and admission is decentralized, ie each municipality conducts its own campaign. On the other hand, the abolition of fees for disadvantaged children is likely to improve their access to early childhood education and care services. According to the EC, fees act as a barrier and are one of the reasons for the low participation of children from hard-to-reach and / or segregated communities.

According to the data of the National Statistical Institute, as of December 31, 2021⁷, there are 833 independent nurseries and nursery groups in the country as part of kindergartens (DG) with a total of 32,856 places in them. Compared to the previous year, the number of places in nurseries increased by 281, or 0.9%. In the cities there are 724 nurseries with 30,667 places, and in the villages - 109 with 2,189 places. Compared to the previous year, the places in nurseries in the cities increased by 1.3%, and those in the villages decreased - by 4.6%. As of December 31, 2021, the total number of places in early childhood facilities in the country warranties access of merely 18.2% of all children thereto⁸. This number varies across regions while it is 29.5 % in Gabrovo, 25.1 % in Pleven, 23.9 % in Blagoevgrad and is lowest in Pazardzhik (9.5%) and Sliven (10.4%). In the district of Sofia (capital) the availability of places for small children almost does not change, as compared to 2020 it increased merely by 0.1 percentage points. In 2021, 27,953 children were admitted to nurseries, which is 2,238 or 8.7% more than in the previous year. At the end of last year, the total number of children up to 3 years of age raised in nurseries in the country was 16.5% of all children from that age group.

As of December 1, 2021, there are 1,817 independent kindergartens in the country. 214,800 children are enrolled in pre-school education conducted in kindergartens and preparatory groups in schools. Compared to the previous year, the number of children decreased by 0.4%. The coverage of children for the school year 2021/2022 is 79.1% and increases compared to the previous school year by 1 percentage point. The average number of children in an independent kindergarten in the country is 120, and for the cities it is significantly higher - 155 than in the villages - 61. An average of 24 children are enrolled in one group, respectively 25 in the cities and 20 in the villages.

⁷ https://nsi.bg/sites/default/files/files/pressreleases/Creches2021_5HKE54X.pdf

⁸ https://nsi.bg/sites/default/files/files/pressreleases/Education2021_OCQ5H5R.pdf

2. Evaluation of the lacking legal framework:

2.1. The existing legal framework in the country in no way specifies or tackles the engagement and commitments that the State should make to meet its international obligations in providing accessible, affordable and efficient early childhood development services that are aligned with the interests and needs of small children. There is no unified piece of legislation or strategy for its development that sets the criteria for early childhood development and outlines the specific undertakings of the government in this respect. The latter is coupled with the lack of a unified National Strategy for the Child, which was abandoned in 2019 and withdrawn from its adoption under the speculative attacks based on speculation, disinformation and fake news. All of the above leaves the state of children's care in the country in an extremely poor condition that calls for the immediate intervention of the Committee.

V. CONCLUSIONS

This complaint, submitted by Eurochild, must prompt the Committee to find as follows:

- That Bulgaria is in breach of Articles 11, 13, 14, 17, 27 and 30 of the revised European Social Charter read alone or in conjunction with Article E for the various reasons referred to above. Eurochild is aware that the issue of early childhood development is a delicate subject whose regulation is at the discretion of the State. Eurochild also notes that Bulgaria has been making efforts in the last couple of months to improve its policy in this sphere. However, it is still inadequate and inefficient to secure that the best interest of the child are at the heart of all adopted measures.

Therefore, Eurochild respectfully requests the European Committee of Social Rights to consider the facts set down in this complaint and declare that Bulgaria is in breach of the aforementioned articles of the revised Charter.

Eurochild also requests the European Committee of Social Rights:

- to bring the procedures for early childhood development and care into line with the rights of children governed by the documents cited at the beginning of this complaint;
- to guarantee effective and immediate access for all such minors to educational facilities that are aligned with the child's interests and the need to ensure their adequate early childhood development;
- to allocate sufficient financial resources for the construction of nurseries and kindergardens to be in compliance with the effective rights of children enshrined in international conventions and the revised Charter and to be as compatible as possible with the recommendations of the Parliamentary Assembly of the Council of Europe;
- to make it easier for children with special needs to be initially admitted to kindergardens where their needs are adequately treated;
- to ensure that the right to education of all children received is respected.

Eurochild asks the Bulgarian state to abandon its purely administrative approach and take the following measures:

- allocate sufficient budgets and human resources to ensure that the required facilities for early childhood development are constructed according to the existing best practices for such buildings;
- improve co-ordination between departments in the interests of children and their early childhood development through local bodies and the independent national council responsible for coordinating and monitoring the quality of the care provided for minors;
- make it compulsory for kindergardens to offer deaf or deaf-blind children a translator for communication with the rest of the children;
- set up compulsory specialised trainings for professionals dealing with small children in view of the screening required for tracking developmental problems.

14 February, 2023

Signatories: ML Coleiro Preca

Marie-Louise Coleiro Preca (President Eurochild)

[Signature] [Signature]

Tanya Ward (Vice-President Eurochild)

