



BULGARIAN  
HELSINKI  
COMMITTEE

# ALTERNATIVE REPORT ABOUT THE RIGHTS OF PERSONS WITH DISABILITIES IN BULGARIA UNDER THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Bulgarian Helsinki Committee

Sofia, May 2017



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H E L S I N K I  
C O M M I T T E E

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The objectives of the committee are to promote respect for the human rights of every individual, to stimulate legislative reform to bring Bulgarian legislation in line with international human rights standards, to trigger public debate on human rights issues, to carry out advocacy for the protection of human rights, and to popularise and make widely available human rights instruments.

The backbone of the committee's activities is systematic monitoring of the human rights situation in the country. It gives us information on the state and development of human rights in the country and supplies our legal defense program with cases of human rights violations for litigation before the domestic and international courts. In addition, the committee reports on human rights violations with a special emphasis on the rights of ethnic and religious minorities, refugees and asylum-seekers, rights of the child, protection from torture and ill-treatment, freedom of expression and association, problems of the criminal justice system.

The BHC offers free legal help to the victims of human rights abuses. The committee also works in the sphere of human rights education, organizes conferences, workshops, public actions and other forms of public activities aimed at bringing the concept of human rights to the attention of the general public.

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## EXECUTIVE SUMMARY

This comprehensive report makes a detailed and critical analysis of the Bulgarian legislation and practice concerning persons with disabilities and their compliance with the UN Convention on the Rights of Persons with Disabilities, ratified by Bulgaria in January 2012. The report mainly covers the period 2012-2016 but also reflects some tendencies in policy making and implementation of existing policies from earlier period (2005-2012) when some of the major changes in social, educational and labour spheres took place.

Although some efforts had been made the **Bulgarian disability legislation is still far from the philosophy of the UN Convention as it mainly considers persons with disabilities as non-able and object of social assistance schemes/benefits**. Far more radical and holistic approach needs to be applied in elaboration of legislation and policies especially in the field of personal and social assistance, independent living, support in decision making, education, and employment of persons with disabilities.

The **medical model in assessment** of disabilities is leading and is a basis for all rights and benefits in practice. Social assessment of the needs and capacities of the persons with disabilities is done in a formal and bureaucratic way. **Individually tailored services, assistance and allowances do not exist**. The legislation does not contain **any unified definitions of “a child with a disability” or “a person with a disability”** and different institutions use different methods for data collection and data processing about persons with disabilities. As a result **only “persons with permanent disabilities” assessed under the medical model with 50 and over 50 % reduced working capacity are mentioned in policy and legislation acts and are entitled to some disability specific rights**.

Public environment is **largely inaccessible** for persons with different kinds of disabilities. Universal design is not adopted as a notion/definition and measures for its potential implementation are taken on EU funded projects basis sporadically.

For persons with disabilities in Bulgaria, **the right to independent living is not respected**. The majority of them live with their families and cannot choose where and with whom to live. Those who have no families or who cannot live with them are moved to social care institutions or residential community-based services where they are placed either involuntarily or without any right to choose. Some of them were abandoned as children or as adults by their families. A slowly growing tendency is for persons with disabilities to live in “protected homes” or “family-type accommodation centres” (small group homes that are meant to be an alternative to large institutions) in the community, which do not provide more opportunities for independent living in practice. **Access to community-based services is not guaranteed to all potential users and the quality of care provided in them is generally low**, with a few exceptions. Users’ opinions are not being sought and taken into account while the services are being developed, while they are functioning and when their quality is being evaluated.

People with disabilities living in institutions/residential services cannot exercise their rights to privacy, to have relationships, to choose and organise their daily activities, to marry or to

have children. They are medically treated involuntarily, often at risk to their health and lives. The practice of unlawful seclusion and restraint of some residents (with intellectual disabilities or psycho-social problems) of institutions continues (both children and adults). **Death cases and abuse cases in both institutions and residential community-based services are not investigated and prosecuted.**

**People with intellectual disabilities and psycho-social problems are often deprived of their legal capacity and placed under guardianship.** This automatically deprives them of the right to be recognised as “persons” before the law. They do not receive any support for decision making and are not allowed to enter into legal commitments. Some people have been placed under guardianship but have not had a guardian appointed for years. A significant and positive step towards implementation of Art.12 of the CRPD is the elaboration of the draft Natural Persons and Support Measures Act which was adopted by the Council of Ministers in 2016 and was introduced for voting in the Parliament.

People with disabilities (especially those with intellectual disabilities and psycho-social problems) living in institutions have **no access to any mechanisms of complaint** before the courts, within the institutions where they live or before human rights institutions or organisations. The only access to justice they benefit from so far is ensured by one NGO in Bulgaria which performs project-based monitoring for people in these two groups living in institutions or with their families.

Social assistance is available only for very poor persons and families, only to those with permanent disabilities and is **extremely insufficient** to meet even their basic needs. Disability allowances are also extremely low and are received only by persons with permanent disabilities. A positive development in 2017 is the substantial increase of disability allowances for children with permanent disabilities irrespective of the income of the families. Day care and consultation/rehabilitation services are provided in special centres and are not available for all persons with disabilities.

Although the number of children with disabilities in special schools has significantly decreased over the last ten years and over 14,000 such children are enrolled in mainstream schools every year, children with disabilities still **cannot benefit of quality education as schools still lack expertise, accessibility, sufficient and qualified staff and funding to be adapted to their needs.** Some children with complex needs, severe forms of disability or living in residential community-based services do not attend school at all. Vocational high school training for children with disabilities is not developed and is largely unavailable. A positive step towards inclusive education was the enforcement of the **new Preschool and School Education Act** as well as a Council of Ministers’ Ordinance for Inclusive Education in 2016. Outcomes of their implementation in practice should be closely monitored and publicly discussed.

Persons with disabilities (especially those with intellectual and psycho-social disabilities) are **not provided with real opportunities for vocational training or employment on the open labour market.** State funding and attention are mainly focused on specialized enterprises and the promotion employment measures (subsidized employment) on the open labour market which do not prove to be effective.

# CONTENTS

- Article 1 and 2 – Purpose and Definitions ..... 6
- Article 3 - General principles ..... 6
- Article 4 - General obligations ..... 7
- Article 5 - Equality and non-discrimination ..... 17
- Article 7 - Children with disabilities ..... 20
- Article 9 – Accessibility ..... 25
- Article 10 - Right to life ..... 28
- Article 12 - Equal recognition before the law ..... 30
- Article 13 - Access to justice ..... 34
- Article 14 - Liberty and security of the person ..... 39
- Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment ..... 43
- Article 16 - Freedom from exploitation, violence and abuse ..... 46
- Article 19 - Living independently and being included in the community ..... 50
- Article 23 - Respect for home and the family ..... 60
- Article 24 – Education ..... 62
- Article 25 – Health ..... 67
- Article 26 - Habilitation and rehabilitation ..... 70
- Article 27 - Work and employment ..... 71
- Article 28 - Adequate standard of living and social protection ..... 85
- Article 29 - Participation in political and public life ..... 90
- Article 31 - Statistics and data collection ..... 90
- Article 33 - National implementation and monitoring ..... 91
- Recommendations ..... 92

## ARTICLE 1 AND 2 – PURPOSE AND DEFINITIONS

The Bulgarian legislation **does not contain any definitions of “communication”, “language” and “universal design”**.

The *Integration of Persons with Disabilities Act* defines **“disability”** as “any loss or impairment of anatomical structure, physiological or mental state of an individual”.<sup>1</sup> A **“person with permanent disability”** is a “person who, as a result of anatomical, physiological or mental impairment, has permanently reduced capacities to perform activities in the way and at the level of a healthy person and for whom the medical assessment authorities have estimated a level of reduced working capacity of 50 and more percent”.<sup>2</sup>

### Discrimination

Disability is **not a protected ground** under the Bulgarian Constitution (adopted in 1991). According to Art. 6 of the Bulgarian Constitution, “all persons are born free and equal in dignity and rights”<sup>3</sup> and “all citizens shall be equal before the law and there shall be no privileges or restriction of rights on the grounds of race, national or social origin, ethnic self-identity, gender, religion, education, opinion, political affiliation, personal or social status or property status”.<sup>4</sup> While persons with disabilities are not entitled to protection under the Constitution, they are protected against discrimination under the *Protection from Discrimination Act* (adopted in 2004).<sup>5</sup> This act covers all types of persons who might be discriminated against on a wide array of grounds and both in public and private sectors. However, it does not have the same legislative weight as the Constitution and many professionals are not aware of it. In addition, the *Integration of Persons with Disabilities Act*, the *Child Protection Act* and the *2016 Preschool and School Education Act* prohibit direct and indirect discrimination against persons with disabilities.

## ARTICLE 3 - GENERAL PRINCIPLES

The Bulgarian Constitution provides for respect to **inherent dignity of the person**.<sup>6</sup> Non-discrimination is provided for in *Protection from Discrimination Act (Art.4)* and the

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<sup>1</sup> Bulgaria, *Integration of Persons with Disabilities Act (Закон за интеграцията на хората с увреждания)*, (1 January 2005), Additional provisions, item 1 and 2, available at: <http://www.lex.bg/bg/laws/ldoc/2135491478>.

<sup>2</sup> Bulgaria, *Integration of Persons with Disabilities Act* (1 January 2005), Additional provisions, item 1 and 2.

<sup>3</sup> Bulgaria, *Constitution of the Republic of Bulgaria (Конституция на Република България)* (13 July 1991), Art. 6, para.1, available at: <http://www.lex.bg/bg/laws/ldoc/521957377>.

<sup>4</sup> Bulgaria, *Constitution of the Republic of Bulgaria* (13 July 1997), Art. 6, para.2.

<sup>5</sup> Bulgaria, *Protection from Discrimination Act (Закон за защита от дискриминация)* (1 January 2004), Art.4, para.1, available at: <http://www.lex.bg/bg/laws/ldoc/2135472223>.

<sup>6</sup> Bulgaria, *Constitution of the Republic of Bulgaria* (13 July 1997), Art. 4, para.2 provides that “Republic of Bulgaria ensures the life, the dignity and the personal rights and creates conditions for free development of the person and the civil society. “

*Integration of Persons with Disabilities Act*.<sup>7</sup> Principles of full and effective participation and inclusion in society, accessibility and equality are also **partially** regulated by the *Integration of Persons with Disabilities Act*. The latter should guarantee conditions for: **equality** of the persons with disabilities; **social integration and fulfilment of the rights** of persons with disabilities; **support** for persons with disabilities and their families; **integration** of persons with disabilities **in employment**.<sup>8</sup> Integration of persons with disabilities is to be done by: medical and social rehabilitation; education and vocational training; employment; accessible living and architectural environment; social services; socio-economic protection and accessible information.<sup>9</sup>

The principles of respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; individual autonomy including the freedom to make one's own choices, and independence of persons; equality of opportunity; accessibility; equality between men and women<sup>10</sup> and respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities **are not explicitly reflected regarding persons with disabilities** by the Bulgarian legislation.

## ARTICLE 4 - GENERAL OBLIGATIONS

The **Council of Ministers** determines the state policy about integration of persons with disabilities.<sup>11</sup> State policy for integration of persons with disabilities is **implemented** by the Council of Ministers, minister of labour and social policy, regional governors and local authorities together with nationally representative organisations of and for persons with disabilities, nationally representative organisations of employers and nationally representative organisations of employees according to the national strategy for persons with disabilities.<sup>12</sup> The state and local authorities adopt legislation, strategies, programs, standards and other documents related to persons with disabilities.<sup>13</sup>

The **National Council for Integration of Persons with Disabilities** was set up at the Council of Ministers to support the elaboration and the implementation of the disability policies and its chairperson is the minister of labour and social policy.<sup>14</sup> The Council is a **consultative body** consisted of: state officials, nationally representative organisations of and for persons with disabilities, nationally representative organisations of employers and nationally represented organisations of employees and the National Association of Municipalities. The Council **gives**

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<sup>7</sup> Bulgaria, Integration of Persons with Disabilities Act (1 January 2005), Art.3.

<sup>8</sup> Bulgaria, Integration of Persons with Disabilities Act (1 January 2005), Art.2.

<sup>9</sup> Bulgaria, Integration of Persons with Disabilities Act (1 January 2005), Art.4.

<sup>10</sup> Bulgaria, Equality between Men and Women Act (*Закон за равнопоставеност между мъжете и жените*) (26 April 2016), Art.1 and 2, available at: <http://www.lex.bg/bg/laws/ldoc/2136803101>.

<sup>11</sup> Bulgaria, Integration of Persons with Disabilities Act (1 January 2005), Art.5.

<sup>12</sup> Bulgaria, Integration of Persons with Disabilities Act (1 January 2005), Art.5, para.2 (adopted in 2010).

<sup>13</sup> Bulgaria, Integration of Persons with Disabilities Act (1 January 2005), Art.5, para.3.

<sup>14</sup> Bulgaria, Integration of Persons with Disabilities Act (1 January 2005), Art.6 (adopted in 2010).

**opinions about all draft legislation, strategies, programs and plans regarding persons with disabilities.**<sup>15</sup> According to the Regulation of its activities the National Council should also: organize research and analysis of the needs the persons with disabilities and make proposals for raising social and economic effectiveness of this process;<sup>16</sup> cooperate to achieve coordination of state, municipal, public authorities and organisations in integration of persons with disabilities;<sup>17</sup> report annually to the Council of Ministers about its activities,<sup>18</sup> receive, analyse and discuss the annual reports and financial reports of nationally representative organisations of and for persons with disabilities related to integration.<sup>19</sup>

The Council of Ministers adopted *Regulation for the Activities of the National Council for Integration of Persons with Disabilities* in which it determines **the criteria for national representativeness of the organisations of and for persons with disabilities.**<sup>20</sup> This regulation was adopted and enforced on 1 January 2005 but was thoroughly amended on 20 October 2015.<sup>21</sup> According to the 2015 amendments organisations of and for persons with disabilities and employers' organisations that would be recognized as nationally representative should: be registered as NGOs or cooperatives 5 years before their application; have aims and activities with national significance in integration of persons with disabilities field again 5 years before their application; their territorial structures should cover **more than 35 % of the municipalities** in the country; have at least **5 years of experience in the field of support** of persons with disabilities.<sup>22</sup> Apart from the general criteria the organisations should also fulfil **specific criteria**: organisations of and for persons with disabilities should have **at least 1,800 members**, out of whom **at least 60 % persons with permanent disabilities** and be registered as NGOs; organisations of persons with sight and hearing disabilities to have at least 400 members, out of whom at least 55 % persons with permanent disabilities; organisations of persons with small size to have at least 150 members out of whom at least 50 % with permanent disabilities; **organisations of employers to have at least 10 employers and at least 800 persons with disabilities employed**; organisations for persons with disabilities **providing services to serve at least 4,500 persons** annually and to have at least 50 persons appointed to work in the services; parents' and

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<sup>15</sup> Bulgaria, Integration of Persons with Disabilities Act (1 January 2005), Art.6, para.3.

<sup>16</sup> Bulgaria, Regulation for the Structure and Activities of the National Council for Integration of Persons with Disabilities and the Criteria for Representativeness of the Organisations of and for Persons with Disabilities (*Правилник за устройството и дейността на Националния съвет за интеграция на хората с увреждания и критериите за представителност на организациите на и за хора с увреждания*) (01.01.2005, amended on 20 October 2015), Art.3, para.2, available in Bulgarian at: <http://www.lex.bg/laws/ldoc/2135497189>.

<sup>17</sup> Bulgaria, Regulation for the Structure and Activities of the National Council for Integration of Persons with Disabilities and the Criteria for Representativeness of the Organisations of and for Persons with Disabilities, Art.3, para.4.

<sup>18</sup> Bulgaria, Regulation for the Structure and Activities of the National Council for Integration of Persons with Disabilities and the Criteria for Representativeness of the Organisations of and for Persons with Disabilities, Art.3, para.8.

<sup>19</sup> Bulgaria, Regulation for the Structure and Activities of the National Council for Integration of Persons with Disabilities and the Criteria for Representativeness of the Organisations of and for Persons with Disabilities, Art.3, para.9.

<sup>20</sup> Bulgaria, Integration of Persons with Disabilities Act (1 January 2005), Art.6, para.4.

<sup>21</sup> Bulgaria, Regulation for the Structure and Activities of the National Council for Integration of Persons with Disabilities and the Criteria for Representativeness of the Organisations of and for Persons with Disabilities, (01.01.2005, amended on 20 October 2015).

<sup>22</sup> Bulgaria, Regulation for the Structure and Activities of the National Council for Integration of Persons with Disabilities and the Criteria for Representativeness of the Organisations of and for Persons with Disabilities, (01.01.2005, amended on 20 October 2015), Art.8, para.1.

professional organisations for persons with disabilities to have at least 500 members for organizations and at least 1,500 members for associations of organisations. The minister of labour and social policy appoints a commission to assess the compliance with the criteria of the candidates after they submit a number of documents proving the compliance with the criteria.<sup>23</sup> Then the Council of Ministers recognizes the organisations as nationally representative on proposal of the National Council in three months period after the submission of the application.<sup>24</sup>

For the implementation of disability state policy an **Agency for Persons with Disabilities** was set up at the Ministry of Labour and Social Policy.<sup>25</sup> The Agency implements the state policy for integration of persons with disabilities by: registration of persons that provide or adapt technical aids and medical appliances; control of the activities of provision of such aids and appliances; keeping a register of specialized enterprises for persons with disabilities; participation and provision of mandatory opinion on drafts of legislation related to persons with disabilities; elaboration of programs and financing of projects aimed at economic activities and rehabilitation of and for persons with disabilities.<sup>26</sup> The Agency also creates and maintains a **data base for persons with permanent disabilities which serves for analysis and policy planning**.<sup>27</sup> Since 2014 the National Expert Medical Commission, local commissions, the National Insurance Institute, the National Statistical Institute, the National Centre for Public Health and Analysis, the State Agency for Child Protection, the National Tax Agency had been obliged to provide data to the Agency for Persons with Disabilities.<sup>28</sup> **Such a data base was not identified on the internet.**

## Children with disabilities

Since 2000, specific provisions in the legislation and specific policy documents, such as the *Child Protection Act*, the *Protection from Discrimination Act*, the *Integration of Persons with Disabilities Act*, the *Public Education Act* and the *National Strategy for the Child (2008-2018)*, *National Strategies for Ensuring Equal Opportunities to Persons with Disabilities*, have been elaborated to enhance the protection of children/persons with disabilities' rights. The provisions are dispersed throughout different pieces of legislation, and different ministries and agencies are in charge of their implementation.

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<sup>23</sup> Bulgaria, Regulation for the Structure and Activities of the National Council for Integration of Persons with Disabilities and the Criteria for Representativeness of the Organisations of and for Persons with Disabilities, (01.01.2005, amended on 20 October 2015), Art.9a.

<sup>24</sup> Bulgaria, Regulation for the Structure and Activities of the National Council for Integration of Persons with Disabilities and the Criteria for Representativeness of the Organisations of and for Persons with Disabilities, (01.01.2005, amended on 20 October 2015), Art.10.

<sup>25</sup> Bulgaria, Integration of Persons with Disabilities Act (1 January 2005), Art.7.

<sup>26</sup> Bulgaria, Integration of Persons with Disabilities Act (1 January 2005), Art.8.

<sup>27</sup> Bulgaria, Integration of Persons with Disabilities Act (1 January 2005), Art.9.

<sup>28</sup> Bulgaria, Integration of Persons with Disabilities Act (1 January 2005), Art.9, para.3.

According to the Child Protection Act (CPA), the state child protection policy is determined by the **Parliament** on the basis of the national strategy for child protection as proposed by the Council of Ministers.<sup>29</sup>

The **State Agency for Child Protection (SACP)** has the main executive power on drafting and implementing the child protection policies. The SACP drafts and adopts the annual National Programmes for Child Protection. It licenses and controls the activities of providers of social services for children, carries out monitoring of compliance with the rights of children (including children living in institutions) and drafts legislation concerning children's rights.<sup>30</sup>

A **National Council of Child Protection** has been created at the State Agency for Child Protection. It has **consultative and coordinative functions** in the policy and legislation planning, drafting and implementation and was set up to include deputy-ministers of all relevant ministries in the child protection field, as well as child care and child protection non-governmental organizations.<sup>31</sup>

The **Ministry of Education and Science (MES)** and the municipalities are responsible for the provision of preschool and school education to **all children** from ages 5 (or 7 depending on parents' choice) to 16, including children with disabilities.<sup>32</sup> The ministry prepares draft legislation, allocates funding, controls and manages the activities and provides the main methodological guidance to the schools in Bulgaria. The national policy on school education is prepared by the Council of Ministers and is adopted by the Parliament.

The **Ministry of Labour and Social Policy (MLSP)** is responsible for the provision of **institutional and community-based social services** and **social benefits** for the children and adults with disabilities and their families,<sup>33</sup> as determined by the Council of Ministers. The central **Social Assistance Agency (SAA)**, which is subordinated to the Ministry of Labour and Social Policy, is responsible for the methodological guidance of the local structures of social assistance (Social Assistance Departments) and for the supervision and control of their activities.<sup>34</sup> The Social Assistance Agency has departments at regional and municipal levels. The Social Assistance Departments are responsible for providing social benefits and for referring children and families to the respective social services. Within the structure of the Social Assistance Departments, the **Child Protection Departments (CPD)** operate with the main function to protect children's rights; to prevent institutionalization (abandonment) of children who are at risk in their families; and to refer children for adoption, foster care and

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<sup>29</sup> Bulgaria, Child Protection Act (13 June 2000), Art. 1, para. 3.

<sup>30</sup> Bulgaria, Child Protection Act (13 June 2000), Art. 17a.

<sup>31</sup> Bulgaria, Child Protection Act (13 June 2000), Art. 18.

<sup>32</sup> Bulgaria, Preschool and School Education Act (*Закон за предучилищното и училищното образование*), (enforced on 1 August 2016), Art. 7 and 8, available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2136641509>.

<sup>33</sup> Bulgaria, Social Assistance Act (*Закон за социалното подпомагане*), (19 May 1998), Art. 4, available at: <http://lex.bg/bg/laws/ldoc/2134405633>.

<sup>34</sup> Bulgaria, Social Assistance Act (19 May 1998), Art. 5 and 6.

placement at their relatives' families when their own biological family cannot take care of them.<sup>35</sup>

The **Ministry of Healthcare** is responsible for ensuring healthcare services to children<sup>36</sup> and provides medical assessment to children and adults with disabilities.<sup>37</sup> It is still in charge of 17 institutions for abandoned babies and children aged 0 to 3, the majority of whom have disabilities.<sup>38</sup> The State policy of healthcare is determined by the Council of Ministers and implemented by the Ministry of Healthcare.

Since 2009, the **municipalities** have been obliged to also establish local commissions on child protection<sup>39</sup> where all local departments of the ministries and local non-governmental organizations participate to draft the **municipal child protection policies** after assessing the needs of the children and their families.

In 2010 the **regional governors and mayors** were obliged by the *Regulation for Implementation of the Social Assistance Act* to develop local **five-year strategies and plans for support and services for persons with disabilities** based on preliminary assessments of the needs and availability of both institutional and community-based services. These strategies and plans on regional level should be elaborated by: representatives of each municipality, Regional Social Assistance Department; Regional Education Department; Regional Health Department; Regional Employment Department, **NGOs providing services and other persons, authorities and organisations related to provision of services.**<sup>40</sup> The regional strategies contain **analysis of the needs** that is to be done by the municipalities and the local Social Assistance Departments and is adopted by the municipal councils upon proposal of the mayor.<sup>41</sup> They also contain information about: the type, capacity, quality of the provided services; target groups; funding opportunities; availability and cooperation with other service (such as educational, employment, healthcare); accessibility and sustainability of existing services; **participation of civil society, other providers and the users in the development of social services (Art.36a, para.4, item 3)**<sup>42</sup>; possible challenges, institutions that are scheduled for closure; analysis of the resources; periodic review of the implementation of the strategies and mechanism for control over it; **mechanism for**

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<sup>35</sup> Bulgaria, Social Assistance Act (19 May 1998), Art. 5, para. 5 and 6.

<sup>36</sup> Bulgaria, Health Act (*Закон за здравето*), (1 January 2005), Art. 117, available in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135489147>.

<sup>37</sup> Bulgaria, Health Act, (1 January 2005), Art. 101.

<sup>38</sup> Bulgaria, Ministry of Healthcare, <http://www.mh.government.bg/bg/ministerstvo/vtorostepenni-razporediteli/domove-za-mediko-sotsialni-grizhi-za-detsa/>.

<sup>39</sup> Bulgaria, Regulation for Implementation of Child Protection Act (*Правилник за прилагане на Закона за закрила на детето*), (25 July 2003), Art. 6, available at: <http://www.lex.bg/bg/laws/ldoc/2135469520>. The local commissions elaborate the municipal programs for child protection assessing the needs of the children and their families and cooperates, assists and coordinates the exchange of information between the competent authorities and organisations in the municipality.

<sup>40</sup> Bulgaria, Regulation for Implementation of the Social Assistance Act (*Правилник за прилагане на Закона за социално подпомагане*) (1 November 1998), Art.36a, para. 2, available at: <http://www.lex.bg/bg/laws/ldoc/-13038592>.

<sup>41</sup> Bulgaria, Regulation for Implementation of the Social Assistance Act (1 November 1998), Art.36a, para. 3.

<sup>42</sup> Bulgaria, Regulation for Implementation of the Social Assistance Act (1 November 1998), Art.36a and 36b (enforced on 9 April 2010).

**participation of providers of social services, civil society and users in the implementation of the strategies.**<sup>43</sup> **The regional governor adopts the strategy after consultations with the regional councils for development and the Regional Social Assistance Department.**<sup>44</sup>

Based on the regional strategy, the **mayor** is obliged to organize elaboration of **municipal strategy** for social services development to be adopted by the municipal council.<sup>45</sup> The content of the municipal strategies is identical to the regional ones. To implement the municipal strategy the municipal council adopts up to 30 April every year **annual plan for development of social services** after consultations with Social Assistance Department, civil council and upon proposal by the mayor. The plan contains the type, capacity and number of the services that function in the municipality, those that should be opened/closed/restructured, funding and human resources. **The plan is to be sent to the Social Assistance Agency in 14 days after its adoption.**<sup>46</sup>

## Protection from Discrimination Commission

Every person with a disability and his/her parents/legal guardians may file a complaint about discriminatory attitudes before the Protection from Discrimination Commission (PDC).<sup>47</sup> The PDC was established as a single-equality body with a mandate to uniformly provide protection on all grounds, including disability. It consists of nine members, five of whom are elected by Parliament, and the others are appointed by the President.<sup>48</sup> Their term of office is five years and their powers include: **receiving and investigating complaints** by victims, as well as third parties without limitation; **issuing binding rulings** declaring discrimination and imposing financial sanctions; **issuing binding instructions** to prevent, stop or require abstention from discrimination and/or restore the status quo ante; **carrying out surveys** and publishing independent reports; **bringing court action and joining court proceedings** in an *amicus curiae* capacity; making recommendations to other authorities to reform legislation or practice; **giving opinions on draft legislation**; and providing independent assistance to victims of discrimination.<sup>49</sup> The PDC has quasi-investigative powers, including accessing any testimony, documents or facilities for on-site inspections, which allow it to be **proactive in gathering evidence**, thus relieving the victim. Its proceedings are exempt from any fee or cost and can also be initiated *ex officio*.

## Ombudsperson

A general Ombudsperson has been established in Bulgaria in 2005. The Ombudsman Act provides that the Ombudsperson has the powers to intervene when citizens' rights and

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<sup>43</sup> Bulgaria, Regulation for Implementation of the Social Assistance Act (1 November 1998), Art.36a, para. 4.

<sup>44</sup> Bulgaria, Regulation for Implementation of the Social Assistance Act (1 November 1998), Art.36a, para. 5.

<sup>45</sup> Bulgaria, Regulation for Implementation of the Social Assistance Act (1 November 1998), Art.36b.

<sup>46</sup> Bulgaria, Regulation for Implementation of the Social Assistance Act (1 November 1998), Art.36b.

<sup>47</sup> Bulgaria, Protection from Discrimination Act (1 January 2004), Art. 50.

<sup>48</sup> Bulgaria, Protection from Discrimination Act (1 January 2004), Art. 41.

<sup>49</sup> Bulgaria, Protection from Discrimination Act (1 January 2004), Art. 47.

freedoms have been violated by actions or omissions of the State and municipal authorities and their administration, as well as by the persons assigned with the provision of public services.<sup>50</sup> Thus, the Ombudsperson may act on his/her own initiative when he/she has established that the necessary safeguards for protecting citizens' rights and freedoms have not been created. If the Ombudsperson determines that the announcement of the unconstitutionality of a law is needed he/she may propose to one of the following entities to approach the Constitutional Court: one fifth of the MPs, the president, the Council of Ministers, the Supreme Cassation Court, the Supreme Administrative Court or the chief prosecutor. The Ombudsperson can receive complaints from citizens, including persons with disabilities and their parents/guardians. He/she **investigates on the basis of the complaints and reports received; makes proposals and recommendations for reinstatement of the violated rights and freedoms** before the respective authorities and providers of public services (both public and private); **mediates between the administrative authorities and the persons concerned for overcoming the violations admitted**; makes proposals and recommendations for eliminating the reasons and conditions which may lead to the violation of rights and freedoms.

In 2006, the Ombudsperson declared that the priority areas of his activities had been determined by the reports and complaints of the citizens and, among others, were: **protection of the rights of persons with disabilities and implementation of mechanisms for real social integration, equal access to quality education, right to healthcare and protection of the rights to social services/welfare.**<sup>51</sup> However, according to the Ombudsperson's reports, the majority of the individual complaints he received concerned the right to real estate/property, the right to public services, and the right to social services/welfare. In 2007, the Ombudsperson chose several priority areas for intervention and active involvement among which was the right of children to have access to social services, to family, to alternatives to institutionalization and to quality care.<sup>52</sup> It is also worth mentioning that, although broadly declared, some of the priority areas of action of the Ombudsperson during **the period 2005-2010 were not implemented with the necessary scope and impact. For example, the fundamental rights of the child, the access to education, the right to healthcare and social services for people with intellectual and psychosocial disabilities were not even discussed as main human rights problems deserving special attention as they concern vulnerable citizens.**

In 2011, the newly elected Ombudsperson started working more actively on the rights of children with disabilities by **monitoring care homes for children with intellectual disabilities.**

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<sup>50</sup> Bulgaria, Ombudsman Act (*Закон за омбудсмана*) (1 January 2004), Art. 2, available at: <http://lex.bg/bg/laws/ldoc/2135467520>.

<sup>51</sup> Bulgaria, Ombudsman, 2006 Annual Report of the Ombudsman of the Republic of Bulgaria (*Годишен доклад за 2006*), pp. 18-19, available in English at: <http://www.ombudsman.bg/index.php?action=list&item=opinions&type=10>.

<sup>52</sup> Bulgaria, Ombudsman, 2007 Annual Report of the Ombudsman of the Republic of Bulgaria "Good Governance, Rights of the People and Institutions of Power", (*Годишен доклад за 2007 "Доброто управление, правата на хората и органите на властта"*), pp. 11-54, available at: [http://ombudsman.bg/annual\\_report\\_2007.pdf](http://ombudsman.bg/annual_report_2007.pdf).

The 2012 amendments to the Ombudsman Act<sup>53</sup> broadened the powers of the Ombudsperson to expressly include authorization to submit opinions to the Council of Ministers and the National Assembly on bills relevant to human rights;<sup>54</sup> protect children's rights by the means provided for in the Ombudsman Act;<sup>55</sup> make proposals and recommendations to the Council of Ministers and the National Assembly concerning the signing and ratification of international acts in the field of human rights.<sup>56</sup> These amendments led to more active involvement of the Ombudsperson in issues concerning children and persons with disabilities while, previously, he/she had not shown such interest and commitment.

In 2013, the Ombudsperson prepared a report on **his monitoring of care homes for children with intellectual disabilities and homes for medico-social care for children aged 0 to 3 (where 50% of the children have disabilities).**<sup>57</sup> Unfortunately, this report is somewhat inadequate.<sup>58</sup> It lacks a thorough human rights approach and comprehensive methodology, and does not present a complete picture of the situation of children placed in institutions (for example, only a handful of institutions were visited). The Ombudsperson monitored the process of closing down institutions for medico-social care for children (IMSCC) by visiting four of the eight pilot institutions (out of a total of 29 IMSCC in the country). His report outlines the positive aspects of the facilities available at IMSCC but **fails to research the reasons leading to the placement of children in these institutions and the lack of possible protection measures in the children's biological families or other family environment.** The Ombudsperson acting as National Preventative Mechanism **fails to comment** on each child's individual mental, physical and emotional state. He **does not focus on the deficiencies of the quality of medical care and the failure to meet the overall individual needs of the children.**

An NGO evaluation of 20 (out of 28) IMSCC done during the period 2013-2014 revealed that the entrance to these institutions is still wide open as children are placed in them **due to both family poverty and disabilities.** The share of children with disabilities placed in IMSCC was still growing: the percentage of **children with disabilities going through these institutions increased from 39.74% in 2013 to 45.18% in 2014.**<sup>59</sup> However, researchers found that a number of children in these institutions are in shocking physical condition, indicating an inability of the institutions to properly address the needs of this growing population.

At the same time, the Ombudsperson's report **fails to address the "postponed humanisation"**, as it were, of the environment in the institutions for medico-social care for children (i.e. the children's lack of contact with the outside world; the lack of access to a

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<sup>53</sup> Bulgaria, Ombudsman Act (1 January 2004), amendments from 11 May 2012.

<sup>54</sup> Bulgaria, Ombudsman Act (1 January 2004), Art. 19, item 8.

<sup>55</sup> Bulgaria, Ombudsman Act (1 January 2004), Art.19, item. 9.

<sup>56</sup> Bulgaria, Ombudsman Act (1 January 2004), Art.19, item. 10.

<sup>57</sup> Bulgaria, Ombudsman, *2013 Annual Report of the Ombudsman as National Preventative Mechanism*, p. 25, available in Bulgarian at: [http://www.ombudsman.bg/documents/prevantiven\\_mehanizam\\_2014.pdf](http://www.ombudsman.bg/documents/prevantiven_mehanizam_2014.pdf)

<sup>58</sup> Bulgaria, Ombudsman, *2013 Annual Report of the Ombudsman as National Preventative Mechanism*, p. 25, available in Bulgarian at: [http://www.ombudsman.bg/documents/prevantiven\\_mehanizam\\_2014.pdf](http://www.ombudsman.bg/documents/prevantiven_mehanizam_2014.pdf).

<sup>59</sup> Information provided to Bulgarian Helsinki Committee (BHC) on 5 February 2015 by the Ministry of Healthcare. According to the ministry, of the 925 children placed in 29 IMSCC, 604 or 65.2% were children with disabilities.

person of trust; the lack of respiratory rehabilitation for bedridden children leading to death cases<sup>60</sup>; the children with the most severe disabilities having significant psychomotor retardation, delayed growth in height and weight, adynamia, forced lying position accompanied by pressure injuries, deformations of the musculoskeletal system, joint contractures and muscle hypertrophy).<sup>61</sup> Although almost 300 deaths of institutionalized children occurred in the four and a half years between mid-2010 and the end of 2014,<sup>62</sup> the causes of these deaths were not mentioned and examined in the Ombudsperson's monitoring.

## Policy developments

Bulgarian governments adopted a number of strategic documents in **implementation of the general obligations under the UN Convention on the Rights of Persons with Disabilities: Action plan for the measures for compliance of the legislation and policies in the disability field with the UNCRDP (2013-2014); Action Plan for Implementation of the UNCRPD (2015-2020); National Strategy for Equal Opportunities for Disabled People (2008-2015); National Strategy for Persons with Disabilities (2016-2020) and 2016-2018 Action Plan for the Implementation of the National Strategy for Persons with Disabilities (2016-2020).**

The first **two-year action plan (2013-2014)** on the implementation of the UNCRPD<sup>63</sup> aimed at setting up a task force within the Ministry of Labour and Social Policy comprised of representatives of all relevant ministries, executive agencies and disability NGOs, which was supposed to develop a plan for legislative amendments in accordance to the UNCRPD provisions until December 2014 when the Optional Protocol was planned to be ratified as well.<sup>64</sup> In fact the whole disability legislation needed significant changes in order to comply with the Convention – starting from the definition of disability, which is currently based on the medical model and refers to the impairment and diagnosis of the person, all throughout the *Integration of Persons with Disabilities Act* (technical aids, integration allowances, independent living), *Family Code* (defining legal capacity restrictions), *Regional Development*

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<sup>60</sup> Bulgaria, BHC press release, *BHC Calls SACP to Investigate 292 Death Cases of Children in Institutions between June 2010 and December 2014*, 29 April 2015, available in Bulgarian at: <http://www.bghelsinki.org/bg/novini/press/single/pressobshenie-bhk-prikanva-dazd-da-razsledva-292-smrtni-sluchai-na-deca-v-domove-mezhdu-yuni-2010-i-dekemvri-2014-g/>.

<sup>61</sup> Bulgaria, Bulgarian Helsinki Committee, *2014 Annual Report*, April 2015, p. 78-86, available in English at: [http://www.bghelsinki.org/media/uploads/annual\\_reports/annual\\_bhc\\_report\\_2014\\_en.pdf](http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2014_en.pdf).

<sup>62</sup> Bulgaria, Bulgarian Helsinki Committee, *BHC Urges the National Child Protection Agency to Investigate the Deaths of 292 Children in Institutions from June 2010 to December 2014*, 28 April 2015, available in Bulgarian at: <http://www.bghelsinki.org/bg/novini/press/single/pressobshenie-bhk-prikanva-dazd-da-razsledva-292-smrtni-sluchai-na-deca-v-domove-mezhdu-yuni-2010-i-dekemvri-2014-g/>.

<sup>63</sup> Bulgaria, Council of Ministers, *Action plan for the measures for compliance of the legislation and policies in the disability field with the UN Convention of the rights of the persons with disabilities in Bulgaria (2013-2014) (План за действие, съдържащ мерки за привеждане на нормативната уредба и политики в областта на хората с увреждания, в съответствие с разпоредбите на Конвенцията за правата на хората с увреждания от Република България (2013-2014)*, adopted on 19 October 2012, with a Council of Ministers decision 868, available at: <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=784>.

<sup>64</sup> Bulgaria, Council of Ministers, *Action plan for the measures for compliance of the legislation and policies in the disability field with the UN Convention of the rights of the persons with disabilities in Bulgaria (2013-2014)*, p.12.

Act (accessibility), *Public Education Act* (education), *Social Assistance Act* (disability allowances and social services), *Labour Code* (employment), etc.<sup>65</sup>

The 2013-2014 Action Plan envisaged a national monitoring body to be set up until December 2013.<sup>66</sup> Two options for monitoring body were discussed, namely the National Ombudsman Office and the Protection against Discrimination Commission. Both are 'independent', meaning elected by the Parliament as opposed to being assigned by the Council of Ministers, i.e. the executive power; both have their budgets voted by the Parliament; both have statutory obligation to respond to violation of human rights and handle such cases.<sup>67</sup> The Protection against Discrimination Commission constitutes a special jurisdiction (decisions are binding) and it has been involved in 268 cases of discrimination on the grounds of disability over the period 2006-2011 most of which refer to Art. 5 of the *Protection from Discrimination Act*, which is lack of accessibility.<sup>68</sup>

An interministerial working group for the coordination of the activities under the UNCRPD was set up in 2013. **However, by the end of 2016 neither a monitoring body, nor a focal point were appointed.**<sup>69</sup> According to the new 2015-2020 Action Plan a new expert group for appointment of coordination body was supposed to be set up in 2016. Another expert group is supposed to elaborate the coordination mechanism in 2017. **The elaboration of legislative amendments which would provide for the functions of the coordination and monitoring authority is scheduled for 2020.**<sup>70</sup>

A comprehensive review of the legislation and **concept papers for legislative amendments were adopted by end of 2015 to comply with Art.11, 12, 14, 18, 19, 21, 24 and 30 of the UNCRPD.** Expert group was appointed to work on concept for legislative amendments under Art. 27 of the UNCRPD. The concepts under Art. 21 and 30 were approved by the National Council of Persons with Disabilities. A concept was prepared for Art.9 but was not approved by the National Council.<sup>71</sup> **A new five-year (2015-2020) Action Plan** was adopted to continue the activities for achieving compliance of Bulgarian legislation with the UNCRPD. However,

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<sup>65</sup> Bulgaria, Integration of Persons with Disabilities Act (*Закон за интеграцията на хората с увреждания*) (1 January 2005), *Family Code (Семеен кодекс)* (1 October 2009), available at: <http://www.lex.bg/bg/laws/ldoc/2135637484>; *Urban Development Act (Закон за устройството на територията)* (31 March 2001), available at: <http://www.lex.bg/bg/laws/ldoc/2135163904>; *Public Education Act (Закон за народната просвета)* (18 October 1991), available at: <http://www.lex.bg/bg/laws/ldoc/2132585473>.

<sup>66</sup> Bulgaria, Council of Ministers, Action plan for the measures for compliance of the legislation and policies in the disability field with the UN Convention of the rights of the persons with disabilities in Bulgaria (2013-2014), p.12, available in Bulgarian at: [http://www.mlsp.government.bg/bg/ministry/Action\\_plan\\_CRPD\\_14%20Sept%202012\\_last.doc](http://www.mlsp.government.bg/bg/ministry/Action_plan_CRPD_14%20Sept%202012_last.doc). The plan does not specify anything about the role and functions of the body. Currently there is not any such body.

<sup>67</sup> Bulgaria, Ombudsman Act (1 January 2004), available at: <http://www.ombudsman.bg/regulations/ombudsman-law>; *Protection from Discrimination Act* (1 January 2004, last amendments of 2009), available at: <http://lex.bg/bg/laws/ldoc/2135472223>.

<sup>68</sup> Presentation delivered by a member of the Commission in June 2011 at a conference on UN CRPD.

<sup>69</sup> Bulgaria, Ministry of Labour and Social Policy, *Report on the implementation of the Action Plan for Implementation of the UNCRPD*, available at: <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=784>.

<sup>70</sup> Bulgaria, Council of Ministers, Action Plan for Implementation of UNCRPD (2015-2020) <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=967>.

<sup>71</sup> Bulgaria, Ministry of Labour and Social Policy, *Report on the implementation of the Action Plan for Implementation of the UNCRPD*, available at: <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=784>.

the majority of these activities were postponed with several years and their implementation seems unclear and not coordinated even on the planning level.<sup>72</sup>

On 23 May 2012, the government adopted an updated version of the **Strategy for Ensuring Equal Opportunities for Persons with Disabilities 2008-2015**.<sup>73</sup> The strategy aims to synchronise the national framework with the CPRD and with the European Disability Strategy 2010-2020. The main goals of the new strategy are a repetition of the goals of the previous strategies, namely: accessibility of public buildings and public and private transportation; quality day care and education for children with disabilities; quality vocational training; high school and university education for young persons with disabilities; complex medical and social rehabilitation; widening of the employment options for persons with disabilities; priority development of community-based social services for persons with disabilities; access to cultural, tourist and sport activities and designated areas for persons with disabilities; and raising awareness about the rights of persons with disabilities.

On 7 July 2016 the Council of Ministers adopted new **National Strategy for Persons with Disabilities (2016-2020)** which reflects the European Disability Strategy 2010-2020 and was elaborated to reflect also the 2015-2020 Action Plan for Implementation of the UNCRPD. It contains 6 priorities – access to living environment and freedom of expression and opinion and access to information; access to inclusive education and life-long learning; access to effective quality health care services; access to employment; adequate support for community living and access to cultural, tourist and sport activities.<sup>74</sup> A *2016-2018 Action Plan for the Implementation of the National Strategy for Persons with Disabilities (2016-2020)* was also adopted at the end of December 2016.<sup>75</sup>

## ARTICLE 5 - EQUALITY AND NON-DISCRIMINATION

As mentioned above (under Art.2 section), the Constitution does not explicitly protect persons with disabilities from discrimination while the *Integration of Persons with Disabilities Act*, *Child Protection Act* and the *Protection from Discrimination Act* do.

The *Child Protection Act* (CPA) provides that there must be no restrictions of the children's rights on the grounds of **disability**, race, nationality, ethnic background, gender, origin,

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<sup>72</sup> Bulgaria, Council of Ministers, *Action Plan for Implementation of UNCRPD (2015-2020)*, available in Bulgarian at: <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=967>.

<sup>73</sup> Bulgaria, *Strategy for Ensuring Equal Opportunities for Persons with Disabilities 2008-2015 (Актуализирана стратегия за осигуряване на равни възможности на хората с увреждания (2008-2015))*, available in Bulgarian at: [www.mlsp.government.bg/bg/docs/index.htm](http://www.mlsp.government.bg/bg/docs/index.htm).

<sup>74</sup> Bulgaria, Council of Ministers, *National Strategy for Persons with Disabilities (2016-2020)*, available in Bulgarian at: <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=1048>.

<sup>75</sup> Bulgaria, Council of Ministers, *2016-2018 Action Plan for the Implementation of the National Strategy for Persons with Disabilities (2016-2020)*, available in Bulgarian at: <https://www.mlsp.government.bg/index.php?section=POLICIESI&I=282>.

property status, religion, education or beliefs.<sup>76</sup> In implementing the principle of non-discrimination, the act provides for special protection of children at risk and other vulnerable groups such as children with disabilities and children from ethnic minority groups. In addition, the *Integration of Persons with Disabilities Act* prohibits direct and indirect discrimination against persons with disabilities.<sup>77</sup>

The *Protection from Discrimination Act* (PDA) provides that “any direct and indirect discrimination on the grounds of gender, race, nationality, ethnicity, citizenship, origin, religion and faith, education, beliefs, political affiliation, personal or public status, **disability**, age, sexual orientation, family status, property status or any other ground, provided by a law or international treaty to which the Republic of Bulgaria is a party shall be prohibited”.<sup>78</sup> Article 5 declares ‘construction and maintenance of an inaccessible environment’ to be direct discrimination. The law applies both to the public and private sectors (including education, health care, public transportation and provision of goods and services). The PDA provides for certain forms of **reasonable accommodation** albeit limited to education and employment.<sup>79</sup>

Under the *Protection from Discrimination Act* (PDA), directors of **educational institutions** must take effective measures to prevent all forms of discrimination by members of the teaching or administrative staff or by students. Educational institutions must take appropriate measures to compensate for persons with disabilities’ limited opportunities to effectively exercise their rights to education and training, unless the cost is “excessive” and “would seriously burden the institution”, which can be considered as a right to reasonable accommodation specific to the sector of education.<sup>80</sup> A specific example of direct discrimination can be found in the 2011 report of the Protection from Discrimination Commission (PDC) concerning a hyperactive child at first grade at school. The parents of the child complained that instead of ensuring proper education to their child, the school organised the parents of the non-disabled children to sign a petition against the hyperactive child to make the child leave the school. The school authorities insisted that the child should be supported by a special teacher but the parents refused this. The child also was punished by the school authorities for his hyperactive behaviour which ruined the discipline.<sup>81</sup> The PDC found direct discrimination in this case and obliged the school to stop it and to prevent further such acts.

In practice, children **with disabilities continue to be discriminated** against regardless of where they live (with families or in institutions) because of the traditional medical **mind-set that regards them as “ill”**, as well as the medical assessment of their “reduced capacity for social adaptation”.<sup>82</sup> Children with disabilities in Bulgaria **are not fully protected from discrimination** and do not enjoy an equal opportunity to be involved in all aspects of social life because of a lack of detailed legislation and mechanisms to ensure inclusive education,

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<sup>76</sup> Bulgaria, Child Protection Act, (13 June 2000), Art. 10.

<sup>77</sup> Bulgaria, Integration of Persons with Disabilities, (1 January 2005), Art. 3.

<sup>78</sup> Bulgaria, Protection from Discrimination Act (1 January 2004), Art. 4.

<sup>79</sup> Bulgaria, Protection from Discrimination Act (1 January 2004), Art. 32 and 16.

<sup>80</sup> Bulgaria, Protection from Discrimination Act (1 January 2004), Art. 32.

<sup>81</sup> Bulgaria, Protection from Discrimination Commission, *2011 Annual report*, p. 48, Decision 1/2011.

<sup>82</sup> Bulgaria, National Network for Children, *Report Card 2014: What is the Average Government Score for Children?*, expert version, April 2014, p. 9, available in Bulgarian at: [http://nmd.bg/Report Card2014\\_expert\\_version\\_web.pdf](http://nmd.bg/Report Card2014_expert_version_web.pdf).

full participation in any children-related activities and policy making and full acknowledgement and prosecution of discrimination-related violations/crimes against them. In order to enhance the protection of children with disabilities, first and foremost, Bulgarian legislation should provide a clear and consistent definition of “disability” to serve as a foundation of legislative acts to specifically address the needs of children with disabilities.

The findings of a 2012 research conducted by the Ministry of Labour and Social Policy (MLSP) show that children with disabilities are **heavily affected by discriminatory attitudes**<sup>83</sup> and that direct and indirect discrimination on the grounds of disabilities is shown both amongst children and by educators and the broader public but the application of existing strategies and programs for prevention and combating discrimination has remained unsatisfactory and their effect on children is vague and uncertain.<sup>84</sup> The largest issues that Bulgaria’s children with disabilities face are discrimination that is still quite prevalent, insufficient access to assistance and social services, a general lack of universal design, inefficient access to inclusive education, and inadequate/ineffective deinstitutionalisation.

Bulgaria still **does not have a children’s rights ombudsperson** to guarantee independent monitoring and control in observing children’s rights, and it is one of just three EU member states not having such a specialised and independent child protection figure. There are still practices of discrimination and unequal treatment of refugee children, children with disabilities and Roma children in terms of their access to education, healthcare and adequate housing and social environment.<sup>85</sup>

## Enforcement mechanisms

### 1. Protection from Discrimination Commission (PDC)

The PDC has the powers to receive and investigate complaints filed by children/adults with disabilities and their parents/guardians and to issue binding rulings. It also has the power to carry out surveys in its own initiative.<sup>86</sup> The PDC may issue binding decisions and it has been involved in 268 cases of discrimination on the grounds of disability over the period 2006-2011, most of which refer to the lack of accessibility.<sup>87</sup>

### 2. Ombudsperson

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<sup>83</sup> Bulgaria, Ministry of Labour and Social Policy (2012) Discrimination against Children in Institutional Care: Covert, Pretended or Real and Perceivable (*Дискриминацията срещу децата в институциите – скрита, претендирана или реална и осезаема*), p. 48, available in English at: [www.unicef.bg/assets/DiscriminationAgainstChildrenInInstitutions\\_EN.pdf](http://www.unicef.bg/assets/DiscriminationAgainstChildrenInInstitutions_EN.pdf).

<sup>84</sup> Bulgaria, Ministry of Labour and social Policy (2012), Discrimination against Children in Institutional Care: Covert, Pretended or Real and Perceivable (*Дискриминацията срещу децата в институциите – скрита, претендирана или реална и осезаема*), p. 57, available in English at: [www.unicef.bg/assets/DiscriminationAgainstChildrenInInstitutions\\_EN.pdf](http://www.unicef.bg/assets/DiscriminationAgainstChildrenInInstitutions_EN.pdf).

<sup>85</sup> Bulgaria, National Network for Children, *Report Card 2015: What is the average Government score for childcare?*, April 2015, p. 10, available in English at: [http://nmd.bg/Report Card2015\\_Engl\\_web.pdf](http://nmd.bg/Report Card2015_Engl_web.pdf).

<sup>86</sup> Bulgaria, Protection from Discrimination Act (1 January 2004), Art. 47.

<sup>87</sup> Presentation delivered by a member of the Commission at a conference on the UN CRPD, June 2011.

The Ombudsperson has the powers to intervene when citizens' rights and freedoms have been violated.<sup>88</sup> Persons with disabilities and their parents/guardians may file complaints to the Ombudsperson for every violation of their rights. Complaints and reports may be submitted to the Ombudsperson by natural persons irrespective of citizenship, gender, political affiliation or religious beliefs.<sup>89</sup> They may be written or verbal and submission may be done by post, personally or by other means of communication including by e-mail.<sup>90</sup> The Ombudsperson should reply to complaints and reports within one month and, in more complex cases, within three months. The Ombudsperson must inform the Prosecutor's Office about the results of his/her checks/investigations when the investigation uncovers information about crimes that have been committed.

No information has been identified that children with disabilities has been consulted in any of the policy procedures mentioned above. The way adults with disabilities were informed (if at all) and the way they expressed their views about the implementation of the UNCPRD are also unclear. The main reason for this is that it is still unclear how nationally representative organisations select their members and representatives and how they provide them with information.

## ARTICLE 7 - CHILDREN WITH DISABILITIES

According to the 2011 National Census, the number of children with estimated disabilities **ages 15 and under** was **9,039** and the number of children with disabilities between the ages of 16 and 18 was unclear.<sup>91</sup> The children who participated in the census were only those whose parents gave consent to do so. **Children with disabilities who currently receive social integration benefits according to the Social Assistance Agency are over 26,000.**

A fundamental issue of the Bulgarian **legal framework** is that it is **incomplete**. Bulgarian legislation does not contain any unified definition of a child with a disability, leading to a lack of reliable data on which to base policy and activities against discrimination of some disabled children in areas such as education, healthcare and access to services. The related lack of a national register of children with disabilities hinders both the delivery and evaluation of services for them. Children with chronic and neurological diseases are at particular risk from the inability of the government to plan for their long-term needs. Children with disabilities still lack full access to quality education.

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88 Bulgaria, Ombudsman Act, Art. 2.

89 Bulgaria, Ombudsman Act (1 January 2004), Art. 24.

90 Bulgaria, Ombudsman Act (1 January 2004), Art. 25.

<sup>91</sup> Bulgaria, National Statistical Institute, 2011 National Census, Persons with Disabilities as of 1 February 2011, available in Bulgarian at: [http://www.nsi.bg/sites/default/files/files/pressreleases/Census\\_Disability2011.pdf](http://www.nsi.bg/sites/default/files/files/pressreleases/Census_Disability2011.pdf). Of all 9,039 children, 42 % were girls and 58 % were boys. Of all 9,039 children 73 % lived in cities and 27 % lived in villages.

Children with disabilities are granted special protection by the Bulgarian legislation by virtue of falling into the more or less generalized category of “**children at risk**” (under the *Child Protection Act*) or children with a certain percent of reduced capacity for social adaptation (under the *Integration of Persons with Disabilities Act*). Although the special legislative acts (*Child Protection Act, Integration of Persons with Disabilities Act, Preschool and School Education Act*) provide for protection from direct or indirect discrimination against children on the basis of their disability, these children are not fully protected because of a lack of detailed legislation and mechanisms that ensure inclusive education and full participation in any activity related to children. The gaps in legislation also allow failures in the prosecution of bias- or hate-motivated crime against them on the basis of their disability.

Overall, the Bulgarian legal framework does **not contain sufficient safeguards** for the rights of children with disabilities in any proceedings. Specifically, there are no provisions ensuring that they can effectively exercise their **right to be heard during administrative and civil or criminal court proceedings** as these procedures are not adapted to the needs of children with disabilities. Upholding the right to inclusive education can also be identified as a challenge due to the lack of financial resources, the inaccessible environment, the lack of individual programmes and the lack of qualified staff. Early intervention and assistance are still not developed and access to healthcare and social services is inadequate and too clumsy. Legislation needs to address the training, payment, workload, and supervision of social workers and other professionals who work with children with disabilities in order to help these children in evolving their capacities.

Still numerous strategies, programmes and plans of actions concerning children’s rights including those with disabilities, are being elaborated by different ministries and agencies and **are not unified and coordinated** in terms of timelines, resources and responsible authorities.

## Policy documents

In 2000, the adoption of the *Child Protection Act* provided that the state policy on child protection must be implemented on the basis of a national strategy to be adopted by the Parliament on the proposal of the Council of Ministers. For the implementation of this strategy, the Council of Ministers adopted *National Programmes for Child Protection*<sup>92</sup> annually since 2003.<sup>93</sup> There are also special programmes for the protection of children with disabilities, which are mentioned below.

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<sup>92</sup> Bulgaria, Child Protection Act (*Закон за закрила на детето*) (13 June 2000), Art. 1, para. 3, available in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2134925825>.

<sup>93</sup> All programmes for child protection are available here in Bulgarian at: <http://sacp.government.bg/programi-dokladi/strategii-programi-planove/>.

The **National Strategy for the Child 2008-2018**<sup>94</sup> focuses on child poverty, social inclusion, equal access to education, health protection, and encouraging the participation of children in the elaboration and the implementation of the policies related to children's rights and obligations. The *National Strategy for Protection and Social Integration of Children with Disabilities (2003-2005)*,<sup>95</sup> and the *National Programme on Guaranteeing the Rights of Children with Disabilities (2010-2013)*<sup>96</sup> aimed to provide equal access and opportunities for development to such children. The **National Programme for Guaranteeing the Rights of Children with Disabilities (2010-2013)** was adopted by the Council of Ministers in July 2010.<sup>97</sup> It included actions on: introducing accessible architecture, inclusive education and integration of children with special educational needs in mainstream schools; training support for teachers, educational professionals and parents; lowering the number of children with special educational needs under the care of one special pedagogue; channelling children with special educational needs towards vocational training schools; prenatal diagnostics to prevent genetically induced developmental disabilities; healthcare support and prevention of the abandonment of children with disabilities; specialised training of social workers; cooperation with the media to fight prejudice and discrimination against children with disabilities; and setting up of a national register of children with disabilities.<sup>98</sup> However, it should be noted that the Programme **did not mention any funding** to be allocated for the implementation of these measures.

Even though there are some mechanisms for reporting on the implementation of the plans, programmes and strategies in place, they **remain ineffective**. Very few implementation measures have been taken to date to ensure the full implementation of the legislation and policies. Indeed, detailed legislative provisions for the coordination of responsible authorities implementing a concrete measure do not exist, nor are specific budgets for the implementation of the policy measures ensuring the rights of children designated.<sup>99</sup>

## Legal framework

### Evolving capacities, right to be consulted, right to be heard and right to be informed

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<sup>94</sup> Bulgaria, National Strategy for the Child 2008-2018, (*Национална стратегия за детето 2008-2018*), published in the State Gazette 14/12 February 2008, available in Bulgarian at: [www.stopech.sacp.government.bg/file.php?fid=281](http://www.stopech.sacp.government.bg/file.php?fid=281).

<sup>95</sup> Bulgaria, Council of Ministers, National Strategy for the Protection and Social Integration of Children with Disabilities 2003-2005, (*Национална стратегия за закрила и социална интеграция на децата с увреждания 2003-2005*), available in Bulgarian at: <http://sacp.government.bg/programi-dokladi/strategii-programi-planove/deca-uvrejdania/>.

<sup>96</sup> Bulgaria, Council of Ministers, National Programme on Guaranteeing the Rights of Children with Disabilities (2010-2013), (*Национална програма за гарантиране на правата на децата с увреждания 2010-2013*), 14 July 2010, available in Bulgarian at: [www.strategy.bg/FileHandler.ashx?fileId=1271](http://www.strategy.bg/FileHandler.ashx?fileId=1271).

<sup>97</sup> Bulgaria, Council of Ministers, *National Programme for Guaranteeing the Rights of Children with Disabilities (2010-2013)*.

<sup>98</sup> Bulgaria, Council of Ministers, *National Programme for Guaranteeing the Rights of Children with Disabilities (2010-2013)*.

<sup>99</sup> Bulgaria, State Agency for Child Protection (SACP), Strategies, Programs, Plans, available in Bulgarian at: <http://sacp.government.bg/programi-dokladi/strategii-programi-planove/>.

Under Bulgarian legislation, children up to the age of 14 are minors and decisions concerning them are taken by their parents. Children aged 14 to 18 are adolescents and they make decisions with the consent of their parents/legal guardians.

The principle of **evolving capacities** of the child is **not recognised** under Bulgarian law. There are no legal provisions or requirements that provide greater capacity for children to take responsibilities for decisions affecting them as they acquire more experience and competences. However, some elements of the principle are reflected. Such elements include the requirement to inform and consult the child as the child's capacities develop. Under the *Child Protection Act*, every child has the **right to be informed and consulted** by the child protection authority even without the consent of his/her parents or caregivers/guardians if this is in the child's best interests and if informing the parents would violate his/her best interests.<sup>100</sup> As part of their freedom to **express opinions** on all matters of their interests provided for in Article 12 of the *Child Protection Act*, children can also ask for assistance from child protection bodies and the persons in charge of their protection under the act.<sup>101</sup> Children can **report independently** or with their parents before every child protection body about violations of their rights. The *Child Protection Act* provides for the protection of the child through ensuring the **most effective procedures and conditions to protect the best interests of the child**.<sup>102</sup>

The social workers at the Child Protection Departments make the **initial assessment** of the child's case brought to court by talking to him/her and all other persons who know the child – teachers, medical doctors, parents/relatives - and are in charge of proposing to the court the hearing of the child if this is in his/her best interests. However, the legislation does not provide for any training of social workers who work with children with disabilities.

The *Child Protection Act* provides that in **each court proceeding (civil and criminal) where children's rights and interests are involved** (including divorce, custody, placement in an institution, adoption, domestic violence, criminal proceedings), it is **obligatory that every child over the age of ten is heard**, unless this hearing violates the interests of that child.<sup>103</sup> When a child has not yet reached the age of ten, he/she may be heard, depending on the level of his/her development and understanding. The decision of the hearing of the child should be reasoned.<sup>104</sup> Before hearing the child, the court should ensure that he/she receives the necessary information to form his/her own opinion, and should **inform the child** of the possible consequences of his/her wishes or opinions and of each decision of the court.<sup>105</sup> There are no provisions in the legislation about the person, the location, the time, nor the way in which the court should provide information to the child. This negatively affects children with disabilities as there are **no provisions in Bulgarian legislation** which

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<sup>100</sup> Bulgaria, Child Protection Act, (13 June 2000), Art. 13.

<sup>101</sup> Bulgaria, Child Protection Act, (13 June 2000), Art. 12.

<sup>102</sup> Bulgaria, Child Protection Act, (13 June 2000), Art. 3, item 3.

<sup>103</sup> Bulgaria, Child Protection Act, (13 June 2000), Art. 15, para. 1.

<sup>104</sup> Bulgaria, Child Protection Act, (13 June 2000), Art. 15, para. 2.

<sup>105</sup> Bulgaria, Child Protection Act, (13 June 2000), Art. 15, para. 3.

ensure that they would be actually heard because there are no provisions safeguarding that the court and the child protection authorities would adapt to the needs of children with disabilities.

## Child Participation

For the purposes of child participation, the State Agency for Child Protection (SACP) elaborated a **mechanism**<sup>106</sup> and a **charter for child participation**.<sup>107</sup> The charter sets out the requirements for child participation at the school, municipal and regional levels in the elaboration of policy papers related to children and youth and the implementation of all activities involving children and youth. Child participation is ensured by electing representatives of each school class to participate in the **School Student Councils**. Then representatives of each student council participate in the **children's municipal council** which has a consultative status in decision-making about issues concerning children and youth. Representatives of these children's municipal councils participate in the **children's regional councils** and work for the implementation of state policies for the children at the regional level. Out of all the children's regional representatives, **33 children are elected to participate in the Children's Council at the SACP**. The mechanism for child participation provides for the way children are elected to participate in the councils, the potential topics, policy and legislative acts and activities in which the children councils would be involved and the bodies and persons that assist children in these discussions. **There are no specific provisions for the participation of children with disabilities in the above mentioned councils.**

The 2014 report of the National Network for Children (NGO) warns that the mechanism works at present on a project and pilot basis and that there is no evidence that it could become a sustainable practice. In addition, the report states that children from vulnerable communities are not represented in the project, even at this stage.<sup>108</sup>

## Social services for children with disabilities

Under the Social Assistance Act, **children with disabilities** have the right to use **social services** such as a personal/social assistant, a day-care centre, a centre for rehabilitation and social integration or a residential family-type centre.<sup>109</sup> However, these services are largely unavailable and the existing ones are not evenly distributed across the country.<sup>110</sup> So, even

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<sup>106</sup> Bulgaria, SACP, *Mechanism for Child Participation*, available in Bulgarian at: <http://sacp.government.bg/detsko-uchastie/mehanizm-na-detskoto-uchastie/>.

<sup>107</sup> Bulgaria, SACP, *Charter for Child Participation*, available in Bulgarian at: <http://sacp.government.bg/detsko-uchastie/harta-za-detsko-uchastie/>.

<sup>108</sup> Bulgaria, National Network for Children, *2014 Notebook*, p. 16, available at: [http://nmd.bg/wp-content/uploads/2014/04/belejnik2014\\_experten\\_cvetni\\_razdelit\\_web.pdf](http://nmd.bg/wp-content/uploads/2014/04/belejnik2014_experten_cvetni_razdelit_web.pdf).

<sup>109</sup> Bulgaria, Regulation for Implementation of Social Assistance Act, Art. 36.

<sup>110</sup> Bulgaria, Social Assistance Agency, list of available community based services - <http://www.asp.government.bg/socialni-uslugi-za-deca>.

though children have these rights, they cannot benefit from such services on a regular basis but only where and until such services exist, which is usually done only under EU funded projects.

## ARTICLE 9 – ACCESSIBILITY

The *Integration of Persons with Disabilities Act* ensures persons with disabilities an accessible architectural and living environment.<sup>111</sup> It regulates the responsibilities of main actors in creation of accessible architectural environment (universal design) including house buildings:

- State and municipal authorities are responsible for the building and organizing urban territories for the population including persons with disabilities under the order provided in the Regional Development Act.<sup>112</sup> According to the latter the minister of regional development issues ordinances to determine the requirements for projects, implementation, control and execution of buildings including for accessible environment for persons with disabilities.<sup>113</sup>
- Ministry of Regional Development is responsible for the elaboration of legislative acts, rules, regulations for the urban territory and its elements, buildings and their elements, elements for adapting existing buildings for public use.<sup>114</sup>
- Ministry of Transport is responsible for elaboration of legislative acts and standards for: ensuring accessible public transport, introducing technical devices into the public space and transport facilitating mobility of persons with disabilities; ensuring special conditions for movements, parking, stay of vehicles led by or transporting persons with disabilities; ensuring of non-problematic access to public transport of persons with disabilities and their accompanying dogs.<sup>115</sup>
- Ministry of Physical Activities and Sports and Ministry of Education in cooperation with the municipalities, sport federations and clubs are responsible for the adaptation and ensuring access for persons with disabilities to sport facilities.<sup>116</sup>
- The municipalities are responsible for accessibility of kindergartens, schools and public or special transport<sup>117</sup> as well as for providing persons with permanent disabilities with municipal housing.

According to paragraph 6 of the *Integration of Persons with Disabilities Act* **the state and municipalities were obliged to ensure access for persons with disabilities to public**

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<sup>111</sup> Bulgaria, Integration of Persons with Disabilities Act, Art.4, para.4.

<sup>112</sup> Bulgaria, Integration of Persons with Disabilities Act, Art.32.

<sup>113</sup> Bulgaria, Regional Development Act (31 March 2001) (*Закон за устройство на територията*), Art.169, para.4 (last amended in 2016), available at: <http://lex.bg/bg/laws/ldoc/2135163904>.

<sup>114</sup> Bulgaria, Integration of Persons with Disabilities Act, Art.33.

<sup>115</sup> Bulgaria, Integration of Persons with Disabilities Act, Art.34.

<sup>116</sup> Bulgaria, Integration of Persons with Disabilities Act, Art.36.

<sup>117</sup> Bulgaria, Integration of Persons with Disabilities Act, Art.38 and Art.48.

**buildings owned by the state and municipalities until 31 December 2006. This had not happened 10 years later. Most of the urban environment is not accessible and rural areas even less so. Official data on accessibility of the environment is not available.**

The controlling body for accessibility of the architectural environment is the director of the National Construction Control Department.<sup>118</sup> However, the law do not provide for any sanctions of state and municipal bodies that do not fulfil their obligation related to accessibility.

The Regional Development Act sets out the legal basis for full accessibility of the built environment, including a requirement for planning of adaptations where needed.<sup>119</sup> There are numerous detailed requirements regarding accessibility of newly constructed and refurbished buildings regulated in **Ordinance 4 of 1 July 2009 for planning, implementation and maintenance of building constructions in compliance with the requirements for accessible environment for the population including persons with disabilities**, enforced on 7 July 2009.<sup>120</sup> The Ordinance was issued by the minister of regional development and determines the requirements to all elements of the urban territory for ensuring accessibility.

A **concept paper** for legislative amendments in compliance with Art.9 of the UNCRPD was elaborated but not approved by the National Council for Integration of Persons with Disabilities until 2015. The new deadline for its elaboration under the 2015-2020 Action Plan was 2016 and the deadline for elaboration and adoption of the amendments is 2020.<sup>121</sup>

According to the Ministry of Education and Science **as of October 2013<sup>122</sup>, there were 91 school buildings which were fully accessible.** The full accessibility referred to by the ministry consists of an adapted WC at the school and proper ramp or lifting platform. It remains unclear whether all school floors used by the students are fully accessible to students with disabilities.

## Transport Accessibility

According to the state reports the *Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004* was transposed in terms of

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<sup>118</sup> Bulgaria, Integration of Persons with Disabilities Act, Art.55, para.1, item 4.

<sup>119</sup> Bulgaria, Regional Development Act (31 March 2001) (*Закон за устройството на територията*), available in Bulgarian at: <http://www.lex.bg/laws/ldoc/2135163904>.

<sup>120</sup> Bulgaria, Minister of Regional Development, *Ordinance 4 of 1 July 2009 for planning, implementation and maintenance of building constructions in compliance with the requirements for accessible environment for the population including persons with disabilities*, available in Bulgarian at: <http://www.mrrb.government.bg/naredba-4-ot-2009-g-za-proektirane-izpulnenie-i-poddurjane-na-stroejite-v-suotvetstvie-s-iziskvaniyata-za-dostupna-sreda-za-naselenieto-vklyuchitelno-za-horata-s-uvrejdaniya-dv-br-54-ot-2009-g/>.

<sup>121</sup> Bulgaria, Council of Ministers, *2015-2020 Action Plan for Implementation of the UNCRPD*, available in Bulgarian at: <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=967>.

<sup>122</sup> Bulgaria, Ministry of Education and Science, Letter No. 1104-9 from 17.10.2013, signed by Penka Ivanova.

introducing provisions **ensuring accessible bus stations and sanctions for violation** of this obligation in the *Road Transport Act*. The latter provides for effective, proportionate and preventative sanctions. The *Road Traffic Act* provides for the **requirements of the parking card allowing its owner to park in designated places for persons with disabilities and to use facilitated access to them.**

*Ordinance 2 of 15 March 2002 for Transport Schemes and Public Bus Transport* provides for the requirements towards municipal councils that determine the city and intercity lines implemented by buses adapted for persons with disabilities and limited mobility. According to it **only 35 % of the total number of bus runs should be performed by buses adapted to the needs of persons with disabilities.** The tender eligibility requirements for bus transport providers contain obligatory requirement for availability of equipment of the vehicles for transportation of persons with disabilities. **In cities with population over 100,000 citizens at least one main and one additional line are performed only by buses equipped to transport persons with disabilities.**

*Ordinance 33 of 3 November 1999* sets the *accessibility requirements for bus stations* such as: availability of a platform or ramp for wheelchairs allowing access to buses; appropriate route from the street to the bus station and to the buses, in waiting rooms, ticket desks and at least one toilet. *Ordinance H-32 of 16 December 2011 for periodic technical checks of the public transportation vehicles* regulates the technical requirements for vehicles for persons with disabilities.

Railway Administration Agency implements *Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations*. *Regulation (EC) No 1300/2014 of 18 November 2014 on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility*. A National Plan for its implementation from December 2016 reports in details about the numbers and locations of railway stations and stops partially accessible for persons with disabilities and those that would be adapted in the future to comply with the Regulation. Only 8 long-distance trains perform the transport of persons with physical disabilities on a daily basis. To benefit from the railway transport support a persons with disability needs to request it one day before the trip. **Around 1,000 persons with disabilities a year travel in this way (while persons with physical and sensory disabilities who need support in transport are over 100,000).**<sup>123</sup>

## ICT and Web accessibility

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<sup>123</sup> Bulgaria, Ministry of Transport, Information Technologies and Communications, *National Plan for Implementation of the technical specifications for interoperability relating to accessibility of the rail system for persons with disabilities and persons with reduced mobility*, available in Bulgarian at: [https://ec.europa.eu/transport/sites/transport/files/national\\_implementation\\_plans-bg.pdf](https://ec.europa.eu/transport/sites/transport/files/national_implementation_plans-bg.pdf).

Anti-discrimination legislation requires websites to be accessible for disabled people. Most of the official websites of the Bulgarian government institutions are accessible to the standards of the Web Accessibility Initiatives (<http://www.w3.org/WAI/>).

The Electronic Communications Act was amended in 2011 to provide for compliance with all EU legislation and regulations and explicitly mentions the protection of rights and interests of persons with disabilities in Art.4 and 227.<sup>124</sup> The *Ordinance for Electronic Administrative Services* also contains provisions for accessibility for persons with disabilities. A 40-pages **concept paper** for the needed policy and legislative amendments for implementation of Art.21 of the UNCRPD was elaborated and adopted in 2015;<sup>125</sup> the amendments themselves are planned to be adopted until 2020.

## ARTICLE 10 - RIGHT TO LIFE

### Children with disabilities in institutions

The right to life of children with disabilities (especially those who live in institutions) in Bulgaria is not guaranteed at all. Based on the information requested from the Bulgarian Helsinki Committee (BHC) in 2015 about all **institutions for medico-social care for children (IMSCC)** that are still open in Bulgaria (29 total, all of them being under the governance of the Ministry of Health), it became clear that there were **292 deaths during the period of June 2010 – 31 December 2014**.<sup>126</sup> The **“postponed humanisation”** of the environment in the institutions for medico-social care for children (i.e. the children’s lack of contact with the outside world; the lack of access to a person of trust; the lack of respiratory rehabilitation for bedridden children leading to death cases<sup>127</sup>; the children with the most severe disabilities having significant psychomotor retardation, delayed growth in height and weight, adynamia, forced lying position accompanied by pressure injuries, deformations of the musculoskeletal system, joint contractures and muscle hypertrophy) led to injuries and death for some of them.<sup>128</sup> Although almost **300 deaths** of institutionalized children

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<sup>124</sup> Bulgaria, Electronic Communications Act (22 May 2007), available in English at: <https://www.cdpd.bg/en/index.php?p=element&aid=433>.

<sup>125</sup> Bulgaria, Ministry of Education: Concept for Legislative Amendments for Implementation of Art. 21 of the UNCRPD, available in Bulgarian at: <http://www.mon.bg/?h=downloadFile&fileId=7126>.

<sup>126</sup> Bulgaria, BHC, *BHC Urges the National Child Protection Agency to Investigate the Deaths of 292 Children in Institutions from June 2010 to December 2014*, 28 April 2015, available in Bulgarian at: <http://www.bghelsinki.org/bg/novini/press/single/pressobshenie-bhk-prikanva-dazd-da-razsledva-292-smrti-sluchai-na-deca-v-domove-mezhdu-yuni-2010-i-dekemvri-2014-g/>.

<sup>127</sup> Bulgaria, BHC press release, *BHC Calls SACP to Investigate 292 Death Cases of Children in Institutions between June 2010 and December 2014*, 29 April 2015, available in Bulgarian at:

<http://www.bghelsinki.org/bg/novini/press/single/pressobshenie-bhk-prikanva-dazd-da-razsledva-292-smrti-sluchai-na-deca-v-domove-mezhdu-yuni-2010-i-dekemvri-2014-g/>.

<sup>128</sup> Bulgaria, Bulgarian Helsinki Committee, *2014 Annual Report*, April 2015, p. 78-86, available in English at: [http://www.bghelsinki.org/media/uploads/annual\\_reports/annual\\_bhc\\_report\\_2014\\_en.pdf](http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2014_en.pdf).

occurred in the four and a half years between mid-2010 and the end of 2014,<sup>129</sup> **the causes of these deaths were not examined by any of the relevant institutions in charge.**

The Supreme Cassation Prosecution Office and the regional offices of several authorities like the Ministry of Healthcare, Ministry of Education, Youth and Science, State Agency for Child Protection, Ministry of Labour and Social Policy and the Bulgarian Helsinki Committee (BHC) carried out joint, on the spot, investigations in **all institutions for children with intellectual disabilities in the country during 2010**. There were **238 child deaths between 2000 and 2010**. In the opinion of BHC's experts, at least three quarters of those deaths were avoidable: 31 children died of starvation (systematic malnutrition); 84 from neglect; 13 due to poor hygiene; six in accidents such as hypothermia, drowning, suffocation; 36 died because they were bedridden; and two deaths were caused by violence. Moreover, during the inspection it was found that violence, binding and treatment with harmful drugs continue to be widespread practices in care homes for disabled children in Bulgaria. At the time of the joint monitoring, there were 103 children, who were malnourished and at a real risk of death by starvation in institutions.<sup>130</sup>

On 1 June 2011 the Bulgarian Helsinki Committee and the deputy chief prosecutor in Bulgaria held a press conference '*Care homes for children eight months later: Substantial deficits, significant attainments – questionable justice*' to announce the results of the joint investigation of death and injury cases in **institutions for children with intellectual and mental disabilities**.<sup>131</sup> On the press conference the deputy chief prosecutor Galina Toneva at the time announced that the Prosecutor's office initiated **248 pre-trial proceedings on the death and injury cases**. The bulk of the proceedings are for unknown perpetrators. According to BHC "the prosecutors have issued a number of disquieting refusals to investigate cases such as failure to treat a child's abscess and to provide specialised dental care to a child, to a child abused by means of ill appointed tranquilisers; also cases of sexual abuse, hypotrophy and pneumonia-related deaths, and bodily damage." BHC has criticised over 60% of the prosecutorial decrees of which it was notified. **At present the Prosecutor's office had terminated all pre-trial proceedings. The BHC filed applications to the European Court of Human Rights regarding six of the most severe cases.** However, the ECHR found in 2016 in one of the cases about the death cases of two children in one social care home that

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<sup>129</sup> Bulgaria, BHC, *BHC Urges the National Child Protection Agency to Investigate the Deaths of 292 Children in Institutions from June 2010 to December 2014*, 28 April 2015, available in Bulgarian at <http://www.bghelsinki.org/bg/novini/press/single/pressobshenie-bhk-prikanva-dazd-da-razsledva-292-smrtni-sluchai-na-deca-v-domove-mezhdu-yuni-2010-i-dekemvri-2014-g/>.

<sup>130</sup> Bulgaria, Bulgarian Helsinki Committee, *Joint investigation between the BHC and the Prosecutor's Office carried out in all homes for mentally disabled children in Bulgaria* (Съвместни проверки на БХК и Прокуратурата в домовете за деца с умствени увреждания в България) (2010), available in English at: <http://www.bghelsinki.org/en/news/press/single/press-release-investigations-childrens-homes-8-months-later/>.

<sup>131</sup> Bulgaria, Joint investigation between BHC and the Prosecutor's Office carried out in all homes for mentally disabled children in Bulgaria [Съвместни проверки на БХК и Прокуратурата в домовете за деца с умствени увреждания в България] (2010), available in English at: <http://forsakenchildren.bghelsinki.org/en/>.

BHC has no *locus standi* as it did not provide sufficient evidence that it had contacts with the victims while they were alive.<sup>132</sup> The other four cases are pending.

## ARTICLE 12 - EQUAL RECOGNITION BEFORE THE LAW

### Current situation

The Bulgarian Constitution<sup>133</sup> provides for equal rights of persons with disabilities. However, there is no explicit guarantee/mechanism for equal treatment of people with any disabilities and especially mental ones as only persons with hearing problems are provided with interpreter in justice proceedings. The rest persons with disabilities are not ensured any accommodation when they need to protect their rights.

People with intellectual/psycho-social disabilities who are placed under guardianship **cannot make a legal stand on their own in practice**. According to Art. 5, para.1 of the *Individuals and Family Act* adolescents and adults who due to their intellectual disability or mental health problem cannot take care of their own affairs are to be placed under plenary guardianship and lose their legal capacity, and para.3 of the same article provides **that for the persons who are placed under plenary guardianship the legal regime for minors is applicable, and for the persons under partial guardianship – the legal regime for adolescents**. The Civil Procedure Code (Art.28) states that persons under partial guardianship can make a legal standing personally with the consent of their parents or guardians. People under plenary guardianship are represented by their parents or guardians.<sup>134</sup> **People under plenary guardianship have no right to legal standing to take a case on their own.**

Under Bulgarian legislation, the adult to be placed under guardianship should be questioned in person and, if need be, may be brought to the court against his or her will. If the adult is in a hospital and the treating doctor determines that he or she has a health condition that prevents the adult from attending court, the judge is obliged to obtain a direct impression of the adult's health condition.<sup>135</sup> This can be accomplished, for example, by going to the hospital to see and speak to the adult. While this requirement does support the opportunity for the person to be heard by the judge, a personal visit by the judge *in lieu* of attendance at the court hearing **does not ensure that the adult has the opportunity to respond to evidence nor does it ensure that the adult will have adequate opportunity to present evidence including calling witnesses.**

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<sup>132</sup> <https://www.doctrine.fr/d/CEDH/HFDEC/ADMISSIBILITY/2016/CEDH001-165417>.

<sup>133</sup> Bulgaria, Constitution, Art. 6.

<sup>134</sup> Bulgaria, Civil Procedure Code, (26 July 2013), available at: <http://lex.bg/laws/ldoc/2135558368>.

<sup>135</sup> Bulgaria, Civil Procedure Code, Art.337 (1).

Courts only take decisions for incapacitation and do not appoint the guardians; this is done by the mayors of municipalities who appoint guardianship councils and guardians. The guardian of a person placed under plenary guardianship exercises the person's rights and accepts legal responsibilities on behalf of the person under guardianship. **In plenary guardianship cases, the guardian makes all decisions for the adult<sup>136</sup>, while in partial guardianship cases; the adult has some authority to make decisions on his/her own behalf, but only in the case of very basic decisions of an everyday nature.** As there is not any legal definition of the latter it is up to the concrete guardian to decide what these very basic decisions are and what money to give to the person under guardianship to buy food, clothes, shoes, books or other stuff for him/her. In all other decisions, **the guardian of the person under partial guardianship has the authority to decide through the provision or withholding of consent.**<sup>137</sup> Thus, even an adult under partial guardianship is precluded from making any decisions on his/her own behalf since the guardian can always veto any decisions that the adult wants to make.

The guardian's specific authority is defined by law. Generally, guardians have both decision-making authority over the adult and an obligation to protect the adult's welfare. The effectiveness of guardianship as an institution heavily depends on certain personal qualities of each guardian, such as their competence, diligence and conscientiousness.

## Developments after the ratification of the UNCPRD

Bulgaria ratified the UN Convention on the Rights of Persons with Disabilities (CPRD) on 26 January 2012. A few days earlier, on 17 January, the Grand Chamber of European Court of Human Rights issued its judgment on the case of *Stanev v. Bulgaria*.<sup>138</sup> The case concerns a person under "partial" guardianship who was placed in a social care institution for persons with mental disorders. Placement was initiated by a contract between his guardian and the management of the social care institution. Mr. Stanev's consent was not sought. He tried on several occasions to initiate proceedings for restoring his legal capacity but without success. He was denied access to court. **The ECtHR found violations of Art. 5, 6, 3 and 13 of the European Convention on Human Rights.** The Court condemned the Bulgarian system, which does not allow for direct access of a person under guardianship to court.

The two events, which took place at the same time, triggered the formation by the Ministry of Justice of a **working group on the implementation of Art. 12 of CPRD in the national legislation.** The working group was composed predominantly of representatives of non-

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<sup>136</sup> Bulgaria, Family Code (1 October 2009), Art. 164, available at <http://www.lex.bg/bg/laws/ldoc/2135637484>.

<sup>137</sup> Bulgaria, Family Code (1 October 2009), Art. 168, available at: <http://www.lex.bg/bg/laws/ldoc/2135637484>.

<sup>138</sup> ECtHR, *Stanev v. Bulgaria*, Appl. No. 36760/06, Judgment of 17 January 2012. This case was a joint litigation project of the Bulgarian Helsinki Committee and the Budapest-based Mental Disability Advocacy Centre. The two organizations provided the applicant's legal representation in the proceedings.

governmental organizations. In August 2012 it prepared a **concept paper**,<sup>139</sup> which was presented to the public at the end of September.<sup>140</sup> **On a session of the Council of Ministers held on 14 November 2012 the Concept paper was adopted by the Council of Ministers.**

The concept paper envisages **abolition of the full incapacitation and adoption of protection measures in the form of advanced directives, supportive decision-making and partial guardianship (попечителство)**.<sup>141</sup> It also spells out the conditions under which a **protection measure** may be imposed on a person with intellectual/psycho-social problem. They are to be based on the principles of necessity, proportionality, flexibility, respect for the will of the person, periodic review and avoiding conflicts of interests. The concept paper was deficient on the scope of rights,<sup>142</sup> which are to be guaranteed to the persons with reduced capacity and in providing for a time frame for the adoption of the legislative amendments. It envisaged elaboration of draft laws and/or amendments to the current legislation so that plenary guardianship is abandoned as a notion and detailed support measures are incorporated in the laws to enable people with psycho-social and intellectual disabilities to develop their full potential.

On 15 May 2014 the **Ombudsman requested that the Constitutional Court in Bulgaria announce Art.5, para. 1 of the *Individuals and Family Act* with regards to ‘and they lose their legal capacity’ and Art.5, para 3 of the same act as provisions in violation with Art. 4, para. 2, Art.5, para.4 and Art.51, para.3 of the Constitution of Bulgaria.** The Ombudsman stated that Art. 5 of the *Individuals and Family Act* violates the rights of people with intellectual/psycho-social disabilities as it poses a restriction of their legal capacity which is not proportionate to their condition and thus it is discriminatory. The Ombudsman stated also that this legislation in Bulgaria is a violation of Art. 4, para 2 and Art. 12, para. 2 of the UN Convention on the Rights of Persons with Disabilities.<sup>143</sup>

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<sup>139</sup> Bulgaria, Bulgarian Centre for Non-profit Law, *Concept paper for amendments in domestic legislation, related to the implementation of the standards of Art. 12 of the UN Convention for the Rights of Persons with Disabilities, (КОНЦЕПЦИЯ ЗА ПРОМЕНИ НА НАЦИОНАЛНОТО ЗАКОНОДАТЕЛСТВО, СВЪРЗАНИ С ПРИЛАГАНЕТО НА СТАНДАРТИТЕ НА ЧЛ.12 ОТ КОНВЕНЦИЯТА НА ООН ЗА ПРАВАТА НА ХОРАТА СЪВРЕЖДАНИЯ)*, available in Bulgarian at: [http://www.bcnl.org/uploadfiles/documents/news\\_docs/2012/proekt\\_koncepcia.pdf](http://www.bcnl.org/uploadfiles/documents/news_docs/2012/proekt_koncepcia.pdf).

<sup>140</sup> Bulgaria, Ministry of Justice, News, 27.09.2012, <https://mjs.bg/117/6/>.

<sup>141</sup> Partial guardianship is used in the concept paper as a last resort for people who are in permanent incapacity to form and express their will. It should be applied **only after the court has exhausted the other less restrictive alternatives and only in these spheres of life in which the person is not able to form and express will.** Guardian is appointed by the court for the concrete case and person only after it is convinced that the person is not able to act without the guardian. Only in this case the guardian makes decision instead of the person (substitute decision making) and for a certain period of time and with the obligation to research what the wishes and needs of the person under guardianship are. The person to be placed under guardianship is asked to point out whom to be the guardian. To guarantee the rights of the person to be placed under partial guardianship the person should be heard in person and a complex assessment by psychiatrist, psychologist, social worker, personal physician and a trust person should be done.

<sup>142</sup> The concept envisages in short term (without specification what short term means) only the Family Code, the Persons and Family Act and the Civil Procedure Code to be amended as in these acts the terms and procedures for placement under guardianship are provided for. This means that only rights to access to justice and rights to marry, adopt children and take care of biological children as well as to inherit property by the spouse and family would be regulated in a new way. The other rights are provided for in other acts that are envisaged to be amended in long term plan (again not specified).

<sup>143</sup> Bulgaria, Ombudsman, Request of the Ombudsman on the bases of Art. 150, para.3 of the Constitution for announcing Art.5, para. 1 of the *Individuals and Family Act* with regards to ‘and they lose their legal capacity’ and Art.5, para 3 of the

In the case before the Constitutional Court several observations and statements were considered and they can be grouped so: the Council of Ministers, the Supreme Cassation Court, the Chief Prosecutor, the Ministry of Labour and Social Policy, the Ministry of Healthcare, the Bulgarian Union of Medical Doctors and the Union of Lawyers in Bulgaria are of the opinion that the Ombudsman's request should be rejected as the Council of Ministers and the Supreme Cassation Court found that the challenged by the Ombudsman regime does not deny, but ensures the dignity and the rights of the individuals; the contrary view is taken in the positions of the Bulgarian Centre for Non-Profit Law, Bulgarian Lawyers for Human Rights, Bulgarian Helsinki Committee and the Bulgarian Psychiatric Association (NGOs). Bulgarian Centre for Non-Profit Law and Bulgarian Lawyers for Human Rights found that the removal of legal capacity of adults means that they are deprived of their basic constitutional rights on the basis of disability and not be protected. Bulgarian Helsinki Committee maintains that the state of incapacitation is a kind of civil death.

The Constitutional Court considered the gaps in the legislation concerning people under guardianship. Its decision states that *“the lack of detailed legislative regulation of the legal regime of the incapacitated persons leads to not just limitation of those rights, the exercise of which carries a risk to the interests of incapacitated, third parties or the society, but also limits the exercising of unreasonably wide range of rights, including the constitutional ones”*. The decision also states that *“the current legislative framework does not take into account the requirements of the CRPD – the restrictions of the rights of such persons to be proportionate to their condition, to apply for the shortest possible term and to be subject to regular review by an independent body.”* However, the decision held on 17 July 2014 does not pronounce the requested from the Ombudsman provisions as contradicting the Constitution as in this way the legal status of incapacitated persons would not be improved and because thorough amendments of the legislation are needed.<sup>144</sup>

As a product of the working group at the Ministry of Justice which consisted of NGOs, academic and governmental representatives, a **Draft Act on the Natural Persons and the Support Measures**<sup>145</sup> was elaborated and introduced in the Parliament by the Council of Ministers on 4 August 2016. **The draft act is centered on the UNCRPD recognition of legal capacity concept and was elaborated to implement the supported decision making concept in legislation. Discussion and voting meetings at the Parliament are expected.**

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same act as provisions in violation with Art. 4, para. 2, Art.5, para.4 and Art.51, para.3 of the Constitution of Bulgaria. available in Bulgarian at: <http://www.ombudsman.bg/public-positions/3062?page=3#middleWrapper>.

<sup>144</sup> Bulgaria, Constitutional Court, Decision 12/17.07.2014 issued on the case 10/2014. The decision is available in Bulgarian at: <http://constcourt.bg/acts>.

<sup>145</sup> Bulgaria, Council of Ministers, Draft Act on the Natural Persons and Support Measures, available in Bulgarian at: <http://parliament.bg/bills/43/602-01-48.pdf>.

## ARTICLE 13 - ACCESS TO JUSTICE

### Children with disabilities

Bulgarian legislation does not envisage any specific provisions regarding children with disabilities when they participate in judicial proceedings as witnesses or victims as well as when they are suspects. This affects children's right to participate in any administrative and judicial proceedings that involve their interests. A 2014 EU Fundamental Rights Agency (EUFRA) research on this topic<sup>146</sup>, including interviews with children with disabilities who had participated in judicial proceedings, showed that this was particularly problematic. The research showed that, as a rule, **both children with and without disabilities who are placed in institutions are not heard as they are not perceived as capable witnesses. The children who were heard were not properly informed, they felt stress and fear during the hearings, they were not of the opinion that the majority of their views were taken into account and were not informed about the outcome of the case.**

The lack of **provisions in the legislation about the person, the location, the time, nor the way in which the court should provide information to the child** negatively affects children with disabilities as there are no provisions in Bulgarian legislation which ensure that they would be actually heard because there are no provisions safeguarding that the court and the child protection authorities should provide special accommodations to adapt to the needs of children with disabilities. Under the law in all cases, the hearing and the consultation of the child should be carried out in an environment that is **appropriate for his/her age** and in the presence of a social worker from the Social Assistance Department serving the region in which the permanent address of the child is located, and, when necessary, in the presence of another specialist.<sup>147</sup> The court orders the hearing to be held in the presence of the parent, guardian or another person close to the child, unless this does not correspond to the interests of the child.<sup>148</sup> Here again, **neither the obligation to inform the child prior to the hearing, nor the actual hearing of the child, are regulated in a way that ensures that the individual needs of children (children with disabilities in particular) are taken into account.**

Furthermore there are no tailor-made mechanisms to protect children with behavioural disorders or children with intellectual or psychological disabilities when participating in **criminal proceedings** or proceedings for protection against discrimination as victims or witnesses. Generally, both investigating authorities and judges lack knowledge and/or training of what expertise is needed in such cases. The law has specific provisions for ensuring interpreter only with regard to children with hearing and/or speech

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<sup>146</sup> EU Fundamental Rights Agency, Children and Justice, available at <http://fra.europa.eu/en/project/2012/children-and-justice>.

<sup>147</sup> Bulgaria, Child Protection Act, (13 June 2000), Art. 15, para. 4 (18.04.2003).

<sup>148</sup> Bulgaria, Child Protection Act, (13 June 2000), Art. 15, para. 5 (9.05.2006).

impairments.<sup>149</sup> If victims or witnesses do not understand the official language (Bulgarian) the court, prosecutor or investigation body is obliged to appoint a translator or interpreter for them.<sup>150</sup> However, such obligation arises only in cases where pre-trial or trial criminal proceedings had already been instituted. There is no obligation for the investigating authorities or the court to appoint a translator/interpreter/assistant outside the said proceedings and for children with intellectual or mental health problems.

The present Criminal Code regards as aggravating cases or as specific bias-motivated crimes only criminal acts motivated by race, nationality, ethnicity and religion.<sup>151</sup> In this law, there is no specific provision directly stipulating that the **disability of the victim is an aggravating circumstance**. It should be noted that the provision for aggravated cases of murder, for example, uses the term “murder of a person in a helpless state”.<sup>152</sup> According to the legal theory and the established practice “helpless state” could mean a number of conditions ranging from deep sleep and unconsciousness to sickness<sup>153</sup> and, therefore, it could be speculated whether the said provision could be applied in cases of a murder of a person with disabilities (adult or child). During the present research, however, no case-law could be found that specifically identifies disability as a form of “helpless state”.

On 9 April 2012 the Ministry of Justice published on its website **the draft of the new Criminal Code** of 30 March 2012.<sup>154</sup> The draft law introduces for the first time the term ‘protected grounds’. According to the legal definition given in the same text it covers: ‘race, belonging to a national group, nationality, ethnicity, origin, religion, belief, health status, sex and sexual orientation’.<sup>155</sup> Therefore, the new draft legislation broadens the scope of vulnerable groups of victims who are protected by criminal law. The usage of the term ‘health status’ instead ‘disability’ could be considered as a positive step, as ‘health status’ is a broader term and covers larger group of people who might not have a formal diagnose and/or an expert’s assessment which officially certifies they have a disability. The new draft law, like the present Criminal Code, provides that a bias-motivated (i.e. motivated by ‘protected grounds’) murder or bodily injury represents an aggravated case.<sup>156</sup> It also broadens the scope of specific bias-motivated crimes titled ‘**crimes against equality**’<sup>157</sup> by aggravating the criminal responsibility of state officials who incite to discrimination or crime against protected groups.<sup>158</sup> A new development is the prosecution of persons who attack

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<sup>149</sup> Bulgaria, Criminal Procedure Code (*Наказателно-процесуален кодекс*) (26 April 2006), Art. 142, para.4. The provision is general – when the accused person or the witness has hearing or speech disability, an interpreter should be appointed.

<sup>150</sup> Bulgaria, Criminal Procedure Code (26 April 2006), Art. 21, para. 2.

<sup>151</sup> Bulgaria, Criminal Code (2 April 1968), Art. 116, para. 10, Art. 131, para. 12, Articles 162-166.

<sup>152</sup> Bulgaria, Criminal Code, (2 April 1968), Art. 116, para. 1(5).

<sup>153</sup> Bulgaria, Supreme Court (*Пленум на Върховния съд*), Decree No. 2 of 16.12.1957, para. 17, accessible in Bulgarian at: <http://law-consult.net/?p=3294>.

<sup>154</sup> Bulgaria, Ministry of Justice, Draft Criminal Code (*Проект за Наказателен кодекс*), <http://www.justice.government.bg/15/>, uploaded on 21 December 2013, adopted by the Council of Ministers on 15 January 2014 - <http://www.government.bg/cgi-bin/e-cms/vis/vis.pl?p=0228&n=5513>.

<sup>155</sup> Bulgaria, Draft Criminal Code, Supplementary provision, §1 (22).

<sup>156</sup> Bulgaria, Draft Criminal Code, Art. 108, para. 16 and Art. 123, para. 16.

<sup>157</sup> Bulgaria, Draft Criminal Code, Chapter 17, Section I, Articles 170 – 173 and Articles 176 – 179.

<sup>158</sup> Bulgaria, Draft Criminal Code, Art. 170, para. 3.

State officials performing duties for protection from discrimination.<sup>159</sup> An aggravation of sentences for persons who participate in a mob gathered to attack protected groups was also introduced.<sup>160</sup> The draft Criminal Code recognises as bias-motivated crimes not only criminal acts based on actual but also on perceived grounds.<sup>161</sup> The draft Criminal Code was adopted by the Council of Ministers in January 2014 but was not submitted for vote in the Parliament until 2017.

There are no provisions in force to date that recognise crimes motivated by someone's disability. The criminal legislation recognises crimes motivated by racism or xenophobia both as aggravated cases of common crimes (resulting in higher penalties)<sup>162</sup> and as separate crimes where the protected ground (ethnic origin, nationality and religion are added) is an essential element and its absence will result in an entirely different crime (hooliganism, for example) or even render the act non-criminal.<sup>163</sup>

**People with mental disabilities do not have access to justice in practice.** Those of them who live in institutions are more often placed under guardianship than those who live in the community. Regardless of this, they do not have access to justice as they lack the accessible information, support, assistance and communication skills that they would need to be able to benefit from the available complaint and monitoring mechanisms.

A 2016 Bulgarian Helsinki Committee's desk and field research in **procedural rights for persons with intellectual and psycho-social disabilities who had been suspected/convicted/sentenced for crimes** concluded that:

- Bulgarian criminal law does not define "a vulnerable person", nor does it contain a common definition of "a person with intellectual and/or psychiatric impairments". The legislation also fails to provide a definition of "a suspect" and utilises the term "detainee". Furthermore, the legislation lacks both the concept and a definition of "a person of trust", and legal representatives are appointed only to persons placed under guardianship.
- Bulgarian criminal law **does not guarantee** that at any stage of the criminal proceedings - whether they participate in the role of the detained, the accused or the defendant - vulnerable persons shall be **informed of their rights** in a clear and comprehensible manner and through the use of audio-visual tools. The legislation does not guarantee that vulnerable persons in pre-trial detention be provided information in an understandable manner.

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<sup>159</sup> Bulgaria, Draft Criminal Code, Art. 171, para. 3.

<sup>160</sup> Bulgaria, Draft Criminal Code, Art. 172, para. 2.

<sup>161</sup> Bulgaria, Draft Criminal Code, Articles 171 and 172.

<sup>162</sup> Bulgaria, Criminal Code (02 April 1968), Art. 116, para. 11 (racist or xenophobic motivated murder) the penalty is imprisonment for 15 up to 20 years of life long imprisonment) while Art.115 states that murder is punished with deprivation of liberty for 10 up to 20 years. , Art. 131, para. 12 (racist or xenophobic motivated bodily injury – imprisonment for 3 up to 15 years in case of severe injury) while Art.128, para. 1 provides that whoever causes severe bodily injury should be punished with imprisonment for 3 up to 10 years.

<sup>163</sup> Bulgaria, Criminal Code (02 April.1968), Art. 162-166.

- Bulgarian investigative and judiciary authorities **do not have direct and immediate access to a database** of persons with intellectual and/or psychiatric disabilities, nor to a database of their legal representatives in cases of legal guardianship.
- Neither the legislation, nor the professional practice provide for **specialised training and procedures** for police officers, prosecutors, judges and lawyers for working with persons with intellectual and/or psychiatric impairments.
- At no stage of criminal proceedings involving persons with intellectual and/or psychiatric impairments does the Criminal Procedure Code require that interrogations be recorded by means of audio and visual recording equipment.
- Persons with intellectual and/or psychiatric impairments are not guaranteed **access to a lawyer while in police detention**. Legal assistance is mandatory only after the person has been indicted and only if his/her disabilities prevent him/her from defending him/herself in the proceedings. Unfortunately, the initial interrogations of some persons are carried out without an attorney present and, in some cases, after the persons have been physically or psychologically abused by police officers. In reality, only a few vulnerable persons are ever able to meet with their lawyers in private during criminal proceedings.
- **Medical assistance** to persons who are held in police detention is provided only if they specifically request it. The medical assistance is not specialised or tailored to the specific needs of vulnerable people, nor are there any guarantees that it will be provided under confidential circumstances.
- The **relatives/close persons of a person in police detention are notified** of the arrest only if the person specifically requests this by completing a designated form, and even then the notification is done by a police officer and not personally by the detainee.
- Bulgarian legislation does not contain any statutes that specifically regulate the **provision of information** to suspected or accused persons with intellectual and/or psychiatric impairments about their procedural rights during the pre-trial stages and, specifically, no special care is taken to explain what it means when charges are being pressed against them or when they are being under investigation. Vulnerable persons do not get sufficient information of their right to challenge actions that infringe upon their rights and they are not properly introduced to the indictment.
- Bulgarian legislation does not regulate the **provision of information to relatives, friends and significant others** who are in a relationship of trust with the vulnerable person about the grounds for and the steps of the proceedings, nor about the procedural rights and obligations of the detained or accused person.
- The interviews show that the persons who received **involuntary treatment** were left very distressed by it. Some of the people who received therapy during their detention were not informed about it in some cases and were not aware of the condition that they had that necessitated the therapy.

- Bulgarian legislation contains some guarantees for the performing of competent and independent **forensic assessments** of persons with intellectual and/or psychiatric impairments to determine their mental capacity and ability to comprehend and relay facts, to provide explanations, and understand the nature and consequences of the measures that are enacted against them. However, no guarantees exist that a person will be assessed in a timely manner for indications of vulnerability for the purpose of providing support to that person during criminal proceedings.
- The Criminal Procedure Code does not mandate that only expert witnesses selected from the Expert Witness Directory be appointed as forensic experts. The **lack of major and detailed legislative act** about the work of expert witnesses and the current situation of **low remuneration** make the assessment process both hard and unreliable for all parties.
- All of the interviewed detainees shared their **negative views of their experience during pre-trial detention** due to the length of detention, the difficult living conditions, the lack of communication with friends and relatives, the lack of activity, and the lack of private consultation with a lawyer.
- Bulgarian legislation does not provide any special **safeguards** for the procedural rights of accused persons with intellectual and/or psychiatric impairments in **trial proceedings** apart from the mandatory legal aid if the person's impairments prevent him/her from defending him/herself. Although the court is generally required to notify all of the parties in a proceeding of their rights, there are no regulations that specify what special accommodations need to be provided, when is the particular time and at what particular place does this information need to be delivered and which official is responsible for providing this information.
- There is no legal provision regulating that the **verdict** is delivered in a manner that is understandable to persons with intellectual and/or psychiatric impairments.<sup>164</sup>

In addition, the Legal Assistance Act<sup>165</sup> states that socially vulnerable people have the right to free legal assistance. The Regulations for the Implementation of the Social Assistance Act, Art. 9<sup>166</sup> define socially vulnerable people as those whose income for the preceding month is lower than the determined differentiated minimal income (determined by the Council of Ministers, at present it is BGN 65 (EUR 33)).

<sup>164</sup> Bulgarian Helsinki Committee, "Enhancing Procedural Rights of Persons with Intellectual and/or Psychiatric Impairments in Criminal Proceedings: Exploring the Need for Actions", to be published in 2017.

<sup>165</sup> Bulgaria, Legal Assistance Act, Art.22, (19 March 2013), available at: <http://www.lex.bg/bg/laws/ldoc/2135511185>.

<sup>166</sup> Bulgaria, Regulations for the Implementation of the Social Assistance Act (1 November 1998), available at: <http://www.lex.bg/bg/laws/ldoc/-13038592>: Art. 9. (1) Right to monthly assistance shall have persons or families whose income for the preceding month is lower than the determined differentiated minimal income.

(2) Basis for determining the differentiated minimal income shall be the guaranteed minimal income (GMI) the monthly amount of which shall be determined by an act of the Council of Ministers.

(3) (amended in June 2005) The differentiated minimal income shall be determined as follows: 6. for a person with durably reduced working capacity by 50 and over 50 percent – 100 percent of the GMI; 7. for a person with durably reduced working capacity by 70 and over 70 percent – 125 percent of the GMI.

## ARTICLE 14 - LIBERTY AND SECURITY OF THE PERSON

**Bulgarian legislation does not contain effective safeguards against arbitrary detention of persons with disabilities.** Although some efforts were put to amend the legislation in 2016 and the practice of placement in institutions/residential services they still do not meet the needs of persons with disabilities and lead to violation of their right to liberty and security. Persons with disabilities in Bulgaria who are not in a position to take care of themselves are often placed in institutions. The majority of those with psycho-social or intellectual disabilities are placed under guardianship before the accommodation in an institution.

### Procedure for placement in institution

Until 29 January 2016 the procedure for placement in social care institutions under the *Regulations for Implementation of the Social Assistance Act* required that the applicant or their legal representative submit a request to the local Social Assistance Department (SAD) or the mayor, along with a medical document that certifies the candidate's health condition and their identity document.<sup>167</sup> The SAD conducted a social assessment, in which the family, property and social situation of the applicant are studied, and prepared a proposal for placement in a social care institution (or a denial of placement). Then the entire set of documents was sent to the SAD's director and the latter decided on the applicant's placement in an institution. Upon placement, a formal contract was signed between the institution and the individual in need of care or their legal representative, stating the extent and time frame of the provision of social services, as well as the fee the resident will pay for them. The placement procedure did not contain any safeguards against involuntary placement and **in fact the majority of the residents lived in these institutions against their will.** Moreover, they are placed under orders issued by the Social Assistance Agency which oblige the local authorities to place the applicant into a certain social care institution. Then the person is offered a formal contract in parallel with the order.

Upon placement residents **were deprived of their legal capacity under a 1999 order by the Ministry of Labour and Social Policy.**<sup>168</sup> This is why an NGO monitoring of all institutions for adults with intellectual disabilities and mental health problems in 2005 revealed that about 85% of the residents of institutions for people with intellectual disabilities, about 73% of the residents of institutions for people with mental health problems and about 44% of the residents of institutions for people with dementia had been placed under guardianship. Among these, the overwhelming majority were cases of plenary guardianship: 92% of those

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<sup>167</sup> Bulgaria, Regulations for Implementation of the Social Assistance Act (*Правилник за прилагане на Закона за социално подпомагане*), Art. 40, available at: <http://lex.bg/bg/laws/ldoc/-13038592>.

<sup>168</sup> In letter SG-91-00-77 of 20.10.1999, paragraph 9, subparagraph b), the Deputy Minister of Labour and Social Policy at the time, Dr Tatyana Vassileva stipulated that: "when an individual placed in a social care home has no parents or designated guardian/trustee, it is the responsibility of the director of the home for mentally disabled adults to send a request to the court that the individual be declared incapacitated and placed in the home".

committed with intellectual disabilities, 89% of those committed with mental health problems and 88% of those committed with intellectual disabilities.<sup>169</sup> In 2008-2009 another monitoring exercise revealed that these numbers had not changed.<sup>170</sup> **Although the procedure for placement in a social care institution does not appear to presume involuntary detention, in practice there are exceptionally few individuals with intellectual disabilities and mental health problems who have been placed in social care institutions upon their own request.**<sup>171</sup> Often, placement requests and social service contracts contain not only the name of the provider of the services and of the applicant for placement, but also the names of relatives, neighbours or spouses of the disabled person, who are not even the applicant's guardians or trustees, but who have submitted a request for placement in an institution in their name. **Even when the placement is made in the applicant's own name by a guardian, the will of the applicant is not taken into account.** The applicant is not represented by an attorney. There is also no follow-up court supervision of the placement ordered by the Social Assistance Departments.<sup>172</sup> In 2008 the Bulgarian Helsinki Committee reported that "people in such institutions are placed there against their will and are legally incapacitated".<sup>173</sup>

**In January 2016 the Social Assistance Act was amended.** The amendments concern the placement of persons with disabilities placed under **plenary guardianship in residential institutions/services**. The first amendment is that social services are provided according to the **personal wish and choice** of persons under plenary guardianship and the opinion of the guardian and if there is a contradiction between them, the personal wish of the person under plenary guardianship is leading.<sup>174</sup> The second amendment is that such placement would be done **by the district court upon written declaration of the wish of the person in need** and temporary administrative placement by the SAD is to be done **only when no other**

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<sup>169</sup> Bulgarian Helsinki Committee, *The Archipelago of the Forgotten: Social Care Homes for People With Mental Disorders in Bulgaria*, monitoring report, 2005, Sofia, p. 10, available in English at: [http://www.bghelsinki.org/index.php?module=resources&lg=en&id=0&cat\\_id=18#2005](http://www.bghelsinki.org/index.php?module=resources&lg=en&id=0&cat_id=18#2005).

<sup>170</sup> Bulgarian Helsinki Committee and Bulgarian Institute for Personal Relations, *Needs Assessment of the Structures Involved in the Process of Deinstitutionalisation of the Care of Persons with Severe Mental Diseases and Mental Disabilities*, Monitoring report, August 2008-August 2009, Sofia, available in Bulgarian at: [http://www.bghelsinki.org/index.php?module=resources&lg=bg&id=0&cat\\_id=19#2009](http://www.bghelsinki.org/index.php?module=resources&lg=bg&id=0&cat_id=19#2009). In the IPMHP in Petkovo, out of 100 residents, 81 were under plenary guardianship and eight under partial guardianship. During the period 2000-2008, 64 residents died and 63 were placed in the institution. Only 12 left the institution to live with their families. In the IPMHP Rovino, out of 99 residents 87 were under plenary guardianship and 11 under partial guardianship. In the IPID Pchelishte, out of 77 residents 60 were placed under plenary guardianship and four under partial guardianship. In the IPID Prekolnica, out of 60 residents 42 were placed under plenary guardianship and one under partial guardianship – and so on.

<sup>171</sup> See "Far from the eyes of society: Systematic discrimination against people with mental disabilities", Amnesty International report published on 10 October 2002, available online in Bulgarian at <http://www.amnesty.org>.

<sup>172</sup> Bulgarian Helsinki Committee, *The Archipelago of the Forgotten: Social Care Homes for People With Mental Disorders in Bulgaria*, monitoring report, 2005, Sofia, p. 7, available in English at: [http://www.bghelsinki.org/index.php?module=resources&lg=en&id=0&cat\\_id=18#2005](http://www.bghelsinki.org/index.php?module=resources&lg=en&id=0&cat_id=18#2005). The BHC continues to mention the lack of judicial control over placement in social care institutions as a serious human rights problem in all its annual human rights reports in 2006, 2007, 2008 and 2009.

<sup>173</sup> Bulgarian Helsinki Committee, *2008 Annual Human Rights Report*, Sofia 2009, p.36, available in English at: [http://www.bghelsinki.org/index.php?module=resources&lg=en&cat\\_id=24](http://www.bghelsinki.org/index.php?module=resources&lg=en&cat_id=24).

<sup>174</sup> Bulgaria, Regulation for Implementation of the Social Assistance Act (*Правилник за прилагане на Закона за социално подпомагане*), Art. 16a, para.3.

**opportunities exist** again upon written declaration of the wish of the person.<sup>175</sup> The request should be accompanied by a report about the opportunities for home care of the person; assessment of the needs of the person and report about the available appropriate social community-based services. In case of temporary administrative placement the SAD should inform the court in 1-month. The stay of a person under plenary guardianship in a residential service **cannot be no longer than 3 years** but it can be prolonged if there are not any other opportunities for care.<sup>176</sup> When deciding the placement the court may gather evidence but **must explore the personal wish** of the person in need and the SAD representative and the guardian should be present.<sup>177</sup> The court must issue a decision in one month. The court may decide placement in institution **only if there are no options** for home care or community-based residential centres.<sup>178</sup> The person under plenary guardianship may ask to leave the residential services/institutions under the same procedure.

Although a good step toward the respect and safeguarding of the rights of persons with disabilities, these amendments are unclear as to why they do not apply to all persons with disabilities who need care but only to those who are under plenary guardianship.

## European Court on Human Rights cases

In 2012 and in 2015 the European Court on Human Rights held in **two cases of persons with disabilities placed in social care homes that this placement is arbitrary deprivation of liberty (*Stanev v Bulgaria*<sup>179</sup> and *Stankov v Bulgaria*<sup>180</sup>)**. Here are the facts about the *Stanev v. Bulgaria* case. In 2000, Mr Rusi Stanev was placed under partial guardianship by a Bulgarian court and a municipal employee was appointed as his guardian. In 2002, without ever having met Mr Stanev, she had him placed in a social care institution in a remote mountainous area 400 km from his home. Once there, the director of the institution became his guardian and controlled all of his affairs. The conditions in the institution, as documented by the Council of Europe Committee for the Prevention of Torture (CPT), were unliveable. The amount of food was inadequate, the residents had to sleep in their coats in the winter due to the lack of heat, and the sanitary facilities were nothing more than holes in the ground in wooded areas outside the buildings of the institution. Mr Stanev had no ability to challenge this situation as he could not initiate any type of legal proceedings, including a proceeding to have his guardianship lifted, without his guardian's consent.

**The European Court of Human Rights** ('the Court') found that Mr Stanev's placement in the social care institution, against his will and for an independent period of time, on the order of

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<sup>175</sup> Bulgaria, Regulation for Implementation of the Social Assistance Act, Art. 16b.

<sup>176</sup> Bulgaria, Regulation for Implementation of the Social Assistance Act, Art. 16.

<sup>177</sup> Bulgaria, Regulation for Implementation of the Social Assistance Act, Art. 16c.

<sup>178</sup> Bulgaria, Regulation for Implementation of the Social Assistance Act, Art. 16c, para.6.

<sup>179</sup> [https://www.escri-net.org/sites/default/files/caselaw/decision\\_on\\_stanev\\_v.\\_bulgaria\\_0.pdf](https://www.escri-net.org/sites/default/files/caselaw/decision_on_stanev_v._bulgaria_0.pdf).

<sup>180</sup> file:///C:/Users/User/Downloads/003-5039527-6193477%20(2).pdf.

a government employee, meant that Mr Stanev had **clearly experienced a deprivation of his liberty, a violation of Article 5(1) ECHR**. The Court went on to state that a need for social assistance, such as was clear in Mr Stanev's case, should not automatically lead to measures involving deprivation of liberty. It was the presence of a mental health condition which had led directly to the decision to place Mr Stanev in the institution, and this was not a sufficient justification under the European Convention of Human Rights. The system of guardianship in Bulgaria meant that Mr Stanev had no realisable right to challenge the lawfulness of his detention in the Bulgarian courts (Article 5(4) ECHR). His legal standing to do so had been removed at the time he had been placed under guardianship, which the Court found to be a breach of his rights under this article. Given that Mr Stanev's right to liberty had unlawfully been restricted, the Court went on to assess whether he would be able to have this situation recognised and compensated under Bulgarian law. The Court found that this was not the case, due to Mr Stanev's status as a person under guardianship, and the Bulgarian government had breached his right to compensation (Article 5(5) ECHR). **Unfortunately, Mr. Stanev died on 9 March 2017, without his guardianship being lifted, after 12 years of justice proceedings and 5 years after he won his ECHR case.**

The *Stankov v Bulgaria* case concerned Mr Stankov's legal incapacitation and his subsequent placement by his mother, as his guardian, in a social care home for people with mental disorders. On 21 May 1999 a court declared Mr Stankov to be partially incapacitated on the grounds that he suffered from schizophrenia, which had led to a change in personality and deprived him of the ability to manage his own affairs and interests. Mr Stankov's mother was appointed as his guardian. On 22 June 1999 she asked the social services to take her son into care. On 30 June 1999 Mr Stankov was admitted to the Dragash Voivoda home for men with mental disorders, an institution under the responsibility of the Ministry of Labour and Social Policy. On 26 September 2002 he was transferred to the Rusokastro home for adults with a mental deficiency, which was under the responsibility of the same Ministry. In June 2006 Mr Stankov, through his lawyer, asked the public prosecutor's office to apply to the Regional Court to have his legal capacity restored on the grounds that his condition allowed him to manage his own interests. The prosecutor refused to institute proceedings for restoration of his legal capacity. Mr Stankov submitted in particular that his placement in a social care home was in breach of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights. Relying on Article 5 § 4 (right to speedy review of the lawfulness of detention), he complained that he had been unable to have the lawfulness of his placement in the home reviewed by a court. Relying on Article 5 § 5 (right to compensation), he submitted that he had not been entitled to compensation for the alleged violations of his rights. Relying on Article 3 (prohibition of inhuman or degrading treatment) read separately and in conjunction with Article 13 (right to an effective remedy), he complained in particular about the living conditions in both the homes in which he had been placed. Indeed, the **ECHR found violations of Art. 3, 5, 6 and 13.**

However, a 2014-2015 Bulgarian Helsinki Committee's research in 40 institutions and 81 residential community-based services for persons with psycho-social and intellectual disabilities where 3,993 persons were living showed that 2,794 (2,447 of whom live in institutions) were placed under plenary guardianship, 230 – under partial guardianship and the rest were not placed under guardianship.<sup>181</sup> In addition, the monitoring visits in 81 new residential community-based services concluded that **placement again is done by other persons, not the person with disability and his/her wish often is not explored and that guardians of the majority of the users placed under guardianship are staff members.**

## ARTICLE 15 - FREEDOM FROM TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

### Children with disabilities in institutions

The **practice shows that some of the most vulnerable children with disabilities placed in institutions are not protected from the risk of injuries and death.** In 2010 the Supreme Cassation Prosecution Office and the regional offices of several authorities like: the Ministry of Healthcare, Ministry of Education, Youth and Science, State Agency for Child Protection, Ministry of Labour and Social Policy and the Bulgarian Helsinki Committee (NGO) carried out joint, on the spot, investigations in **all institutions for children with intellectual disabilities.** **There were 238 child deaths between 2000 and 2010. In the opinion of BHC's experts, at least three quarters of those deaths were avoidable: 31 children died of starvation (systematic malnutrition); 84 from neglect; 13 due to poor hygiene; six in accidents such as hypothermia, drowning, suffocation; 36 died because they were bedridden; and two deaths were caused by violence.** Moreover, during the NGO monitoring it was found that violence, binding and treatment with harmful drugs continue to be widespread practices in care homes for disabled children in Bulgaria. At the time of the joint visits, **there were 103 children, who were malnourished and at a real risk of death by starvation in institutions.**<sup>182</sup>

On 1 June 2011, the Bulgarian Helsinki Committee (BHC) and the Deputy Chief Prosecutor in Bulgaria held a press conference, *"Care Homes for Children Eight Months Later: Substantial Deficits, Significant Attainments – Questionable Justice"*, to announce the results of the

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<sup>181</sup> Bulgaria, Bulgarian Helsinki Committee, *Unhappening Deinstitutionalization of Persons with Mental Disabilities*, monitoring report, 2016, available in Bulgarian at: [http://www.bghelsinki.org/media/uploads/documents/reports/special/2016\\_nesluchvashtata\\_se\\_deinstitutionalizacia\\_na\\_licata\\_s\\_umstveni\\_zatrudnenia\\_v\\_bulgaria\\_\[978-954-9738-37-7\].pdf](http://www.bghelsinki.org/media/uploads/documents/reports/special/2016_nesluchvashtata_se_deinstitutionalizacia_na_licata_s_umstveni_zatrudnenia_v_bulgaria_[978-954-9738-37-7].pdf).

<sup>182</sup> Bulgaria, Bulgarian Helsinki Committee, *Joint investigation between the BHC and the Prosecutor's Office carried out in all homes for mentally disabled children in Bulgaria (Съвместни проверки на БХК и Прокуратурата в домовете за деца с умствени увреждания в България)* (2010), available in English at: <http://www.bghelsinki.org/en/news/press/single/press-release-investigations-childrens-homes-8-months-later/>.

**investigation of death and injury cases in institutions for children with intellectual and psychosocial disabilities.**<sup>183</sup> During the press conference the Deputy Chief Prosecutor at the time, Galina Toneva, announced that the Prosecutor's office initiated 248 pre-trial proceedings on death and injury cases. The bulk of the proceedings are for "unknown perpetrators" (meaning that the prosecutors were not able to estimate who the actual perpetrators were). According to the BHC "the prosecutors have issued a number of investigation cases on the failure to treat a child's abscess; to provide specialised dental care to a child; to a child abused by means of ill appointed tranquilisers; cases of sexual abuse, hypotrophy and pneumonia-related deaths; and bodily damage." The BHC highlighted that over 60% of the notified prosecutorial decrees were subject to further investigations. **At present, the Prosecutor's office has terminated all pre-trial proceedings.** In 2012 the BHC filed the first applications to the European Court of Human Rights regarding three of the most severe cases.<sup>184</sup> As of April 2017 these cases grew to six. In 2016 in one of them the ECHR found the application inadmissible because of lack of *locus standi* of the BHC. This fact only confirmed the lack of legal protection mechanisms for these children even *post mortem* and on international level.

On 28 April 2015 the Bulgarian Helsinki Committee (BHC) submitted a report to the chairperson of the State Agency for Child Protection urging the agency to open an investigation into the **extremely high number (around 300) of deaths of children discovered in the institutions for medico-social care for children (IMSCC), children from 0-3 years of age who are deprived of parental care and/or children with disabilities.**<sup>185</sup> **As of April 2017 no information was received about investigations.** An BHC evaluation of 20 (out of 28) IMSCC done during the period 2013-2014 revealed that the entrance to these institutions is still wide open as **children are placed in them due to both family poverty and disabilities.** The share of children with disabilities placed in IMSCC is still growing: the percentage of children with disabilities going through these institutions increased from 39.74% in 2013 to 45.18% in 2014.<sup>186</sup> However, researchers found that a number of children in these institutions are in shocking physical condition, indicating an inability of the institutions to properly address the needs of this growing population. The identified problems were: **the children's lack of contact with the outside world; the lack of access to a person of trust; the**

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<sup>183</sup> Bulgaria, Bulgarian Helsinki Committee, *Joint investigation between the BHC and the Prosecutor's Office carried out in all homes for mentally disabled children in Bulgaria [Съвместни проверки на БХК и Прокуратурата в домовете за деца с умствени увреждания в България]* (2010), available in English at:

<http://www.bghelsinki.org/en/news/press/single/press-release-investigations-childrens-homes-8-months-later/>.

<sup>184</sup> Bulgaria, Bulgarian Helsinki Committee, Application Number 35653/12, available in Bulgarian at: [http://www.bghelsinki.org/media/uploads/files/2012-08-06\\_application.pdf](http://www.bghelsinki.org/media/uploads/files/2012-08-06_application.pdf); Bulgaria, Bulgarian Helsinki Committee, Application Number 79879/12, available in Bulgarian at:

[http://www.bghelsinki.org/media/uploads/application\\_echr\\_b.s.pdf](http://www.bghelsinki.org/media/uploads/application_echr_b.s.pdf).

<sup>185</sup> Bulgaria, BHC, *BHC Urges the National Child Protection Agency to Investigate the Deaths of 292 Children in Institutions from June 2010 to December 2014*, 28 April 2015, available in Bulgarian at

<http://www.bghelsinki.org/bg/novini/press/single/pressobshenie-bhk-prikanva-dazd-da-razsledva-292-smrtni-sluchai-na-deca-v-domove-mezhdu-yuni-2010-i-dekemvri-2014-g/>.

<sup>186</sup> Information provided to Bulgarian Helsinki Committee (BHC) on 5 February 2015 by the Ministry of Healthcare. According to the ministry, of the 925 children placed in 29 IMSCC, 604 or 65.2% were children with disabilities.

lack of respiratory rehabilitation for bedridden children leading to death cases<sup>187</sup>; the children with the most severe disabilities having significant psychomotor retardation, delayed growth in height and weight, adynamia, forced lying position accompanied by pressure injuries, deformations of the musculoskeletal system, joint contractures and muscle hypertrophy.<sup>188</sup>

## Adults with disabilities in institutions

The 2014-2015 Bulgarian Helsinki Committee monitoring of 40 institutions for persons with psycho-social and intellectual disabilities revealed that **application of medication for the reasons of discipline and physical seclusion and restraint are still a practice. Caged spaces, without any furniture, poor hygiene and access to sanitary facilities, arbitrary placement in them by orderlies or nurses for uncertain periods, prescription of medicines on the phone** are some of the other inhuman and degrading practices the researchers described. In several cases they found that persons with psycho-social problems placed in institutions caused a serious physical injury to a guard in an escape attempt and murder of another resident (in search for a cigarette). The residents have also severe self-destructive behaviour. **The material conditions and the attitude of the staff in some of these institutions continue to amount themselves to inhuman and degrading treatment.**<sup>189</sup>

The 2012 ECHR case *Stanev v Bulgaria* emphasized on this aspect also. The conditions in the institution, as documented by the Council of Europe Committee for the Prevention of Torture (CPT), were unliveable. The amount of food was inadequate, the residents had to sleep in their coats in the winter due to the lack of heat, and the sanitary facilities were nothing more than holes in the ground in wooded areas outside the buildings of the institution. Mr Stanev had no ability to challenge this situation as he could not initiate any type of legal proceedings, including a proceeding to have his guardianship lifted, without his guardian's consent. The Court found that the living conditions Mr Stanev had to endure for seven years **amounted to degrading treatment**, relying on the report of the CPT. There was no suggestion of intent on behalf of the authorities to inflict degrading treatment, but nevertheless, the material conditions of the institution had resulted in this damage to Mr Stanev. Thus the Court found his right to freedom from degrading treatment (Article 3 ECHR) had been violated. The Court held that Mr Stanev's inability to access a court to review the restrictions on his legal capacity, which restricted many other rights, violated the right to a fair trial under Article 6(1) ECHR. The Court found that, in addition to the breach of Mr Stanev's substantive rights under the European Convention, Bulgaria also **did not provide a**

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<sup>187</sup> Bulgaria, BHC press release, *BHC Calls SACP to Investigate 292 Death Cases of Children in Institutions between June 2010 and December 2014*, 29 April 2015, available in Bulgarian at: <http://www.bghelsinki.org/bg/novini/press/single/pressobshenie-bhk-prikanva-dazd-da-razsledva-292-smrtnei-sluchai-na-deca-v-domove-mezhdu-yuni-2010-i-dekemvri-2014-g/>.

<sup>188</sup> Bulgaria, Bulgarian Helsinki Committee, *2014 Annual Report*, April 2015, p. 78-86, available in English at: [http://www.bghelsinki.org/media/uploads/annual\\_reports/annual\\_bhc\\_report\\_2014\\_en.pdf](http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2014_en.pdf).

<sup>189</sup> Bulgaria, Bulgarian Helsinki Committee, *Unhappening Deinstitutionalization of Persons with Mental Disabilities*, monitoring report, 2016.

**remedy for the degrading treatment** he had suffered, or for the unlawful denial of his right to a fair trial. This lack of remedy constituted a breach of Article 13 ECHR.

In 2015 *Stankov v Bulgaria* case the Court found that Mr Stankov was partially deprived of his legal capacity in May 1999. He was stripped of his autonomy, including his recognition as a person before the law, and placed under guardianship. Shortly thereafter he was placed in the Dragash Voyvoda social care institution against his will. **The conditions were appalling.** He was forced to share clothing with other residents (all clothing was for general usage) in an institution that was filthy and unheated, even in the depths of the Bulgarian winter. Deaths at the institution became common place, and following intense [international criticism](#) the institution was later closed in 2002. The closure of Dragash Voyvoda failed to result in positive change for Mr. Stankov. Instead, he was moved to a second institution in Rusokastro, where he continued to be cut off from society and was forced to live in similarly horrendous conditions. The ECHR found violations of Art. 3 and Art. 13 of the ECHR.

## ARTICLE 16 - FREEDOM FROM EXPLOITATION, VIOLENCE AND ABUSE

**No specific policy document directly addressing violence against children and adults with disabilities or bias-motivated crime against such children and adults could be identified.**

### Children with disabilities

Discrimination against children, including disability amongst other grounds, is recognized as an issue in the *National Strategy for The Child 2008-2018*<sup>190</sup> but not in the possible aspect of violence against children or hate crime.<sup>191</sup>

In 2012 the Ministry of Education and Science together with other governmental institutions and NGOs developed a **“Mechanism for Combating School Bullying between Children and Students at School”**.<sup>192</sup> The Mechanism includes a detailed explanation on what constitutes bullying and abuse, the types of abuse that occur among peers at school, and gives specific guidelines on how schools should deal with bullying. A notable shortcoming of the Mechanism is that no possible grounds for bullying to occur are identified. The mechanism is mandatory in developing school policies and programmes dealing with abuse at school. In 2013, the Ministry has continued its work on establishing the Mechanism as part of a system

<sup>190</sup> Bulgaria, National Strategy for the Child (2008-2018), available in Bulgarian at: <http://sacp.government.bg/programi-dokladi/strategii-programi-planove/strategia-zakrila-deteto-2008-2018/>.

<sup>191</sup> Bulgaria, National Assembly, National Strategy for the Child 2008-2018, p. 41.

<sup>192</sup> Bulgaria, Ministry of Education and Science, Mechanism for Combating School Bullying between Children and Students at School (*Механизъм за противодействие на училищния тормоз между децата и учениците в училище*), approved by the Minister of Education and Science with Ordinance No. RD 09-611/ 18.05.2012, available in Bulgarian at: [www.rio-sofia-grad.com/web\\_folders/docs\\_files/norm/docs\\_2012/Mehanizam.doc](http://www.rio-sofia-grad.com/web_folders/docs_files/norm/docs_2012/Mehanizam.doc).

for prevention of abuse and aggression among children and students<sup>193</sup> and as a measure for the prevention of dropout and early school leaving.<sup>194</sup> However, an NGO reports in 2015 that psychological counselling and support come up as a leading topic in the discussions regarding care provision in the cases of child abuse and emerge as an urgent task of the state. Unfortunately, there is still **no clearly outlined national policy on psychological service provision in education**. The work of the National Mobile Group for Psychological Support was stopped with a decision of the Minister of Education and Science in 2014. It used to meet the need of interaction in crisis or child abuse cases and to provide support to schools in response to the growing needs of the students. This had a negative effect on the education system and made it uncertain in case management, especially in the areas where there are no school psychologists and pedagogical advisors or **there is a shortage of psychologists from the resource centres for children with special educational needs**.<sup>195</sup> The minister of education **restored the work of the National Mobile Group for Psychological Support in 2016**.

The lack of specific policies addressing the issues of violence against children with disabilities was also confirmed by interviewed experts from the office of the Ombudsperson of the Republic of Bulgaria and an expert-consultant at the Ministry of Education in 2013.<sup>196</sup> Interviewed experts also recognised the problem of discrimination against children with disabilities but were sceptical as to the authorities' abilities to identify and address such acts as acts of bias-motivated violence or hate crime, rather than problems of application of policies in practice or institutionalised discrimination in the best case. Within these lines are also the findings of a research conducted by the Ministry of Labour and Social Policy named "The Discrimination against Children in Institutional Care: Covert, Pretended or Real and Perceivable".<sup>197</sup> Its conclusions show that **children with disabilities are most heavily affected by the discriminatory attitudes**<sup>198</sup> and that **direct and indirect discrimination on the grounds of disabilities is shown both amongst children and by educators and the**

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<sup>193</sup> Bulgaria, Ministry of Education and Science, Report on the Implementation of the policies and programmes of the Ministry of Education and Science as of 30 June 2013 (*Отчет за изпълнението на политиките и програмите на Министерството на образованието и науката към 30.06.2013 г.*"), available in Bulgarian at: [www.minedu.government.bg/opencms/export/sites/mon/left\\_menu/budget/mon/otchet\\_po\\_programi\\_30-06-2013.pdf](http://www.minedu.government.bg/opencms/export/sites/mon/left_menu/budget/mon/otchet_po_programi_30-06-2013.pdf).

<sup>194</sup> Bulgaria, Ministry of Education and Science, Draft of the "Strategy for the prevention of and reducing the share of dropouts and early school leavers 2013-2020" (*Проект на „Стратегия за превенция и намаляване дела на отпадащите и преждевременно напусналите образователната система 2013-2020“*), available in Bulgarian at: [www.minedu.government.bg/opencms/export/sites/mon/left\\_menu/documents/documentsproject/2013/proekt-strategia\\_prevencia\\_2013-2020.pdf](http://www.minedu.government.bg/opencms/export/sites/mon/left_menu/documents/documentsproject/2013/proekt-strategia_prevencia_2013-2020.pdf).

<sup>195</sup> Bulgaria, National Network for Children, *Report Card 2015: What is the average Government score for childcare?* April 2015, p. 27, available in English at: [http://nmd.bg/ReportCard2015\\_Engl\\_web.pdf](http://nmd.bg/ReportCard2015_Engl_web.pdf).

<sup>196</sup> Bulgaria, Interviews carried out under the social fieldwork phase of an EU Fundamental Rights Agency project regarding violence against children with disabilities with Eva Zhecheva (Ombudsperson institution) and Anet Marinova (consultant at the Ministry of Education and Science) in April 2013.

<sup>197</sup> Bulgaria, Ministry of Labour and Social Policy, *The Discrimination against Children in Institutional Care: Covert, Pretended or Real and Perceivable (Дискриминацията срещу децата в институциите – скрита, претендирана или реална и осезаема)*, 2012, available in English at: [http://www.unicef.bg/assets/DiscriminationAgainstChildrenInInstitutions\\_EN.pdf](http://www.unicef.bg/assets/DiscriminationAgainstChildrenInInstitutions_EN.pdf).

<sup>198</sup> Bulgaria, Ministry of Labour and Social Policy, *The Discrimination against Children in Institutional Care: Covert, Pretended or Real and Perceivable*, 2012, p. 48.

**broader public**<sup>199</sup> but the application of existing strategies and programs for prevention and combating discrimination has remained unsatisfactory and their effect on children is vague and uncertain.<sup>200</sup> However, no particular data or conclusions were presented as to violence against children with disabilities as a bias-motivated act.

A particular development in the field of protection of children from violence is the **2010 Coordination Mechanism for Cooperation in Cases of Children Victims of or at Risk of Violence and for Cooperation in Cases of Crisis Intervention** (the Mechanism).<sup>201</sup> The Mechanism aims at improving cooperation between the relevant child care authorities and provides for a list of actions and measures that each of them should undertake in case of a signal that a child needs protection under the Child Protection Act<sup>202</sup> or in cases of a critical situation (acts of violence, terrorist attacks and natural disasters).<sup>203</sup> The Mechanism was established following an agreement signed between the ministers of Labour and Social Policy, Internal Affairs, Education, Justice, Foreign Affairs, Culture, Healthcare, the Chairperson of the State Agency for Child Protection (SACP), the Director of the Social Assistance Agency and the Chairperson of the Managing Board of the National Association of Municipalities.<sup>204</sup> They all obliged themselves to appoint **teams on duty to work on 'hot cases' during holidays, weekends and beyond their working hours**. The SACP proposed that this mechanism should be provided for in legislation. The chairperson of the SACP elaborated internal rules for coordination of the child protection bodies for work on cases of crisis intervention. The work of the mobile teams for crisis intervention was organized, members of the teams were appointed and guidance for fast and effective actions was provided to them. A monitoring was performed in 2010 to research the implementation of this mechanism. The monitoring showed that 95% of all authorities obliged to protect children issued orders to appoint their representative but only 36% of them included this obligation in the job descriptions of their officials. However, the research revealed that many of the local departments are waiting for instructions and guidance from the central authorities in terms of operational organisation which is totally in their powers and responsibilities; that some of the local members of the teams are formally appointed; that

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<sup>199</sup> Bulgaria, Ministry of Labour and Social Policy, *The Discrimination against Children in Institutional Care: Covert, Pretended or Real and Perceivable*, 2012, p. 57.

<sup>200</sup> Bulgaria, Ministry of Labour and Social Policy, *The Discrimination against Children in Institutional Care: Covert, Pretended or Real and Perceivable*, 2012, p. 57.

<sup>201</sup> Bulgaria, *Coordination Mechanism for Cooperation in Cases of Children Victims of or at Risk of Violence and for Cooperation in Cases of Crisis Intervention (Координационен механизъм за взаимодействие при работа в случаи на деца, жертви или в риск от насилие и за взаимодействие при кризисна интервенция)* (2010), available in Bulgarian at: [http://sacp.government.bg/media/filer\\_public/2015/12/17/koordinatsionen-mehanizam-zadalzhenia-na-organite.pdf](http://sacp.government.bg/media/filer_public/2015/12/17/koordinatsionen-mehanizam-zadalzhenia-na-organite.pdf).

<sup>202</sup> Bulgaria, Child Protection Act (13 June 2000), Art. 7 and Coordination Mechanism for Cooperation in Cases of Children Victims of or at Risk of Violence and for Cooperation in Cases of Crisis Intervention (2010), p. 1.

<sup>203</sup> Bulgaria, *Coordination Mechanism for Cooperation in Cases of Children Victims of or at Risk of Violence and for Cooperation in Cases of Crisis Intervention* (2010), p. 2.

<sup>204</sup> Bulgaria, *Agreement for Cooperation (Споразумение за сътрудничество)*, signed on 15 March 2010, available in Bulgarian at: <http://sacp.government.bg/deinosti/sporazumenie-deistvia-deca-risk/>.

the work of the local teams needs to be supported by trainings, exchange of practices, financial and material resources.<sup>205</sup>

A thematic inspection by the State Agency for Child Protection carried out in May-June 2012 on the effective forms of work and **addressing violence against children in institutions for children deprived of parental care**, established 46 cases of violence in these institutions.<sup>206</sup> The Agency visited a total of 51 institutions for children deprived of parental care. The inspection established that often violence between children was not paid due attention and that cases of verbal abuse and aggressive behaviour among children were underestimated. The study showed that **only in rare cases was there good functioning of the Coordination Mechanism** for Cooperation in Cases of Children Victims of or at Risk of Violence and for Cooperation in Cases of Crisis Intervention. Moreover, the need for developing prevention services and rehabilitation of children victims of violence was established.<sup>207</sup>

In his report after the visit in February 2015 the Commissioner for Human Rights of the Council of Europe expressed his concern about the serious abuses including physical and psychological violence reportedly perpetrated among children living in institutional care and also by staff members against these children. However, according to information from the Bulgarian authorities, there has been **only one prosecution** in the period 2013-2014: a pre-trial proceeding was initiated against an unknown perpetrator under Article 123 of the Criminal Code (death by negligence) for the death of a child at the “Home for Children with Mental Retardation” in the town of Berkovitsa in 2014. Children in institutions are also still reported to suffer from neglect and disproportionate and inadequate punishment.<sup>208</sup>

## Domestic Violence

Domestic violence cases are to be addressed under the detailed rules of the *Methodology for working with victims of domestic violence* adopted in 2012<sup>209</sup> as well as the *Instruction for the Order for Cooperation between the Bodies of the Ministry of Labour and Social Policy and the Ministry of the Interior for Protection from Domestic Violence No. Iz-*

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<sup>205</sup> Bulgaria, State Agency for Child Protection, 2010 Annual Report, pages 6-7, available in Bulgarian at: <http://sacp.government.bg/programi-dokladi/dokladi/>.

<sup>206</sup> Bulgaria, State Agency for Child Protection, News, 27 July 2012, <http://sacp.government.bg/novini/2012/07/27/tematicna-proverka-na-dazd-konstatira-46-sluchaya/>.

<sup>207</sup> Bulgaria, State Agency for Child Protection, *Coordination mechanism for interaction in the work on cases of child victims or at risk of abuse and interaction in crisis intervention (Координационен механизъм за взаимодействие при работа в случаи на деца, жертви или в риск от насилие и за взаимодействие при кризисна интервенция)*, 15 March 2010, available in Bulgarian at: [http://sacp.government.bg/media/cms\\_page\\_media/19/%D0%9A%D0%9C-nasilie%20\(1\)\\_1.doc](http://sacp.government.bg/media/cms_page_media/19/%D0%9A%D0%9C-nasilie%20(1)_1.doc).

<sup>208</sup> Council of Europe, *Report by Nils Muiznieks Commissioner for Human Rights of the Council of Europe following his visit to Bulgaria from 9 to 11 February 2015*, p.12, available in English at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2768089&SecMode=1&DocId=2277360&Usage=2>.

<sup>209</sup> Bulgaria, Ministry of the Interior, Order Iz-717/05.04.2012 – Methodological guidelines to police authorities to act under the Protection Against Domestic Violence Act (*Методически указания за действията на полицейските органи по Закона за защита от домашно насилие*) Regional Police Department in Plovdiv.

2673/10.11.2010.<sup>210</sup> According to them police officers are obliged to inform the local Social Assistance Department when they identify a **victim of domestic violence who is a child, a person with disability or a person under guardianship**.<sup>211</sup> The Social Assistance Department is responsible for monitoring of the implementation of the court-appointed measures in cases of domestic violence when the victim is a child, a person with disabilities or under guardianship, and when the measure concerns the temporary residency of the victim or the prescription of recovery support for the victim.<sup>212</sup> NGOs are responsible for monitoring the implementation of the court-appointed measures in cases of domestic violence when establishing perpetrator programmes.<sup>213</sup>

## Adults with disabilities

A 2014-2016 monitoring report of the Bulgarian Helsinki Committee contains numerous examples of **physical and psychological abuse** and risk of abuse in remaining institutions for adults with psycho-social and intellectual disabilities and more worrying - in the new community-based centres for children and adults with disabilities which were supposed to be the better alternative of institutions.<sup>214</sup> **Remote locations, lack of sufficient and qualified staff, lack of training, lack of activities for the residents, lack of medical, educational and day care services were pointed out as main reasons for the everyday abuse in these services.**

## ARTICLE 19 - LIVING INDEPENDENTLY AND BEING INCLUDED IN THE COMMUNITY

### Deinstitutionalization of children with disabilities

Before 1989 the policy was directed to isolate the children/adults with disabilities in closed institutions away from the public sight. The process of deinstitutionalization began with the *Childhood for All* project in mid-2010 with the ambition to first transfer the most vulnerable group of 1,797 children with disabilities from the institutions for children with intellectual disabilities (ICID) and children over three years of age from the institutions for medico-social

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<sup>210</sup> Bulgaria, Ministry of Interior and Ministry of Labour and Social Policy, Instruction Із-2673/10.11.2010 for the Order for Cooperation between the Bodies of the Ministry of Labour and Social Policy and the Ministry of the Interior for Protection against Domestic Violence (*Инструкция № Із-2673 от 10.11.2010 г. за реда за осъществяване на взаимодействието между органите на Министерството на вътрешните работи и на Министерството на труда и социалната политика при защита от домашно насилие*), available in Bulgarian at: [www.asp.government.bg/ASP\\_Files/PNO/INSTRUKCIQ\\_z2673\\_ot\\_10112010\\_g\\_za\\_reda\\_za\\_osysestvqvane\\_na\\_vzaimodejstvieto.htm](http://www.asp.government.bg/ASP_Files/PNO/INSTRUKCIQ_z2673_ot_10112010_g_za_reda_za_osysestvqvane_na_vzaimodejstvieto.htm).

<sup>211</sup> Bulgaria, Ministry of Interior and Ministry of Labour and Social Policy, Instruction Із-2673/10.11.2010 for the Order for Cooperation between the Bodies of the Ministry of Labour and Social Policy and the Ministry of the Interior for Protection against Domestic Violence, Art. 9.

<sup>212</sup> Bulgaria, Regulations for the Implementation of the Protection against Domestic Violence Act (*Правилник за прилагане на Закона за защита от домашно насилие*), (15.06.2010), Art. 9, available in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135684122>.

<sup>213</sup> Bulgaria, Regulations for the Implementation of the Protection against Domestic Violence Act, (15.06.2010), Art. 10.

<sup>214</sup> Bulgaria, Bulgarian Helsinki Committee, *Unhappening Deinstitutionalization of Persons with Mental Disabilities*, monitoring report, 2016, p.40-88.

care for children (IMSCC).<sup>215</sup> Gradually, five projects were initiated in 2012 as part of the implementation of the ***Vision on the Deinstitutionalisation of the Children in the Republic of Bulgaria***. In 2010, it was planned that the children from ICID and IMSCC would be transferred to 149 family-type (residential) accommodation centres (FTAC) and 36 protected houses and would be provided with day care and rehabilitation services in one day care centre for children with disabilities and eight social rehabilitation and integration centres. All these facilities were to be built under the *Childhood for All* project in 81 municipalities nationwide with a total capacity of 2,076 places. The initial plan was to have all children transferred by the end of October 2014. The map of community-based services was updated in 2014 to include the construction of 160 FTAC, including 37 for children without disabilities.<sup>216</sup>

At the start of the reform in 2010, there were 137 childcare institutions (IMSCC, ICID and the third type of residential childcare institution – institutions for children deprived of parental care, ICDPC) with a total of 5,965 children living in them. By 31 December 2014, the total number of children and adolescents living in institutional care across 95 childcare institutions was 2,218.<sup>217</sup>

- 925 children in 29 institutions for medico-social care for children (IMSCC);<sup>218</sup>
- 1,235 children and young people in 47 institutions for children deprived of parental care (ICDPC). Nine of them house 196 children aged 3 to 7 years and 38 of these institutions house 1,039 children aged 7 to 18 years and 78 young people over 18;<sup>219</sup>
- 508 children and young people in 19 institutions for children with intellectual disabilities (ICID), of whom 181 children and 327 young people over 18.<sup>220</sup>

**For one-third of the children and young people from the target group of the *Childhood for All* Project children and young persons with disabilities in ICID and the only institution for children with physical disabilities (ICPD) and children aged over 3 years in IMSCC who have “left” the institutions, the reform is actually a dead end.** According to official statistics, between the start of the project on 1 June 2010 and 31 January 2015, the number of

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<sup>215</sup> Bulgaria, Bulgarian Helsinki Committee, *2014 Annual Report*, April 2015, p. 79, available in English at: [http://www.bghelsinki.org/media/uploads/annual\\_reports/annual\\_bhc\\_report\\_2014\\_en.pdf](http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2014_en.pdf).

<sup>216</sup> Bulgaria, Bulgarian Helsinki Committee, *2014 Annual Report*, April 2015, p. 79, available in English at: [http://www.bghelsinki.org/media/uploads/annual\\_reports/annual\\_bhc\\_report\\_2014\\_en.pdf](http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2014_en.pdf).

<sup>217</sup> Information provided by SACP to BHC on 27 January 2015 under a request for access to public information, ref. No. 14-00-1/12.01.2015; information provided to BHC by SAA, ref. No. 05-14 of 29.01.2015; information provided by the Ministry of Health on 5 February 2015 on request by BHC; database of the Childhood for All project.

<sup>218</sup> 1,130 children in 29 IMSCC at the end of 2013. Data provided to BHC by the Ministry of Health on 5 February 2014: “Number of children by 31 December 2014: – 925 in residential care, 50 prematurely born infants in special wards and 716 children from families using the services of the day care centres daily, hourly and weekly. No IMSCC were closed in 2014”.

<sup>219</sup> 1,492 in 51 ICDPC at the end of 2013. The following ICDPC were closed down in 2014: ICDPC in Popovo, ICDPC St. Ivan Rilski in Sofia and ICDPC Rada Kirkovich in Plovdiv. The ICDPC in Borovan was closed on 1 January 2015.

<sup>220</sup> 1,144 children and young people in 23 ICDD and 1 ICPD at the end of 2013. The quoted information is provided by SACP on 27 January 2015 on BHC request for access to public information No. 14-00-1/12.01.2015. Two ICDD and one ICPD were closed in 2014: ICDD in Targovishte, the ICDD in Kermen and the ICPD in Lukovit.

children and young persons with disabilities placed in ICID/ICPD and that of the children above 3 years in IMSCC has been reduced by 668.<sup>221</sup>

Where did these children go?

- **In a family environment: 390** (almost 60%). Of them: adopted – 272 children; reintegrated into their biological families – 61 children (including 2 unsuccessful reintegrations where the children had to be returned to the institution); in foster care – 55 children; left because of coming of age – 2;
- **Transfer to another institution: 88** (13.1%). Of these: to a social educational professional centre - 6 young people; to ICDPC - 38 children; to institutions for adults with intellectual disabilities - 44 young people;
- **To residential community-based services: 79**. Of these: to other FTAC - 51 children; to sheltered houses - 22 young people; to transient homes - 6 children;
- **Death cases: 111** (16.6%).<sup>222</sup>

The analysis of these figures reveals that for 199 of the 668 children and young people that “left” the institutions, deinstitutionalisation did, in fact, not take place. According to the “black statistics” of deinstitutionalisation, for 1 out of 3 children (29.7%) the “exit” from the institution was either death or transfer to another institution. **In four years of reforms, only 469 of the initial target group of 1,797 (26%, 1 out of 4) children in ICDD/ICPD and in IMSCC who had to leave the institutions as part of the *Childhood for All* project have really left them.**<sup>223</sup>

**By the end of 2016 all institutions for children with intellectual disabilities had been closed down. However, 10 of them turned into institutions for adults as the children who were placed in them turned 18.**

## EU Funded Projects on Deinstitutionalisation

The projects related to deinstitutionalization of children are part of *Human Resources Development Operational Programme* and are fully or partially implemented with EU structural funds.<sup>224</sup> Some of the financial schemes mentioned by the Ministry of Labour and Social Policy come together under the title *Let us not abandon a single child*.

Scheme BG051PO001-5.2.12 (started in 2012; BGN 23 million (approx. EUR 11,5 million) envisioned the **deinstitutionalisation of children with disabilities by establishing of 60 new social services in the community to accommodate over 800 children from 15 specialised institutions due to be closed down**. At the same time, however, the infrastructure for this

<sup>221</sup> Source: SACP, database of the Childhood for All project.

<sup>222</sup> Bulgaria, Bulgarian Helsinki Committee, *2014 Annual Report*, April 2015, p. 80, available in English at: [http://www.bghelsinki.org/media/uploads/annual\\_reports/annual\\_bhc\\_report\\_2014\\_en.pdf](http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2014_en.pdf).

<sup>223</sup> Bulgaria, Bulgarian Helsinki Committee, *2014 Annual Report*, April 2015, p. 80, available in English at: [http://www.bghelsinki.org/media/uploads/annual\\_reports/annual\\_bhc\\_report\\_2014\\_en.pdf](http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2014_en.pdf).

<sup>224</sup> Bulgaria, Ministry of Labour and Social Policy, Written reply 05-12 from Hasan Ademov, minister of labour and social policy, 15 November 2013.

project was supposed to be financed also by the *Programme for Development of the Rural Areas* which puts a question about the intent to place children in the community.

Another scheme, BG051PO001-5.2.15 (started in 2013; BGN 4,8 million (approx. EUR 2,4 million)), financed the **opening of at least 30 new services in the community after restructuring pilot medico-social care institutions for children aged 0-3 years, aimed at 800 children while another 200 children become reintegrated in the community after closing down 8 medico-social care institutions for children.**

With a decision 208 of **10 August 2015** the Council of Ministers **regulated the residential type of service for children in need of permanent medical care and provided for the mechanisms for closure of 8 institutions for medico-social care for children.** The total of 208 children were assessed, 408 staff members were trained and supervised, 239 staff members were trained to work in the new services under a *“Chance for Happy Childhood”* project. During the project 181 children were reintegrated in families while the total number of children placed in these 8 institutions were 342. As of October 2015 the 8 institutions were closed down.<sup>225</sup> Under the same project **8 complexes for “innovative integrated health and social services for children aged 0 to 3” were opened** that include: 7 family consultation centres, 3 foster care centres, 5 early intervention centres, 3 centres for child mental development, 8 day care centres, 2 Mother and Baby Units, 8 Mother and Child Health Centres, 9 specialised residential care centres for children aged up to 7 who need constant medical care.<sup>226</sup> During the period January 2012-30 September 2015, 434 children at the age up to 3 years, **including 149 children with disabilities** were placed in family and close to family environment. Out of them 11 were placed in other institutions, 159 children were adopted, 144 children were placed in foster families, 89 children were reintegrated in biological families, 9 children were placed in relatives’ families and 33 children were placed in family-type centres, 27 of whom were placed in family-type centres for children with disabilities.<sup>227</sup> However, the National Network for Children (NGO) comments in its 2016 report that the newly established services “are still not statutory regulated and there are no activities for ensuring their sustainability and financing mechanisms. This was the reason for the newly created complexes providing services to be forced to suspend their work.”<sup>228</sup> **No plans have been identified about the remaining 17 institutions for medico-social care for children aged 0 to 3 in the country.**

The *Life in the Community* project (started in 2012; BGN 3,8 million (approx. EUR 1,9 million) was supposed to create 29 new services in the community for persons placed in institutions, for children without parental care as well as for adults with disabilities.<sup>229</sup>

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<sup>225</sup> Bulgaria, Social Assistance Agency, *2015 Annual Report*, p.40.

<sup>226</sup> Bulgaria, *Report about the Implementation of “Direction Family” project*, p.7, available at:

[http://www.mh.government.bg/media/filer\\_public/2016/04/06/izpalnenie-na-proekt-posoka-semeystvo.pdf](http://www.mh.government.bg/media/filer_public/2016/04/06/izpalnenie-na-proekt-posoka-semeystvo.pdf).

<sup>227</sup> Bulgaria, *Report about the Implementation of “Direction Family” project*, p.12.

<sup>228</sup> Bulgaria, National Network for Children, *2016 Report Card*, p.29, available in English at: [http://nmd.bg/wp-content/uploads/2016/06/EN\\_Bejejnik-2016\\_web.pdf](http://nmd.bg/wp-content/uploads/2016/06/EN_Bejejnik-2016_web.pdf).

<sup>229</sup> Bulgaria, Ministry of Labour and Social Policy, Letter No. 05-10/10.10.2013 from Hasan Ademov, minister of labour and social policy.

In 2012 the programme *Let us Make School More Attractive for Young People*<sup>230</sup> (2007-2013) facilitating interesting extracurricular activities for school children was opened to 2,193 children with disabilities out of a total of 153,189 children beneficiaries.<sup>231</sup>

As of December 2015 the Social Assistance Agency reports that: 122 family type accommodation centres for children/young adults with disabilities (FTAC) were opened with total capacity of 1,655 places; 71 day care centres for children with disabilities operate with total capacity of 1,944 places; 9 day care centres for children and adults with disabilities with total capacity of 411 places.<sup>232</sup> In the FTAC for children and adults with disabilities 1,299 children/young adults were placed as of November 2015, in the protected homes for young adults with disabilities 122 adults previously living in institutions were placed.<sup>233</sup>

## Independent living in the community

Under Bulgarian legislation the children and adults with disabilities have the right to social assistance and provision of services that allow them living independently in the community. However, the **concept of personal assistance (as defined by the Independent Living movement in Europe) is not available in Bulgaria**. There is no legislation providing for support for living in the community (professional and peer counselling, personal assistance and support at school, at work or leisure) which would facilitate independent living.

According to the 2015-2020 Action Plan for Implementation of the UNCRPD a **draft of Social Services Act** to comply with UNCRPD was supposed to be elaborated in 2016, no evidence about which had been identified. **A concept paper for legislative amendments in compliance with Art.19 of the UNCRPD was also adopted by 2015.**

## Personal Assistance Services

According to the Bulgarian legislation social services provided in the community are the assistance services, day care services and residential services.<sup>234</sup> The types of **personal assistance services in the community** include:<sup>235</sup> a **personal assistant** (a person assisting a child or adult with a permanent disability or a serious illness with her/his everyday needs)<sup>236</sup>, a **social assistant** (a person providing consultations in relation to the user's recreational and

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<sup>230</sup> Bulgaria, *Let us Make School Attractive for Young People (Да направим училището привлекателно за младите хора)*, available at: <http://uspeh.mon.bg/?m=2&p=2>.

<sup>231</sup> Bulgaria, Ministry of Labour and Social Policy, Letter No. 05-10/10.10.2013 from Hasan Ademov, minister of labour and social policy.

<sup>232</sup> Bulgaria, Social Assistance Agency, *2015 Annual Report*, p.15, available at: [http://www.asp.government.bg/ASP\\_Files/APP/GODISHEN%20OTCHET%20ASP-2015.pdf](http://www.asp.government.bg/ASP_Files/APP/GODISHEN%20OTCHET%20ASP-2015.pdf).

<sup>233</sup> Bulgaria, Social Assistance Agency, *2015 Annual Report*, p.39.

<sup>234</sup> Bulgaria, Regulations for Implementation of Social Assistance Act, Art. 36, para.2.

<sup>235</sup> Bulgaria, Regulations for Implementation of Social Assistance Act, , Art. 36, para. 2, items 1-3 (the article was enforced on 1 May 2003; last amended in November 2016), available in Bulgarian at: <http://lex.bg/laws/ldoc/-13038592>.

<sup>236</sup> Bulgaria, Regulations for Implementation of Social Assistance Act, Additional provisions, Para. 1, item 17 (the article was enforced on 1 May 2003).

social activities),<sup>237</sup> and a **domestic assistant** (a person assisting the user with household and personal hygiene maintenance and home cooking).<sup>238</sup> **The assistants are not chosen by the persons with disabilities and the persons with disabilities do not have a personal budget for assistance and the freedom to choose how to spend it.** The available types of assistance to persons with disabilities are provided **on a project and programme basis whenever EU funding is available.** Consequently, the provision is inconsistent and the eligibility criteria are different. As a result, access to such assistance by all persons/children with disabilities is not ensured in a systematic way. In practice, in 2003 there were 6,230 personal assistants, in 2006 there were 1,000 personal assistants, and in 2011 there were 3,000 personal assistants employed in providing the relevant services.<sup>239</sup> The difference in numbers is a result of the fact that assistants are paid under **different projects that have different durations.** During the last three phases of the EU project *Alternatives* (2010, 2011 и 2013/2014) the total of **35,222 persons with permanent disabilities** expressed wish to benefit from personal assistant program.<sup>240</sup> The candidates for personal assistants who wished to provide care and support for their relatives and others who were selected were **31, 911** persons, and **21, 920** were trained to be personal assistants. Thus the project continued instead of 19, the total of 53 months. The additional funding allowed 51 in July 2013, 126 in January 2014 and 218 in June 2014 of the partner municipalities to increase the hourly quota and the payment for it from 1 Euro to 1,50 Euro per hour. **The total number of persons with disabilities who received personal assistance during the period 10 January 2011-31 December 2014 is 21,340 and the personal assistants were 20,185.** By the end of the project the users of this service were 13,115 and the assistants were 12,416. The project costed around BGN 168 million (EUR 84 million).<sup>241</sup>

**The Social Assistance Agency reports that in 2016 personal assistants were 2,967 persons out of whom 922 assisted children.**<sup>242</sup>

As a result, the variation in the types of personal assistance offered can be confusing to children and adults with disabilities and their families. The 2011 and 2012 *National Child Protection Programs* estimated that there was a **need for a minimum guaranteed package of services** to be provided to families and children at risk (including children with disabilities). However, this has not been achieved in practice and this measure has not been included in the National Programs since 2012.<sup>243</sup>

## Day Care Services

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<sup>237</sup> Bulgaria, Regulations for Implementation of Social Assistance Act, Additional provisions, Para. 1, item 18 (the article was enforced on 1 May 2003).

<sup>238</sup> Bulgaria, Regulations for Implementation of Social Assistance Act, Additional provisions, Para. 1, item 19 (the article was enforced on 1 May 2003).

<sup>239</sup> Bulgaria, *National Programme "Assistance for Persons with Disabilities"* (Национална програма "Асистенти за хора с увреждания," available in Bulgarian at: [http://www.az.government.bg/Projects/Prog/AHU/Frame\\_AHU.htm](http://www.az.government.bg/Projects/Prog/AHU/Frame_AHU.htm)).

<sup>240</sup> Bulgaria, Social Assistance Agency, *2015 Annual Report*, p.45.

<sup>241</sup> Bulgaria, Social Assistance Agency, *2015 Annual Report*, p.45.

<sup>242</sup> Bulgaria, Social Assistance Agency, *2016 Annual Report*, p.12.

<sup>243</sup> Bulgaria, National Network for Children, *Report Card 2014: What is the average Government score for childcare?* April 2014, p. 41, available at: [http://nmd.bg/wp-content/uploads/2014/04/belejnink2014\\_experten\\_cvetni\\_razdelit\\_web.pdf](http://nmd.bg/wp-content/uploads/2014/04/belejnink2014_experten_cvetni_razdelit_web.pdf).

Supporting services for community living of persons with disabilities are supposed to be also the day care centres and the centres for social rehabilitation and integration. According to legislation “**day care centre**” is a complex of social services that creates conditions for full service provision of the users throughout the day or weekly – provision of food, meeting everyday health, educational and rehabilitation needs as well as organisation of leisure time and personal contacts. The users pay a fee of 30 % of their income.<sup>244</sup> As of December 2015 the Social Assistance Agency reported that 71 **day care centres** for children with disabilities operate with total capacity of 1,944 places and **9 day care centres** for children and adults with disabilities with total capacity of 411 places.<sup>245</sup> As of June 2016, 74 day care centres for adults with disabilities operate (with a total of 1,853 users) – **6 centres for persons with physical disabilities** with 135 users, **50 day care centres for persons with intellectual disabilities** with 1,438 users and **12 centres for persons with psycho-social problems** (mental health problems) with 280 users.<sup>246</sup> **Around 4,200 children and adults with disabilities used day-care centres in the country in mid-2016.**

However, as of **31 December 2016** the Social Assistance Agency reported that there were: **73 day care centres for children and youth with disabilities** with the total capacity of **1,981** places, **5 day care centres for children and youth** for weekly care with the total capacity of **113 places** and only **13 day care centres for children and adults with disabilities** with the total capacity of **531 places** – **so children and adults with disabilities who used day care were 2,625.**<sup>247</sup>

“**Centre for social rehabilitation and integration**” is a complex of social services, related to rehabilitation, socio-legal consultations, education and vocational training counselling and elaboration of individual programs for social inclusion.<sup>248</sup> As of June 2016 there were 43 centres for social rehabilitation and integration for children, out of which **9 were for children with disabilities and 300 children used them.**<sup>249</sup> Centres for social rehabilitation and integration for adults with disabilities are 84, out of which 10 for persons with sight problems (315 users), 2 centres for persons with physical disabilities (100 users), 5 centres for persons with psycho-social problems (137 users), one centre for persons with intellectual

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<sup>244</sup> Bulgaria, Regulations for Implementation of Social Assistance Act, Additional provisions, Para. 1, item 21 (the article was enforced on 1 May 2003).

<sup>245</sup> Bulgaria, Social Assistance Agency, *2015 Annual Report*, p.15, available at: [http://www.asp.government.bg/ASP\\_Files/APP/GODISHEN%20OTCHET%20ASP-2015.pdf](http://www.asp.government.bg/ASP_Files/APP/GODISHEN%20OTCHET%20ASP-2015.pdf).

<sup>246</sup> Bulgaria, Social Assistance Agency, [http://www.asp.government.bg/ASP\\_Client/ClientServlet?cmd=add\\_content&lng=1&sectid=24&s1=23&selid=23](http://www.asp.government.bg/ASP_Client/ClientServlet?cmd=add_content&lng=1&sectid=24&s1=23&selid=23).

<sup>247</sup> Bulgaria, Social Assistance Agency, *2016 Annual Report*, p.21, available in Bulgarian at: <http://www.asp.government.bg/documents/20181/20931/O%D1%82%D1%87%D0%B5%D1%82+%D0%B7%D0%B0+%D0%B4%D0%B5%D0%B9%D0%BD%D0%BE%D1%81%D1%82%D1%82%D0%B0+%D0%BD%D0%B0+%D0%90%D0%B3%D0%B5%D0%BD%D1%86%D0%B8%D1%8F%D1%82%D0%B0+%D0%B7%D0%B0+%D1%81%D0%BE%D1%86%D0%B8%D0%B0%D0%BB%D0%BD%D0%BE+%D0%BF%D0%BE%D0%B4%D0%BF%D0%BE%D0%BC%D0%B0%D0%B3%D0%B0%D0%BD%D0%B5+%D0%B7%D0%B0+2016+%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D0%B0/2a9f2f34-7240-49ab-9070-ca6fc6da56dc>

<sup>248</sup> Bulgaria, Regulations for Implementation of Social Assistance Act, Additional provisions, Para. 1, item 22 (the article was enforced on 1 May 2003).

<sup>249</sup> Bulgaria, Social Assistance Agency, [http://www.asp.government.bg/ASP\\_Client/ClientServlet?cmd=add\\_content&lng=1&sectid=24&s1=23&selid=23](http://www.asp.government.bg/ASP_Client/ClientServlet?cmd=add_content&lng=1&sectid=24&s1=23&selid=23).

disabilities and psycho-social problems with 30 users, one centre for persons with hearing problems with 40 users (total of 622 users). **Centres for social rehabilitation and integration were used by 922 children and adults with disabilities in 2016.**

Obviously the available personal assistance, day care and rehabilitation services **cannot meet the needs of persons with disabilities who are around half a million.**<sup>250</sup>

### **Residential community-based services for children and adults with disabilities**

**Protected Homes** (*защитени жилища*) are social services where persons with disabilities live independently, supported by a team of minimum four professionals, including head of the home (preferably a psychologist), a social worker, a social pedagogue and a nurse or a mentor.<sup>251</sup> The social service may also be used as prevention measure from institutionalisation for people in the community. The users of the social service pay 50 % of their income as user tax to the Ministry of Labour and Social Policy which finances the service provider through a delegated budget allocated to the municipality where the home is located.<sup>252</sup> The users who have no income are exempt from the fee. As of June 2016 there were 142 protected homes: 15 homes for persons with physical disabilities with a total of 143 residents; 31 homes for persons with psycho-social problems with 305 users; 96 homes for persons with intellectual disabilities with 807 users. **The total of persons with disabilities residing in protected homes is 1,255.**

**Supervised Homes** (*наблюдавани жилища*) are social services in the community where together with living arrangements, support and consultation for people, leaving specialised institutions are provided. The staff of the supervised homes consists of a minimum of two specialists – a psychologist and a social worker.<sup>253</sup> Only **two supervised homes with a total of 16 persons are explicitly announced as homes for persons with psycho-social problems as of June 2016.**<sup>254</sup>

**Family-type Accommodation Centre (FTAC)** (*център за настаняване от семеен тип*) is a complex of social services, provided in an environment similar to the family one for not more than 15 persons.<sup>255</sup> As of June 2016 there were **81 family-type accommodation centres for**

<sup>250</sup> National Statistics Institute - Census 2011 Disabilities

[http://www.nsi.bg/EPDOCS/Census\\_Disability2011.pdf](http://www.nsi.bg/EPDOCS/Census_Disability2011.pdf). The last census was run in early 2011 and had a chapter on disabilities. The results show that the total number of disabled people is 474,267.

<sup>251</sup> Bulgaria, Social Assistance Agency, 'Protected Home' (*Защитено жилище*), Information, undated, available in Bulgarian at: [http://www.asp.government.bg/ASP\\_Files/ZJ-Mladeji.doc](http://www.asp.government.bg/ASP_Files/ZJ-Mladeji.doc).

<sup>252</sup> Bulgaria, Tariff for the fees for social services, financed by the state budget (*Тарифа за таксите за социалните услуги, финансирани от републиканския бюджет*), Art. 2, para. 1 (20) and Art. 4, para. 1, 01 January 2003, available in Bulgarian at:

<http://www.mlsp.government.bg/bg/law/regulation/%D0%A2%D0%90%D0%A0%D0%98%D0%A4%D0%90%20%D0%B7%D0%B0%20%D1%82%D0%B0%D0%BA%D1%81%D0%B8%D1%82%D0%B5%20%D0%B7%D0%B0%20%D1%81%D0%BE%D1%86%D0%B8%D0%B0%D0%BB%D0%BD%D0%B8%D1%82%D0%B5%20%D1%83%D1%81%D0%B%D1%83%D0%B3%D0%B8.doc>.

<sup>253</sup> Bulgaria, Social Assistance Agency, 'Supervised Home' (*Наблюдавано жилище*), Information, undated, available in Bulgarian at:

[http://www.asp.government.bg/ASP\\_Files/MSU/%D0%9D%D0%90%D0%91%D0%9B%D0%AE%D0%94%D0%90%D0%92%D0%90%D0%9D%D0%9E\\_%D0%96%D0%98%D0%9B%D0%98%D0%A9%D0%95\\_%D0%A1%D0%90%D0%99%D0%A2.doc](http://www.asp.government.bg/ASP_Files/MSU/%D0%9D%D0%90%D0%91%D0%9B%D0%AE%D0%94%D0%90%D0%92%D0%90%D0%9D%D0%9E_%D0%96%D0%98%D0%9B%D0%98%D0%A9%D0%95_%D0%A1%D0%90%D0%99%D0%A2.doc).

<sup>254</sup> Bulgaria, Social Assistance Agency,

[http://www.asp.government.bg/ASP\\_Client/ClientServlet?cmd=add\\_content&lng=1&sectid=24&s1=23&selid=23](http://www.asp.government.bg/ASP_Client/ClientServlet?cmd=add_content&lng=1&sectid=24&s1=23&selid=23).

<sup>255</sup> Bulgaria, Regulations for Implementation of Social Assistance Act, Additional provisions, Para. 1, item 26 (the article was enforced on 1 May 2003, last amended in 2009).

**adults with disabilities** – 10 for persons with dementia with 132 users; 19 centres for persons with physical disabilities for 259 users, 26 centres for persons with psycho-social problems with 350 users; 24 centres for persons with intellectual disabilities with 297 users, **the total of 1,038 adult users.**<sup>256</sup> As of December 2015 the Social Assistance Agency reports that 122 **family type accommodations for children/young adults with disabilities (FTAC)** were opened with total capacity of **1,655 places.**<sup>257</sup> As of 31 December 2016 the Social Assistance Agency reported that 146 family-type centres for children/youth without disabilities with the total capacity of 1,780 places, **130 family-type centres for children/youth without disabilities with the total capacity of 1,753 places and 8 family-type centres for children and youth in need of constant medical care with the total capacity of 64 places** are functioning in the country.<sup>258</sup> So **children, youth and adults with disabilities placed in family-type accommodation centres are around 2,860.**

**The number of children and adults with disabilities placed in residential community-based services is approximately 4,131 persons.**

All types of social services are provided by licenced service providers and are financed with delegated budgets.

## Deinstitutionalisation of adults with intellectual and psycho-social problems

According to the *Vision for the Deinstitutionalisation of People with Intellectual Disabilities, Mental Health Problems and Dementia 2010-2011*, in 2010 a total of 2,349 people with intellectual disabilities lived in 28 institutions, 1,249 people with mental health problems lived in 15 institutions and 843 people with dementia lived in 13 institutions (**the total number of institutions was 56 and their residents' number - 4,441**). The Vision was replaced with the *National Strategy for Long Term Care*<sup>259</sup> that was adopted in January 2014 to plan the main aims and activities for development of community-based services for elderly and adults with disabilities and deinstitutionalisation of persons with disabilities living in institutions. Unfortunately during the period 2010-2016, 10 institutions for persons with mental disabilities were closed down and 10 were opened where children with intellectual disabilities have lived and reached the age of 18 and thus the institutions turned institutions for adults. **The total number of residents in institutions for persons with mental disabilities in 2015 was 3,979.**<sup>260</sup>

<sup>256</sup> Bulgaria, Social Assistance Agency,

[http://www.asp.government.bg/ASP\\_Client/ClientServlet?cmd=add\\_content&lng=1&sectid=24&s1=23&selid=23](http://www.asp.government.bg/ASP_Client/ClientServlet?cmd=add_content&lng=1&sectid=24&s1=23&selid=23).

<sup>257</sup> Bulgaria, Social Assistance Agency, *2015 Annual Report*, p.15, available at:

[http://www.asp.government.bg/ASP\\_Files/APP/GODISHEN%20OTCHET%20ASP-2015.pdf](http://www.asp.government.bg/ASP_Files/APP/GODISHEN%20OTCHET%20ASP-2015.pdf).

<sup>258</sup> Bulgaria, Social Assistance Agency, *2016 Annual Report*, p.21.

<sup>259</sup> Bulgaria, Council of Ministers, *National Strategy for Long Term Care*, adopted on 7 January 2014, available in Bulgarian at: <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=882>.

<sup>260</sup> Bulgaria, Bulgarian Helsinki Committee, *Unhappening Deinstitutionalization of Persons with Mental Disabilities*, monitoring report, p.6.

Upon a request by the Bulgarian Helsinki Committee to the Social Assistance Agency in 2016 it replied that only in 2015 31 residential community-based services for persons with mental disabilities have been set up: 16 protected homes for adults with intellectual disabilities; 4 protected homes for persons with psycho-social problems; 7 family-type centres for adults with intellectual disabilities and 4 family-type centres for persons with psycho-social problems.<sup>261</sup>

A 2014-2016 Bulgarian Helsinki Committee **monitoring report in 81 newly established FTAC and protected homes for adults with intellectual disabilities and psycho-social problems** states that although there are rare examples of good practice of real independent living and social inclusion, the majority of the residents in the so-called community-based services live under similar conditions as in the institutions:

- placement in FTAC is done by other persons, not the person with disability and his/her wish often is not explored, contract for using services is signed by guardians or by the person but without his/her being informed properly about the content;
- buildings vary between luxury and old houses, institutions, in small towns they were used for kindergartens, schools or are separate buildings or corridors of institutions of local hospitals; out of 128 in total, 45 protected homes are located in villages where there is not any opportunity for activities;
- food is prepared by catering companies;
- daily activities are rare and largely not corresponding the personal needs and wishes of the users;
- personal money is not spent according to the wishes of persons with disabilities;
- guardians of the majority of the users placed under guardianship are staff members of the FTAC;
- few persons with disabilities use educational or day care service and go to work;
- few persons with disabilities maintain regular contacts with the outside world;
- staff is insufficient, underqualified and underpaid;
- medical care is not provided in the way applicable for persons living outside residential services and is often lacking or of lower quality.<sup>262</sup>

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<sup>261</sup> Bulgaria, Social Assistance Agency, Letter by the SAA after a request by the BHC from February 2016.

<sup>262</sup> Bulgaria, Bulgarian Helsinki Committee, *Unhappening Deinstitutionalization of Persons with Mental Disabilities*, monitoring report, 2016, p.30-98.

## ARTICLE 23 - RESPECT FOR HOME AND THE FAMILY

### Children with Disabilities

The Child Protection Act provides that the protection of the child is based on the principle of raising the child in the family environment<sup>263</sup> and support for the family.<sup>264</sup> Protection is provided, first and foremost, through support, services and cooperation rendered in the child's family environment<sup>265</sup> as well as providing further special care for children with disabilities.<sup>266</sup>

The main **safeguards for the family life** of children with disabilities are set in the Child Protection Act. The measures for child protection in family environment are: the provision of psychological, legal, and pedagogical support for the parents; referral to community-based social services; appropriate consultation and provision of information to the child; consultation on social assistance and social services issues; cooperation on the improvement of the social and material conditions of living; social work to facilitate the relationship between the parents and the children; assessment of the child's individual needs and capacity in order to be referred to the most appropriate school; help finding a job for children over the age of 16; and help and assistance in adoption procedures and assistance to adults who take care of children in the implementation of their functions.<sup>267</sup>

Another safeguard for the right to family life is the provision that recommends that **placement outside of the biological family** or with other family members and into residential or foster care should be used by the Child Protection Departments **only as a last resort** when all other options for raising up the child in his/her biological family have been exhausted.<sup>268</sup> However, after his visit to Bulgaria in 2015, the Commissioner for Human Rights of the Council of Europe expressed his concern at the allegations that **the socio-economic background, the ethnic origin and/or the disability of the child are sometimes part of the reasoning in the decision to separate a child from his/her parents and place him/her in a social or medical care institution**. Concerning more particularly the placement of children on the basis of their disabilities, the Commissioner stated that **there are still cases where medical staff have pushed parents to abandon their children born with disabilities** and place them in a specialised institution under the pretext that this would be the only viable solution.<sup>269</sup>

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<sup>263</sup> Bulgaria, Child Protection Act, (13 June 2000), Art. 3, item 2.

<sup>264</sup> Bulgaria, Child Protection Act, (13 June 2000), Art. 3, item 12.

<sup>265</sup> Bulgaria, Child Protection Act, (13 June 2000), Art. 4, item 1.

<sup>266</sup> Bulgaria, Child Protection Act, (13 June 2000), Art. 4, item 12.

<sup>267</sup> Bulgaria, Child Protection Act, (13 June 2000), Art. 23.

<sup>268</sup> Bulgaria, Child Protection Act, (13 June 2000), Art. 25, para. 2.

<sup>269</sup> Council of Europe, *Report by Nils Muiznieks Commissioner for Human Rights of the Council of Europe following his visit to Bulgaria from 9 to 11 February 2015*, p.10, available in English at:

Every child has the right to personal relationships with his/her parents unless the court has decided the opposite based on the principle of **best interests of the child**.<sup>270</sup> The 2011 and 2012 *National Child Protection Programs* estimated that there was a **need for a minimum guaranteed package of services** to be provided to families and children at risk (including children with disabilities). However, this has not been achieved in practice and this measure was not included in the National Program since 2012.<sup>271</sup> Standards for social services, universal allowances for children, pocket money for students with disabilities, and professional foster care salaries have been increased and an attempt to differentiate the funding for residential services has been made in 2014. However, **no standards for services on prevention of abandonment, early intervention and support to families at risk have been adopted**.<sup>272</sup>

Children with permanent disabilities who live in their biological families or the families of their relatives or foster families (as a protection measure under the Child Protection Act) receive monthly family allowances regardless of the income of the families and these allowances were doubled in 2013.<sup>273</sup> In 2017 the allowances were raised reaching EUR 477 for the most severely disabled children.

**Measures for prevention of abandonment** are applied when a pregnant woman is at risk to abandon her child when one or more of the following circumstances are at hand: she is under the age of 18; she is not married; she has no income or/and house; she has mental health problems and/or communication problems; she has one or more children at risk; she was a victim of violence; she has one or more children with disabilities or other reasons for the risk.<sup>274</sup>

## Adults with disabilities

In January 2016 amendments of the Social Assistance Act have been introduced to provide that placement in institutions shall be done only after all other options of community –based services have been exhausted<sup>275</sup> and that children, persons with permanent disabilities and persons under plenary guardianship may be placed in institutions for a period no longer than 3 years.<sup>276</sup> Yet the court might extend the term if the children cannot be reintegrated in their families, adopted, placed in families of relatives and close friends, foster family or residential

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<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2768089&SecMode=1&DocId=2277360&Usage=2>.

<sup>270</sup> Bulgaria, Family Code (1 October 2009), Art. 124, para. 2.

<sup>271</sup> Bulgaria, National Network for Children, *Report Card 2014: What is the average Government Score for Childcare?*, April 2014, p. 41, available in Bulgarian at: [http://nmd.bg/Report Card2014\\_expert version\\_web.pdf](http://nmd.bg/Report Card2014_expert version_web.pdf).

<sup>272</sup> Bulgaria, National Network for Children, *Report Card 2015: What is the average Government score for childcare?*, April 2016, p. 46, available in English at: [http://nmd.bg/Report Card2015\\_Engl\\_web.pdf](http://nmd.bg/Report Card2015_Engl_web.pdf).

<sup>273</sup> Bulgaria, Family Children Allowances Act (*Закон за семейните помощи за деца*) (1 April 2002), Art. 7, para. 8 (enforced on 1 September 2013) and Art. 8d (enforced on 1 January 2012).

<sup>274</sup> Bulgaria, Ordinance for the conditions and procedure for implementation of measures for prevention of abandonment, placement of children in institutions and their reintegration, Art. 6.

<sup>275</sup> Bulgaria, Social Assistance Act, Art.16, para.2.

<sup>276</sup> Bulgaria, Social Assistance Act, Art.16, para.3.

community-based service and the adults cannot be cared for in family environment or residential community-based service.<sup>277</sup>

**Apparently from the sections above and the new regulation right to respect for home and family environment was not, is not and will be not implemented in practice.**

## ARTICLE 24 – EDUCATION

Since 2002, under Bulgarian legislation, children with disabilities/their parents/legal guardians have the **right to choose what kind of school and type of education they would like to attend.**<sup>278</sup> Under the Public Education Act, the children with special educational needs were to be educated in mainstream schools that were obliged to enrol them free of charge.<sup>279</sup> In August 2016 a new Preschool and School Education Act (PSEA) was enforced.<sup>280</sup> It introduces the concept that education aims at personal development of the students and acquiring of key competences for personal and professional development as well as understanding and implementing values like: sustainable development, democratic principles, tolerance, human rights, cultural heritage, global development processes etc. The act provides for the components of the right to education – **life-long learning and inclusive education** (Art.7) and provides that school education in state and municipal schools is free of charge even **after** the compulsory school age (Art.9, para.2.). State educational standards are supposed to be elaborated among which those that estimate the requirements for inclusive education and funding of the education (in a separate ordinance issued by the Council of Ministers) and the requirements for vocational training (Art.22). Some standards are just elaborated and still not implemented in practice.

According to the PSEA each kindergarten, school and centre for personal development support has the **autonomy** (in accordance with the legislation): to develop their own educational policies, schedules and plans; to select and apply teaching methods, materials, programs and subjects; **to provide vocational trainings of their choice** with the main aim to meet the needs of the students and to provide quality education to them (Art.28). **Schools for children with sensory disabilities are special and they provide primary and high school education as well as vocational training (Art 44). Children with other kinds of disabilities are enrolled in mainstream schools or in centres for special educational support depending on their assessment and the wish of their parents/guardians.**

The law introduces two new types of centres for support of students. **Municipal Centres for**

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<sup>277</sup> Bulgaria, Social Assistance Act, Art.16, para.4.

<sup>278</sup> Bulgaria, Public Education Act, (18 October 1991), Art. 9.

<sup>279</sup> Bulgaria, Public Education Act, (18 October 1991), Art. 27.

<sup>280</sup> Bulgaria, Preschool and School Education Act (*Закон за предучилищното и училищното образование*) (enforced on 1 August 2016), available in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2136641509>.

**personal development support** that work: to develop interests, potential, competencies of students in science, art and sports; to provide carrier guidance; **to provide resource support to students with special needs**; to ensure teaching and psychological support; to implement programs for training of parents and to perform **preventative, diagnostic, rehabilitation and resocialization activities with students** (Art.49). **Centres for special educational support** (municipal and state) perform diagnostic, rehabilitation and therapeutic work with children with special needs after being assessed as such by inclusive education departments; provide teaching and psychological support; implement programs for training of the families of students with special needs; **provide education at the compulsory school age as well as vocational training of students with special needs** (Art.49, para.2) It should be noted that in practice the centres for special educational support are **the former special schools for children with intellectual disabilities**. As there is not any publicly available statistical data about the number of students in these schools in 2017, data from the planned budget standards of the Ministry of Education was reviewed. According to it, **2,032 children study in centres for special educational support** currently and the annual allowance per child for education in them is BGN 4,565 (EUR 2,341).<sup>281</sup> Another 690 children use also boarding house at the school. The same budget estimates show that around 10,000 (or **around 14,000** according to the State Budget Act<sup>282</sup>) students use resource support for some learning problem or disability while studying in **mainstream schools**.

A variety of flexible forms of education are also regulated in details by the new act. The daily, evening and extramural teaching is performed in classes and groups while the individual and self-learning is organised for each student separately. The **combined form of teaching** consists of class teaching and certain subjects are taught in individual sessions with the student (**this form was supposed to help mainly children with disabilities but according to the budget estimates for 2017 only 3 children use it**). The **dual teaching** takes place in classes and also in individual sessions in both school and the real workplace where practical skills are acquired (Art.108). The distant (correspondence) form of teaching may be applied for students of 5<sup>th</sup> to 12<sup>th</sup> grade (Art.113), the combined form - for students who need daily in-class education and individual education in certain subject (Art.114) and dual education - for students over the age of 16 (Art.115).

An **Ordinance for Inclusive Education** issued by the Council of Ministers on 4 November 2016<sup>283</sup> provides very detailed rules for the qualification and work of the staff, for the requirements, the terms, the activities, the cooperation and coordination between educational institutions in provision of education, diagnostic, therapeutic and other services

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<sup>281</sup> Bulgaria, Ministry of Education, *2017 Planned Budget for Schools according to ME information*, available at: [file:///C:/Users/User/Downloads/Naturi\\_admin\\_2017.pdf](file:///C:/Users/User/Downloads/Naturi_admin_2017.pdf).

<sup>282</sup> Bulgaria, Ministry of Education, *2017 Planned Budget for Schools according to the State Budget Act*, available at: [file:///C:/Users/User/Downloads/Naturi\\_ministerstva\\_2017.pdf](file:///C:/Users/User/Downloads/Naturi_ministerstva_2017.pdf).

<sup>283</sup> Bulgaria, Ordinance for Inclusive Education (*Наредба за приобщаващото образование*) (4 November 2016), available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2136927891>.

for special educational support in mainstream and special schools and kindergarten. It also determines the way in which individual plans for education and development are elaborated, updated and implemented and the procedure for assessment and certification of the acquired knowledge and skills in inclusive education.

The new Education Act refers to the **Vocational Education and Training Act (VETA)**<sup>284</sup> for specific matters related to vocational training including for students with disabilities. Vocational training aims at professional qualification and in certain cases at finishing high school and vocational training together. The VETA was amended in 2014 and 2016 in order to correspond to the new Education Act. Thus it also introduced in August 2016 **dual education and training**. The 2016 amendments of VETA provide **for validation of acquired knowledge and skills by informal education** for the purpose of continuation of vocational training and access to labour market (Art.5). The minister of education adopts **a list with professions** in which vocational education and training can be provided in schools. The 2014 and 2016 amendments in VETA regulated in details the 4 levels of acquiring professional skills and the prerequisites for each of them in terms of finished levels of education. **Centres for special educational support have also right to teach students with disabilities in vocational training for 1<sup>st</sup> level of professional qualification** (Art.9, para.5). The VETA provides that professional skills may be acquired by informal and non-formal ways (Art.9). Special attention is paid to development of quality assessment systems for vocational education outcomes within the schools (Art. 9a). For each profession state educational standards need to be elaborated to provide for the requirements to: the teachers, the technical equipment, the teaching plans and programs, the outcomes of the education and the trainees (Art.13a). The minister of education should adopt framework teaching programs for vocational training for each profession and level of professional qualification (Art.10). **Vocational training of persons over the age of 16 in state and municipal schools is to be paid by the trainee** (Art.14b, para.4).

Under the former Public Education Act as well as under the new Preschool and School Education Act children with disabilities are enrolled in **special schools** only after all other options are exhausted, **as a last resort** and with the written wish of their parents/guardians.

## Integration in the mainstream schools

The children with disabilities are **assessed by commissions at the Regional Inspectorates on Education** that referred them to the most appropriate form of education.<sup>285</sup> In 2006 resource centres were set up at the Inspectorates to facilitate the education of children with disabilities. The **Ministry of Education and Science is obliged** to ensure: the preschool and school education of children with disabilities in mainstream schools; supportive environment

<sup>284</sup> Bulgaria, Vocational Education and Training Act (*Закон за професионалното образование и обучение*) (30 July 1999, last amended in 2016), available in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2134673921>.

<sup>285</sup> Bulgaria, Integration of Persons with Disabilities Act, (1 January 2005), Art. 16.

for inclusive education; early hearing, sight, speech and psychological rehabilitation/therapy; textbooks, teaching materials, technical devices and vocational training for children with disabilities and adults with disabilities under the age of 29.<sup>286</sup> The Ministry of Education also creates opportunities for the education of children with special educational needs who are not enrolled in the mainstream schools.<sup>287</sup>

As a result of the amendments introduced in 2002 and the effort to create a supportive environment in mainstream schools, **the number of children with disabilities who study in special schools has declined** (in the 2003/2004 school year there were 76 special schools and 9,163 enrolled students, whereas in 2012/2013 there were only 49 such schools with a total of 3,234 students).<sup>288</sup> As there is not any publicly available statistical data about the number of students in these schools in 2017, data from the planned budget standards of the Ministry of Education was reviewed. According to it, **2,722 children** study in centres for special educational support (**special schools for children with intellectual disabilities**) in **2017**. The annual allowances per child who studies in special schools are: BGN 4,565 (EUR 2,341) for centres for special educational support (and BGN 8,337 (EUR 4,275) when the centre is with a boarding house); BGN 9,891 (EUR 5,072) for **special schools for children with sight disabilities on boarding house (317 such children study in such schools)** and BGN 9,544 (EUR 4,894) for **special schools for children with hearing disabilities on boarding house (401 children study in such schools)**.<sup>289</sup>

**Since 2002 the number of children with disabilities enrolled in mainstream schools has increased.** The Ministry of Education and Science (MES) reported that during the 2009-2010 academic year 8,925 children and students with disabilities aged 7 to 18 were studying in mainstream schools in Bulgaria. During the 2010-2011 academic year, the number of these children was 10,304.<sup>290</sup> The MES received BGN 10 million (EUR 5 million) under the Human Resources Operational Program to ensure a supportive environment for children with disabilities in mainstream schools for the period 2011-2014.<sup>291</sup>

On 12 July 2011, the Minister of Education approved the scheme *Support for the Education of Children with Special Educational Needs* under which 44 projects were approved for the total amount of BGN 8,568,527 (EUR 4,394,116). The objectives of the operation were: the provision of inclusive education and supportive environment, the development of programmes and teaching tools, vocational skills for students and professional skills for

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<sup>286</sup> Bulgaria, Integration of Persons with Disabilities Act, (1 January 2005), Art. 17.

<sup>287</sup> Bulgaria, Integration of Persons with Disabilities Act, (1 January 2005), Art. 18.

<sup>288</sup> Bulgaria, Ministry of Education and Science, *Written reply No. 94-21499 on 14 November 2012*.

<sup>289</sup> Bulgaria, Ministry of Education, *2017 Planned Budget for Schools according to the State Budget Act*, available at: [file:///C:/Users/User/Downloads/Naturi\\_ministerstva\\_2017.pdf](file:///C:/Users/User/Downloads/Naturi_ministerstva_2017.pdf).

<sup>290</sup> Bulgaria, Ministry of Education and Science, *Written reply 1104-08/28.09.2011, signed by the minister Sergey Ignatov, p.4.*

<sup>291</sup> Bulgaria, Ministry of Education and Science, *Written reply 1104-08/28.09.2011, signed by the minister Sergey Ignatov, p.4.*

teachers, rehabilitators, speech therapists, psychologists as well as parents. The budget for the operation was EUR 5,112,919.<sup>292</sup>

In 2014 the number of children with special education needs (SEN) who studied in mainstream schools has increased to 13,313 children and students. The total number of children with SEN receiving inclusive education during the school year 2013/14 (the children from the pilot project including) was 14,967. They were supported by 1,364 specialists from the Resource Centres.<sup>293</sup> **The amount of the fund supplement for children and students who need additional support in schools and kindergartens amounted to BGN 308 (EUR 159) per child and no less than 40% of the supplement is spent to create a supportive environment for helping children and students.** This was a minimal increase over 2012, when the supplement for a child or student who needed resource support was BGN 293 (EUR 151) per year.<sup>294</sup>

The 2017 budget estimates show that around 14,000 students use resource support for some learning problem or disability while studying in mainstream schools. The annual allowance for resource support in mainstream schools per child with special needs is BGN 2,190 (EUR 1,123).

**A considerably large proportion of disabled children remain outside the educational system** (children with extensive disabilities and complex needs, as well as those in residential care). As no public data about them is available it can be only speculated that as the average number of children receiving disability social benefits is over 26,000 and the average number of children with disabilities in special and mainstream schools is around 17,500, the difference between these numbers consists of children at the ages 0 to 5 as well as those who do not attend any form of studying.

## Accessibility of the school buildings and adaptation of the teaching process

According to the Ministry of Education and Science<sup>295</sup>, there were **91 school buildings which were fully accessible in October 2013**. The full accessibility referred to by the ministry consists of an adapted WC at the school and proper ramp or lifting platform. It remains unclear whether all school floors used by the students are fully accessible to students with disabilities. **As of the end of 2013 ramps had been built in a total of 143 schools, 139 schools had adapted WCs, 110 had accessible infrastructure, while 10 were equipped with an elevator system.** As of 2013 there were 29 schools with ongoing reconstructions under the National programme “*Creating an accessible architectural environment 2013*”. The

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<sup>292</sup> Bulgaria, Ministry of Labour and Social Policy, *Written reply 01-39/15.08.2011*, signed by Ginka Mashova, director of Social Protection and Equal Opportunities Department at the MLSP, p. 13.

<sup>293</sup> Information from the MoE provided in a letter dated 17.10.2014, outgoing No 18-617.

<sup>294</sup> Bulgaria, National Network for Children, *Report Card 2014: What is the average Government score for childcare?*

April 2014, p.19, available in English at: [http://nmd.bg/Report Card2014\\_engl\\_web.pdf](http://nmd.bg/Report Card2014_engl_web.pdf).

<sup>295</sup> Bulgaria, Ministry of Education and Science, *Letter No. 1104-9 from 17.10.2013*, signed by Penka Ivanova.

budget of the programme was EUR 800,000. During the implementation of the project BG051PO001-4.1.07 “*Inclusive education*” under the Human Resources Development Operational Programme in 2013, a total of **1,331 students** with special educational needs received support to study in **84 pilot secondary schools** (3 in every region). Appointed to help the students in those schools were 84 psychologists, 152 resource teachers, 41 speech therapists, 2 teachers for children with impaired vision and one hearing therapist. A methodology which evaluates the educational needs of the students had already been developed. Furthermore, the specialised rooms in the 5 schools for children with sensory disabilities in the country were repaired and additionally equipped. The project aimed to create a supportive environment for 400 children (from institutions for children with intellectual disabilities scheduled for closure in the process of deinstitutionalisation) in 64 pilot kindergartens and elementary schools near their new accommodation centres of family type and sheltered housing. Another 192 specialists were supposed to be appointed to support them.

To date, efforts at inclusive education of disabled children have focused largely on the provision of specialists in mainstream schools who often lack coordinated direction, and their work is made harder by the lack of funds and problematic physical environments in the schools. Upholding the right to inclusive education can also be identified as a challenge due to the lack of regular financial resources, the inaccessible environment and the lack of individual programmes and of qualified staff. So far, the **inclusive education process is still limited to the appointment of specialists in the mainstream and primary schools**, who face a situation of not being provided with work methodologies in the new circumstances.

## ARTICLE 25 – HEALTH

### Children with disabilities

In 2016 the National Network for Children reported that “a new kind of medical establishment was legally created **in 2015, namely a Centre for complex services to children with disabilities and chronic diseases**. It is envisaged that these centres provide support to families of children with disabilities in terms of early and subsequent diagnosis, prepare a plan for treatment and monitor the child's condition. At the end of 2015, it was not clear how this would be implemented in practice and where and how these centres would be planned to operate. The specific difference in the functions of the centres for complex services to children with disabilities and chronic diseases and the services under project ‘Social Inclusion’ launched in 66 municipalities was unclear too. To train specialists from the centres trainings were organised on the methodology of providing the ‘Early Intervention’

service. The total of 2,577 persons used the different services of the centres.”<sup>296</sup> By the end of 2016 Regulations for these centres for complex services to children with disabilities and chronic diseases were adopted by the Ministry of Health. However, they do not provide sufficient regulation about the types of the services and their link to other services provided to children with disabilities. According to the Ministry of Labour and Social Policy, all newly opened **47 centres for early disability intervention** will continue to operate after the project to open them expires. According to the data of the National Network for Children member organisations, however, the majority of the centres have suspended operations for 10 months (2015-2016) due to the end of the project and suspended funding. Another service of the Ministry of Health, which is related to children with disabilities, is the **Health and Counselling Centres for Maternal and Child Health, opened at the regional general hospitals under the ‘National Programme for the Improvement of Maternal and Child Health 2014-2020’**. Besides the activities aimed at pregnant women and young parents, they will also provide early diagnosis of developmental delay in born children.<sup>297</sup>

In 2014 the **Ministry of Health (MoH) did not maintain a register of children with disabilities and has neither information about their rehabilitation, nor ways to measure its effectiveness.**<sup>298</sup> A register would help align the data used by various ministries involved and help them in analysing activities and planning their policies. The lack of a proper approach and a system for recording and reporting data for diagnosis and rehabilitation of children with disabilities is alarming as it shows a misunderstanding of the scale and impact of this issue. There is no data on the total number of children diagnosed with disabilities, their distribution by social groups and municipalities so as to help planning and drafting of effective policies and practices for these children and their parents.<sup>299</sup> **A national register for all persons with disabilities diagnosed by the Medical Expert Commissions has been set up in 2013 according to the Ministry of Health. However, some regional commissions do not fill in data from their work in it.**

The Ministry of Health still does not have any information on the number of children who are in need of **specialised mental health care**, on their distribution in the country and on the type of their illness. Child psychiatrists are mainly in the capital Sofia and in some regional centres such as Varna, Rousse, Plevna, Targovishte and Kyustendil. Still, whole areas of the country **do not have an active child psychiatrist**, which is becoming a serious problem given the large number of children and adolescents leaving the institutions for children and youth

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<sup>296</sup> Bulgaria, National Network for Children, *2016 Report Card*, p. 37.

<sup>297</sup> Bulgaria, National Network for Children, *2016 Report Card*, p. 37.

<sup>298</sup> Bulgaria, National Network for Children, *2014 Report Card: What is the average Government score for childcare?*

April 2014, p. 15, available at: [http://nmd.bg/wp-content/uploads/2014/04/belejn2014\\_experten\\_cvetni\\_razdelit\\_web.pdf](http://nmd.bg/wp-content/uploads/2014/04/belejn2014_experten_cvetni_razdelit_web.pdf).

<sup>299</sup> Bulgaria, National Network for Children, *2014 Report Card: What is the average Government score for childcare?* April 2014, p. 15.

who have experienced mental distress and are in need of specialised support and assistance.<sup>300</sup>

By December 2013, the number of psychologists in schools had risen to 1,180 compared to 786 psychologists in 2012. However, **the number of child psychologists and psychiatrists** remains extremely insufficient, as there are no specialists in the education system for implementation of comprehensive mental health programmes.<sup>301</sup> There is a lack of a comprehensive approach and cooperation between different institutions and structures that are in charge of the children's mental health. **There is no link between the work of school psychologists, child psychologists and psychiatrists:** the establishment of such a coordination is a must so that mental and eating disorders can be identified at an earlier stage and the child and family have the opportunity to receive the necessary specialised assistance.<sup>302</sup>

**Early intervention and assistance** are still not developed and access to healthcare services is a serious problem, especially for the ethnic minority population. Many of these children live in institutions and, even when some of them are deinstitutionalised, they are placed in the so called "alternative services" that are just small institutions often located in the same building or next to the building of the institution that they were removed from.<sup>303</sup> Community-based social services are inadequate in number and distribution, and their staff lacks proper training.<sup>304</sup>

However, significant progress was made by an EU funded project called "*Direction- Family*" which managed to significantly reduce the number of babies placed in eight baby institutions from the hospitals shortly after birth. The minister of healthcare issued methodological guidance for the prevention of the abandonment of children (mainly children with disabilities) in 2009 which aimed at cooperation between the medical doctors in hospitals, the Social Assistance Departments and the service providers when working on a case of a child at risk to be abandoned. After the project started, this cooperation brought about actual results. Only 30 children were placed in these eight institutions, compared to 705 children that were placed in the other 21 institutions of the same type for the same period in 2013.<sup>305</sup>

In March 2016 the head of the Fund for Treatment of Children with Disabilities had been dismissed. This led to delay in approving children with rare diseases for treatment abroad. In May-June the regular meetings of the fund were restored.

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<sup>300</sup> Bulgaria, National Network for Children, *2014 Report Card: What is the average Government score for childcare?* April 2014, p. 15, available in Bulgarian at: [http://nmd.bg/wp-content/uploads/2014/04/belejn2014\\_experten\\_cvetni\\_razdelit\\_web.pdf](http://nmd.bg/wp-content/uploads/2014/04/belejn2014_experten_cvetni_razdelit_web.pdf).

<sup>301</sup> Bulgaria, National Network for Children, *2014 Report Card: What is the average Government score for childcare?* April 2014, p. 15.

<sup>302</sup> Bulgaria, National Network for Children, *2014 Report Card: What is the average Government score for childcare?* April 2014, p. 15.

<sup>303</sup> Bulgaria, National Network for Children, *2014 Report Card*, p. 41-42.

<sup>304</sup> Bulgaria, National Network for Children, *2014 Report Card*, p.41.

<sup>305</sup> Bulgaria, National Network for Children, *2014 Report Card*, p.37.

## ARTICLE 26 - HABILITATION AND REHABILITATION

The National Network for Children (a prominent umbrella organization) raises concerns about the insufficient data collection and provision of rehabilitation to children with disabilities in its 2015 report. According to the National Health Insurance Fund regulations in Bulgaria, **rehabilitation of children with disabilities** can be covered financially by seven different clinical paths in hospitals depending on the main disease resulting in the need of rehabilitation. One can also be provided by out-patient care and health insurance. Early diagnostics of neurological diseases during the pre-, peri- and post-natal period of the child's development is essential in view of the potential of timely treatment. The total number of children diagnosed with neurological diseases in 2014 was 23,828, compared to 24,578 in 2013 and 24,387 in 2012.<sup>306</sup> Children born with neurological diseases need to be referred to specialised hospitals where a team of professionals develops and carries out a programme for thorough diagnosis, treatment and complete medical and pedagogical rehabilitation; controls its implementation; and trains parents to make them part of the rehabilitation team. **There is an urgent need for a single register of children with chronic and neurological diseases.** It would make it possible for proper, long-term planning of the funds needed for medical and social activities with these children. Currently, the Ministry of Health has no such information and register. According to the regulations on using the service pack covered by the Health Insurance Fund, children with cerebral palsy are entitled to 120 days of rehabilitation on an annual basis scheduled by the doctor. Rehabilitation is available in 57 hospitals and 17 Institutions for Medical and Social Care for Children and is funded by the Health Insurance Fund. Specialised rehabilitation centres are insufficient to meet the needs of the large number of children with disabilities.<sup>307</sup> The Bulgarian Helsinki Committee's monitoring of all institutions for medico-social care for children carried out in 2013 and 2014 confirmed these concerns. It revealed children in shocking conditions in these homes: no respiratory rehabilitation is carried out for bedridden children despite the fact that this is a proven prevention tool for hypostatic pneumonia; the children with the most severe disabilities have significant psychomotor retardation, delayed growth in height and weight, adynamia, forced lying position accompanied by pressure injuries, deformations of the musculoskeletal system, joint contractures and muscle hypertrophy.<sup>308</sup>

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<sup>306</sup> Bulgaria, National Network for Children, *2015 Report Card: What is the average Government score for childcare?* April 2015, p. 26, available in English at: [http://nmd.bg/Report Card2015\\_Engl\\_web.pdf](http://nmd.bg/Report Card2015_Engl_web.pdf).

<sup>307</sup> Bulgaria, National Network for Children, *2015 Report Card: What is the average Government score for childcare?* April 2015, p. 26, available in English at: [http://nmd.bg/Report Card2015\\_Engl\\_web.pdf](http://nmd.bg/Report Card2015_Engl_web.pdf).

<sup>308</sup> Bulgaria, Bulgarian Helsinki Committee, *2014 Annual Report*, April 2015, p. 81, available in English at: [http://www.bghelsinki.org/media/uploads/annual\\_reports/annual\\_bhc\\_report\\_2014\\_en.pdf](http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2014_en.pdf).

# ARTICLE 27 - WORK AND EMPLOYMENT

## Vocational training

According to school education legislation the principle of equality, non-discrimination and inclusion should be applied.<sup>309</sup> The Vocational Education and Training Act does not explicitly prohibit discrimination but provides that **vocational education of students with disabilities should be done in accordance with their health condition** - the students with sensory disabilities are to be trained in professions appropriate for them and students with intellectual disabilities are trained in part of profession or 1<sup>st</sup> level of professional qualification.<sup>310</sup> The policy and strategic documents do not contain any information about vocational skills programmes (or professions in which training is offered) in which young people with disabilities may be involved. The latter are only mentioned among others as one of the disadvantaged groups on the labour market and no further details are provided about their number, location, education status, gender, type of disability or potential employment programmes targeted at them.

The 2014-2016 report of the Ministry of Education **does not provide any statistics** about the students with disabilities enrolled in mainstream and special schools or those who are in any form of vocational training. It does not report anything about the Youth Guarantee either.

According to the National Statistical Institute data in 2015/2016 academic year there were 2,014 mainstream schools, 46 special schools for children with intellectual disabilities (with 2,427 students), 5 special schools for children with sight and hearing disabilities (with 307 and 281 students respectively)<sup>311</sup> and 387 mainstream vocational training high schools with around 93,000 students in them.<sup>312</sup> **No data is publicly available about the students with disabilities enrolled in mainstream schools including in vocational training high schools.** The lack of data makes it impossible to assess the impact of the new legislative provisions on students and young people with disabilities.

**The National European Youth Guarantee Implementation Plan 2014-2020 (NEYGIP) contains some measures (mainly focused on universal design in schools) related to education and vocational training of children and youth with disabilities. However, it does not specifically envisage any specific measures for training and employment of young persons with disabilities.**

### Employment of Persons with Disabilities

Data about the **unemployed persons with disabilities** is not regularly collected/published by the National Statistical Institute and the terms used in different programs/plans/statistical

<sup>309</sup> Bulgaria, Preschool and School Education Act, Art.3.

<sup>310</sup> Bulgaria, Vocational Education and Training Act, Art.32.

<sup>311</sup> <http://www.nsi.bg/bg/content/3479/%D1%81%D0%BF%D0%B5%D1%86%D0%B8%D0%B0%D0%BB%D0%BD%D0%B8-%D1%83%D1%87%D0%B8%D0%BB%D0%B8%D1%89%D0%B0-%D0%BF%D0%BE-%D0%B2%D0%B8%D0%B4>

<sup>312</sup> <http://www.nsi.bg/bg/content/3481/%D0%BF%D1%80%D0%BE%D1%84%D0%B5%D1%81%D0%B8%D0%BE%D0%BD%D0%B0%D0%BB%D0%BD%D0%B8-%D1%83%D1%87%D0%B8%D0%BB%D0%B8%D1%89%D0%B0-%D0%BF%D0%BE-%D0%B2%D0%B8%D0%B4>

data are different – the most commonly used are **“unemployed with reduced working capacity”**(persons who were assessed as such by medical commissions due to temporary trauma, illness or specific health condition) and **“unemployed with permanent disabilities”** (persons who were assessed by medical commissions as having 50 and more percent of reduced working capacity).

According to the last 2017 *National Employment Action Plan* all **“registered unemployed persons with reduced working capacity” as of 30 September 2016 were 14,742** (out of the total 255,466 registered unemployed persons).<sup>313</sup> **According to the Plan unemployed persons with permanent disabilities in 2016** decreased with 1,021 compared to the same period in 2015. The average monthly number of these persons in 2016 was 15,909, and their share among all unemployed persons is 5,5%. Among them in terms of professions the **highest share is of those persons who do not have any qualification - 39.8%**. In terms of educational level the biggest share is of those who have high school vocational education – 47%, followed by those who have primary and lower level of education - 31%.<sup>314</sup> **One of the clear challenges in employment of persons with disabilities underlined by the 2017 Employment Action Plan is the low employment rate due to inaccessible environment, the workplace conditions and the duration of the working time.**<sup>315</sup> **The Action Plan states that in 2017 the active employment policy would be directed to several disadvantaged groups including unemployed persons with permanent disabilities without qualification.**<sup>316</sup>

It must be noted that the policy documents, programmes, action plans and legislation use a variety of terms about **“unemployed”** persons. Officially under the Employment Promotion Act **“unemployed person” is a person who has registered at the Local Employment Department, does not work, searches for a job and is ready to start working in 14-days period after notification of the Local Employment Department.**<sup>317</sup> **“Long-term unemployed”** is a person who has registration at the Local Employment Department that has not been interrupted for at least 12 months.<sup>318</sup> **“Job seeker”** is a person who did not refuse to meet employers, selected by the Employment Department and has met independently employers with the intention to start working.<sup>319</sup>

**The law recognizes the unemployed young people and adults with permanent disabilities as part of the group of persons in disadvantaged (unequal) situation on the labour market.**<sup>320</sup>

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<sup>313</sup> Bulgaria, Ministry of Labour and Social Policy, *2017 National Employment Action Plan*, Annex 6, available in Bulgarian at: <https://www.mlsp.government.bg/index.php?section=POLICIES&I=249>.

<sup>314</sup> Bulgaria, Ministry of Labour and Social Policy, *Report about the Implementation of the 2016 National Employment Action Plan*, p. 11.

<sup>315</sup> Bulgaria, Ministry of Labour and Social Policy, *Report about the Implementation of the 2016 National Employment Action Plan*, p. 14.

<sup>316</sup> Bulgaria, Ministry of Labour and Social Policy, *Report about the Implementation of the 2016 National Employment Action Plan*, p. 16.

<sup>317</sup> Bulgaria, Employment Promotion Act (1.01.2002) (*Закон за насърчаване на заетостта*), Additional provisions, para.1 (last amended in 2016), available at: <http://lex.bg/bg/laws/ldoc/-12262909>.

<sup>318</sup> Bulgaria, Employment Promotion Act (1.01.2002), Additional provisions, para.2.

<sup>319</sup> Bulgaria, Employment Promotion Act (1.01.2002), Additional provisions, para.3.

<sup>320</sup> Bulgaria, Employment Promotion Act (1.01.2002), Additional provisions, para.4a (last amended in 2016).

In 2015 the concept of “**supported employment**” was introduced as provision of support to unemployed persons with permanent disabilities (and other groups of disadvantaged persons) according to their specific needs to work in non-subsidised workplaces.<sup>321</sup>

Under the *Integration of Persons with Disabilities Act* a “**person with permanent disability**” is a “person who, as a result of anatomical, physiological or mental impairment, has permanently reduced capacities to perform activities in the way and at the level of a healthy person and for whom the medical assessment authorities have estimated a level of reduced working capacity of 50 and more percent”.<sup>322</sup>

According to the Labour Code specific right of the **workers with 50 and over 50 % permanently reduced working capacity is the right to paid annual leave for at least 26 days.**<sup>323</sup> Another such right is the right to compensation of a worker who has reduced working capacity and to whom appropriate working conditions were created. The workers with below 50 % reduced working capacity who are temporary moved to another job and the new job’s remuneration is lower has the right to compensation for the difference.<sup>324</sup>

Under the Labour Code **every employer who has hired over 50 employees must determine annually job positions appropriate for persons with disabilities of 4 to 10 percent of all positions depending on the type of economic activity.**<sup>325</sup> The concrete share of the job positions for persons with disabilities for each economic activity is determined by the minister of labour and social policy and the minister of healthcare.<sup>326</sup> Out of all job positions determined under the Labour Code **the employer must determine not less than 50 % for persons with permanent disabilities.**<sup>327</sup> The employer should inform the Employment Departments for these job positions and must announce the vacant ones in 14 days after their determination.

Since 2014 a **new electronic register** for the vacant job positions for persons with permanent disabilities started functioning.<sup>328</sup> However, there are problems in receiving and processing this information according to the Agency for Persons with Disabilities (APD). In 2016 only 65 Employment Departments provided information to the APD about the job positions announced by employers for persons with permanent disabilities. According to the information provided by them **the employers that implemented their duty to announce the job vacancies in 2016 were 2,346. The determined job positions for persons with**

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<sup>321</sup> Bulgaria, Employment Promotion Act (1.01.2002), Additional provisions, para.45 (introduced in 2015).

<sup>322</sup> Bulgaria, Integration of Persons with Disabilities Act (1 January 2005) (*Закон за интеграцията на хората с увреждания*), Additional provisions, item 1 and 2, available in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135491478>.

<sup>323</sup> Bulgaria, Labour Code (1 January 1987), Art.319 (last amended in 2009).

<sup>324</sup> Bulgaria, Labour Code (1 January 1987), Art.320.

<sup>325</sup> Bulgaria, Labour Code (1 January 1987), Art. 315 (last amended in 2010).

<sup>326</sup> Bulgaria, Ministry of Labour and Social Policy and Ministry of Healthcare, Ordinance RD-07-1 of 2 February 2012 for determination of workplaces, appropriate for persons with reduced working capacity (*Наредба № РД-07-1 от 2 февруари 2012 г. за определяне на работните места, подходящи за трудоустрояване на лица с намалена работоспособност*), available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2135775738>.

<sup>327</sup> Bulgaria, Integration of Persons with Disabilities Act, Art.27.

<sup>328</sup> Bulgaria, Agency for Persons with Disabilities, *2016 Activity Report*, p.10, available in Bulgarian at: <http://ahu.mlsp.government.bg/home/>.

disabilities under the Labour Code were 32,859 and 18,756 out of them were the job positions for persons with permanent disabilities under the *Integration of Persons with Disabilities Act*. The occupied job positions by persons with reduced working capacity were 11,083 and the occupied job positions by persons with permanent disabilities were 11,829. The job vacancies for persons with permanent disabilities are 5,381.<sup>329</sup> The APD does not further analyse or explain the reasons for this phenomenon.

## Disability specific schemes

### Subsidised employment for persons with disabilities

The **employment promotion policy** is basically planned and implemented by the Employment Agency (EA) (subordinated to the Ministry of Labour and Social Policy) by programmes and measures funded by the state budget and EU projects.<sup>330</sup> Under the programmes and measures for employment promotion the EA distributes state financial resources: for salaries (and additional remuneration), for a number of social and health security contributions (basic, additional, for vacation, for periods of unemployment), for training (including transportation and accommodation fees as well as scholarships to the unemployed involved in professional training courses), for transportation, for interests of credits taken by persons with disabilities to develop their own business, supported employment, etc.<sup>331</sup> The funding for salaries and security contributions are provided to the employers, the funding for training is provided either to the training provider or to the trainees, the other funding is provided to the unemployed persons. The amount of the funding for supporting employment programmes is determined annually by the National Employment Action Plan.<sup>332</sup>

The Employment Promotion Act (adopted in 2002) provides for **several measures of subsidizing of employers who hire persons with disabilities:**

1. Art, 36, para.2 - For each job opening at which an **unemployed person up to 29 with permanent disabilities** as well as a **young person from specialized institutions or user of community-based residential social services who finished their education** and is referred by the Employment Agency is hired, the employer receives funding for the salary, all social and health security contributions (including for paid vacation) for the period while these employees are hired but **not more than 18 months**.<sup>333</sup> In practice, the measure does not prove to be very much applied and effective – in 2016 only 13 persons with disabilities benefited from it, 12 of whom were newly hired. The amount allocated for this was BGN 2,083 (EUR 1,040). In 2017 it is expected 42

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<sup>329</sup> Bulgaria, Agency for Persons with Disabilities, *2016 Activity Report*, p.10.

<sup>330</sup> Bulgaria, Employment Promotion Act (1.01.2002), Art.30.

<sup>331</sup> Bulgaria, Employment Promotion Act (1.01.2002), Art. 30a.

<sup>332</sup> Bulgaria, Employment Promotion Act (1.01.2002), Art. 30 a, para.3.

<sup>333</sup> Bulgaria, Employment Promotion Act (1.01.2002), Art. 36, para.2 (last amended in 2016).

persons with disabilities to benefit from it, 30 of whom would be newly hired at the cost of BGN 100,436 (EUR 50,218).<sup>334</sup>

2. **Art. 52** - For each job opening at which **unemployed persons with permanent disabilities** referred by the Employment Agency are hired **full or part-time** the employer receives funding for the salary, all social and health security contributions (including for paid vacation) for the period while these employees are hired but **not more than 12 months**.<sup>335</sup> In 2016 the persons with disabilities who benefited from this measure were 182, 166 of whom were newly hired. The amount allocated for this was BGN 10,660 (EUR 5,330). In 2017 it is expected 265 persons with disabilities to benefit from it, 100 of whom would be newly hired for period of up to 6 months at the cost of BGN 432,892 (EUR 221,996).<sup>336</sup>
3. **Art. 51, para.2** - For each job opening at which an **unemployed person with permanent disabilities, referred by the Employment Department is employed** the employer receives funding for the salary and the social and health security contributions (without the paid vacation) for the period while the person was hired but this period **cannot be shorter than 3 months and longer than 12 months**. The funding is allocated at 75 % during the subsidized period. Under this measure in 2016 there were no activities but for 2017 it is planned that 100 persons with disabilities would be hired for a period of 3 to 12 months at the cost of BGN 370,800 (EUR 190,154).<sup>337</sup>
4. **Art. 43a.** (adopted in 2015) - A person that has the license to provide mediation employment services may apply for allocation of funding for supported employment for each person with permanent disabilities or other disadvantaged group on labour market referred by the Employment Department to whom he/she has found job on an **non-subsidised workplace for a period not shorter than 12 months. (supported employment)** It is planned that 300 persons with disabilities would be supported in finding jobs in 2017 under this measure at the cost of BGN 90,000 (EUR 45,000).<sup>338</sup>

Under the Employment Promotion Act, the employer receives the funding for measures under Art.36 and 52 **if he/she ensures employment of unemployed persons referred by the Employment Agency for an additional period equal to the period of subsidized employment.**<sup>339</sup>

Every year a **National Programme for Employment and Training of Persons with Permanent Disabilities (NPETPPD)** is adopted by the minister of labour and social policy and is

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<sup>334</sup> Bulgaria, Ministry of Labour and Social Policy, *2017 National Employment Action Plan*, Annex 1, p.13-16, available in Bulgarian at: <https://www.mlsp.government.bg/index.php?section=POLICIESI&I=249>, *Report about the Implementation of the 2016 National Employment Action Plan*, p. 10.

<sup>335</sup> Bulgaria, Employment Promotion Act (1.01.2002), Art. 52 (last amended in 2015).

<sup>336</sup> Bulgaria, Ministry of Labour and Social Policy, *2017 National Employment Action Plan*, Annex 1, p.13-16 and *Report about the Implementation of the 2016 National Employment Action Plan*, p. 11.

<sup>337</sup> Bulgaria, Ministry of Labour and Social Policy, *2017 National Employment Action Plan*, Annex 1, p.13-16 and *Report about the Implementation of the 2016 National Employment Action Plan*, p. 11.

<sup>338</sup> Bulgaria, Ministry of Labour and Social Policy, *2017 National Employment Action Plan*, Annex 1, p.13-16 and *Report about the Implementation of the 2016 National Employment Action Plan*, p. 11.

<sup>339</sup> Bulgaria, Employment Promotion Act (1.01.2002), Art. 56, para.4.

implemented by a number of responsible state and municipal bodies. In the last NPETPPD,<sup>340</sup> adopted with an order on 22.01.2016, no recent data about persons with permanent disabilities is mentioned. It only uses data from 2007 according to which the average annual number of registered at the Employment Departments unemployed persons with reduced working capacity was 14,414 persons (31,5 % less than in 2006). The share of persons with reduced working capacity of the total number of the unemployed persons was 5 %. Half of these persons did not have any professional qualification. Only 25,4 % of them had professional training as workers and the specialists were 23,7 %. According to their educational level the unemployed persons with reduced working capacity were divided into several subgroups: with university education - 8.1%; with high school education – 44.7 %; with primary and lower level of education - 47.2 %.<sup>341</sup>

According to the 2016 Programme other characteristics of the unemployed disabled persons are:

- “Registered at ED are mainly persons with general disability diagnosed with 50 up to 70 % reduced working capacity.
- The group of persons with disabilities related to mobility consists up to 20 % of all persons with reduced working capacity. They have low chances for employment because of the inaccessible environment.
- The share of persons with intellectual and psycho-social disabilities who are searching for job is 11 %. Their chances for employment are minor as the employers refuse to hire them and their only chance are the specialised enterprises and home work.
- The persons with sight disabilities are 9 %.”<sup>342</sup>

The main aim of the programme is raising the employability and ensuring employment of registered at ED unemployed persons with permanent disabilities. The beneficiaries of the programme among others are: **unemployed persons with permanent disabilities in active age registered at ED who have over 70 % reduced working capacity, persons with sensory and mental disabilities.** Organisations and entities that may be employers under the Programme are: regional and district administrations, municipal enterprises, Social Assistance Departments, private and state enterprises, other companies and non-governmental organisations, specialised enterprises for disabled persons and Employment Departments.<sup>343</sup>

The programme has a **module for training and a module for subsidized employment.** However, the programme does not mention any recent data of unemployed persons with disabilities, nor does it mention the number of persons who were trained and employed during previous years and those who were supposed to benefit from the programme in 2016. The **main responsibilities for the implementation of the programme are focused on Employment Departments** that: inform, consult, identify the unemployed persons with disabilities who are involved in the programme; require the funding needed from the District

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<sup>340</sup> Bulgaria, Ministry of Labour and Social Policy, *National Programme for Employment and Training of Persons with Permanent Disabilities*, available at: <https://www.az.government.bg/pages/nacionalna-programa-zohtu/>.

<sup>341</sup> Bulgaria, Ministry of Labour and Social Policy, *National Programme for Employment and Training of Persons with Permanent Disabilities*, p.2

<sup>342</sup> Bulgaria, Ministry of Labour and Social Policy, *National Programme for Employment and Training of Persons with Permanent Disabilities*, p.2.

<sup>343</sup> Bulgaria, Ministry of Labour and Social Policy, *National Programme for Employment and Training of Persons with Permanent Disabilities*, p.4.

Employment Departments; organise vocational guidance or professional qualification courses; sign contracts with training institutions; sign contract with employers; control the implementation of the duties of the employers and the hired persons under their contract.<sup>344</sup> The employers are obliged to: sign contracts with the Employment Departments; receive funding; open job positions for the unemployed persons with disabilities for 24 months, sign contracts with the employees and pay their remuneration. They might also ask the employees to be trained by a training company/institution under the Employment Promotion Act.<sup>345</sup>

According to the report about the implementation of the Programme in 2016, **during the period January-November 2016 the number of persons involved in activities were 1,227. The average monthly number of employed persons with disabilities under the programme is 1,169 persons** and the allocated funding was BGN 5,666,700 (approx. EUR 2,833,350).<sup>346</sup>

According to published information by the MLSP the expected number of persons with permanent disabilities (and persons who have passed treatment to overcome drug addiction) who are/would be employed in **subsidised employment in 2017 for 24 months under the programme is 1,889** and the allocated funding for this is BGN 8,682,369 (EUR 4,341,184).<sup>347</sup>

The shares of the disadvantaged groups supported by the measures of the Employment Promotion Act on the labour market in 2016 is as follows: long-term unemployed – 26.5%, young people up to 29 years – 43.4%, persons over the age of 50 – 27.9%, young people up to 24 – 19.1% and **people with disabilities – 5.9%**.<sup>348</sup> **People with permanent disabilities hired for temporary, seasonal or part-time jobs were 166.**<sup>349</sup>

### Disadvantaged groups specific schemes

On 30 December 2014 the minister of labour and social policy determined the Employment Agency (EA) and the Social Assistance Agency (SAA) as partners of the Ministry of Labour and Social Policy in a **pilot project for creation of Employment and Social Assistance Centres for mutual provision of services to disadvantaged groups**.<sup>350</sup> The project started on 1 January 2015 and would last until 31 December 2017 and the total amount of its funding is BGN 24 million (EUR 12 million). The project aims at **better work with disadvantaged groups, facilitation of the access of unemployed persons who receive social benefits to employment and opportunities for social inclusion through provision of more active**

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<sup>344</sup> Bulgaria, Ministry of Labour and Social Policy, *National Programme for Employment and Training of Persons with Permanent Disabilities*, p.7.

<sup>345</sup> Bulgaria, Ministry of Labour and Social Policy, *National Programme for Employment and Training of Persons with Permanent Disabilities*, p.9.

<sup>346</sup> Bulgaria, ministry of Labour and Social Policy, *Report about the Implementation of the 2016 National Employment Action Plan*, p. 2, available at: <https://www.mlsp.government.bg/index.php?section=POLICIESI&I=249>.

<sup>347</sup> Bulgaria, Ministry of Labour and Social Policy, *Fiche for Programs, Projects and Measures funded by the State budget*, Annex 1 at the 2017 National Employment Action Plan, available at: <https://www.mlsp.government.bg/index.php?section=POLICIESI&I=249>.

<sup>348</sup> Bulgaria, Ministry of Labour and Social Policy, *Report about the Implementation of the 2016 National Employment Action Plan*, p. 7.

<sup>349</sup> Bulgaria, Ministry of Labour and Social Policy, *Report about the Implementation of the 2016 National Employment Action Plan*, p. 7.

<sup>350</sup> Bulgaria, Minister of Labour and Social Policy, Order № RD01-954 dated 30.12.2014.

**services aimed at reduction of the social benefits period.** The Employment and Social Assistance Centres were set up within the local departments of both social assistance and employment agencies in 65 municipalities. In May 2015 the minister of labour and social policy determined the officers who would be in charge of the management of the project and their responsibilities.<sup>351</sup> On 31 August 2015 an agreement was signed between the beneficiaries and the partners in which the deadlines, the activities and the responsibilities of each party were determined.<sup>352</sup>

During 2016 the following activities had been implemented: information tables were put on the buildings of the centres and special spaces had been designated for consultation of citizens for provision of social assistance and employment services. **During 2016 the average monthly number of persons who received social benefits in the 65 municipalities where the centres work was: 10,094 persons - under the *Social Assistance Act* and 177,105 persons - under the *Integration of Persons with Disabilities Act*.** Under the *Assistants to Persons with Disabilities* programme 592 unemployed persons were appointed to take care of their relatives with permanent disabilities in family environment.<sup>353</sup> In the first nine months of 2016, 70,636 unemployed persons were registered at the 65 designated Employment and Social Assistance Centres and 59,652 persons found employment.<sup>354</sup>

Several **significant projects** are related to employment of **persons with disabilities** and are carried out in 2017. Below is information about them:

1. Under the project **“Improving the quality and effectiveness of the public services for disadvantaged groups on the labour market and employers”** within the Human Resources Development Operational Program 2014-2020 the following activities are expected to be performed:
  - analysis of the Employment Agency (EA) services provided to the disadvantaged groups on the labour market i.e.: research of the needs of the clients; research of the specific features of the groups; analysis of the models of the provided services and the standards for each of them; review of the available human, financial, technical resources for the provision of services; analysis of the monitoring system of the EA;
  - elaboration of at least three new services for disadvantaged groups and improvement of at least five of the current services. Standard service packages would be elaborated for disadvantaged groups tailored to their needs to facilitate the transition periods;
  - elaboration of criteria and indicators system for monitoring;
  - setting up of an electronic/virtual labour exchange market aiming at provision of on-line services such as: self-informing, electronic submission of CVs and other relevant documents by job seekers, announcement of vacant job positions by the employers, on-line management of calls by labour intermediaries, automatic

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<sup>351</sup> Bulgaria, Minister of Labour and Social Policy, Order №RD01-420 dated 18.05.2015.

<sup>352</sup> Bulgaria, Minister of Labour and Social Policy, Order №RD09-96 dated 31.08.2015.

<sup>353</sup> Bulgaria, Social Assistance Agency, *2016 Annual Report of the Activities*, p.58, available in Bulgarian at: [http://www.asp.government.bg/ASP\\_Files/APP/GODISHEN%20OTCHET%20ASP%20-%202016-final.pdf](http://www.asp.government.bg/ASP_Files/APP/GODISHEN%20OTCHET%20ASP%20-%202016-final.pdf).

<sup>354</sup> Bulgaria, Ministry of Labour and Social Policy, *Report of the Ministry of Labour and Social Policy for the period Jan. - Oct. 2016*, p. 1-3, available in Bulgarian at: <https://www.mlsp.government.bg/index.php?section=POLICIESI&I=385>.

selection of candidates, etc.<sup>355</sup> The total amount of the funding for the period 2015-2018 is BGN 28 million (EUR 14 million).

2. The Labour Policy and Labour Mobility Department at the Ministry of Labour and Social Policy would work on a project for **raising the effectiveness of the implemented employment policy**. The activities under the project would be: elaboration of reports with mid-term and long-term prognosis of the labour market development and the future job demand and offering in Bulgaria; elaboration of two assessments of the effect of the active employment policy funded by the state budget on individual level; public presentation of the reports and assessments with stakeholders. The total amount of the funding of this project is BGN 999,937 (EUR 50,000) and the duration of the project is 2015-2019.<sup>356</sup>

### 3. Active Inclusion:<sup>357</sup>

Main purpose	<b>Improving lives of persons with disabilities and their families through supporting opportunities for open market employment, improving access to services for carrier development, innovative social and health services</b>		
Target group	<b>Economically inactive persons, persons with disabilities and their families</b>		
Activities	<p>Component 1:  <b>Provision of mediation and other services supporting employment; vocational guidance and consultation; provision of trainings for raising professional qualification, trainings in foreign languages, mathematics, digital skills; ensuring employment of persons who take care of persons with disabilities for up to 6 months; adaptation and equipment of workplaces for persons with disabilities; work with employers for overcoming discriminatory attitudes</b></p> <p>Component 2:  <b>Support in finding employment and improvement of access to employment of persons with disabilities; improving access to healthcare through information and consultative services; trainings of disadvantaged groups and their family members</b></p>		
Funding	<b>BGN 20 million (EUR 10 million) - total amount (until 2018 ), BGN 8 million (EUR 4 million) - for 2017</b>		
Contracting authority	<b>Ministry of Labour and Social Policy</b>	Beneficiaries	<b>Non-governmental organisations, providing labour mediation services; education and training institutions and organisations; social services providers; employers; municipalities; centres for information and vocational guidance</b>

<sup>355</sup> Bulgaria, Ministry of Labour and Social Policy, *Report about the Implementation of the 2016 National Employment Action Plan*, p. 33.

<sup>356</sup> Bulgaria, Ministry of Labour and Social Policy, *2017 National Employment Action Plan, Fiche for programs, projects and measures funded by the state budget, Annex 1 at the 2017 National Employment Action Plan*, p.21, available at: <https://www.mlsp.government.bg/index.php?section=POLICIESI&I=249>.

<sup>357</sup> Bulgaria, Ministry of Labour and Social Policy, *2017 National Employment Action Plan, Fiche for programs, projects and measures funded by the state budget, Annex 1 at the 2017 National Employment Action Plan*, p.29.

#### 4. Development of Social Entrepreneurship<sup>358</sup>

Main purpose	Facilitating access to employment and ensuring support for social inclusion of disadvantaged groups through creation of appropriate conditions for their professional integration in social economy		
Target group	Persons with disabilities, persons in disadvantaged situation on labour market, representatives of persons engaged in social and specialised enterprises for persons with disabilities, persons hired in social entrepreneurship		
Activities	<p>The activities are directed at ensuring support for creation of new and enlargement of the available social enterprises and specialised enterprises for persons with disabilities through:</p> <p>psychological support; motivating of persons from disadvantaged groups for employment inclusion; provision of trainings for persons who are employed in social and specialised enterprises; ensuring mentors by the employers; equipment of new workplaces; trainings for raising the management and business skills in order to raise effectiveness of the enterprises; support for ensuring employment for up to 12 months; research in demanded goods and services and social marketing.</p>		
Funding	<p>BGN 15 million (EUR 7,5 million) - total amount up to 2018</p> <p>BGN 4 million (EUR 2 million) - budget for 2017</p>		
Contracting authority	Ministry of Labour and Social Policy	Beneficiaries	<p>Candidates: social and specialised enterprises of persons with disabilities; municipalities; providers of social services; NGOs</p> <p>Partners: education and training institutions/organisations; municipalities; providers of social services; NGOs</p>

#### Training in professional qualification

In July 2011 a state enterprise called “**Bulgarian-German Centre for Professional Training**” was set up.<sup>359</sup> Its main aim is the organization of: trainings in professional qualification for persons over the age of 16; trainings for key competences and vocational guidance. The main public tasks of the centre are: **supporting integration of unemployed persons in disadvantaged situation on labour market** by training in professional qualification and key competences; testing of innovative practices aimed at their implementation by other professional training institutions; raising competences of trainers for adults; training of mentors, external experts and trainers for adults in concrete professions; creating partnership with employers and representatives of employees for elaboration of new training programmes.

<sup>358</sup> Bulgaria, Ministry of Labour and Social Policy, 2017 National Employment Action Plan, Fiche for programs, projects and measures funded by the state budget, Annex 1 at the 2017 National Employment Action Plan, p.31.

<sup>359</sup> Bulgaria, Employment Promotion Act, Art.60a.

The plan for trainings of the “Bulgarian-German Centre for Professional Training” for 2016-2017 mentions that the number of persons involved in training activities of the centre in 2016 is 2,309 and the unemployed from disadvantaged groups on labour market involved in trainings is 2,000. The expected number of unemployed trainees for 2017 is 2,353 and the total amount for the trainings is BGN 3,343,000 (EUR 1,671,500) from the State budget.<sup>360</sup>

**The young people and adults with permanent disabilities are recognised as unemployed persons in disadvantaged situation on the labour market.** According to the plan in 2017 the focus would be put on the groups recommended by the Council of European Union in 2016 – long-term unemployed and young persons who do not participate in employment, education or training.<sup>361</sup> The selection of the unemployed persons who participate in the abovementioned trainings is done by the local Employment Departments. This means that the unemployed persons should be registered at the ED and should have documents certifying their current level of education/qualification and their health condition depending on the profession which they would be trained in.

The professional training is done under programmes approved by the National Agency for Professional Education and Training and the Bulgarian German Centre is licensed in 2011, 2013 and 2014 to provide such trainings in 84 professions.<sup>362</sup>

## Workplace adaptations

According to the *Integration of Persons with Disabilities Act* the **employment of persons with disabilities takes place in integrated or specialised working environment.**<sup>363</sup> The Ministry of Labour and Social Policy and the Employment Agency elaborate and implement national programmes and measures for supporting employment and equalizing opportunities for persons with disabilities on the labour market. In these programmes and measures funding stimulating the employers is to be envisaged.<sup>364</sup>

The employer is obliged to provide **reasonable accommodation** for the person with disability unless the expenses for it are unreasonably high and would be a serious burden for the employer.<sup>365</sup>

**Since 2010 the employers may apply with projects at the Agency for Persons with Disabilities (APD) for funding for ensuring access to the workplace, adaptation of the workplace and equipment of the workplace of the employed person with permanent disability.**<sup>366</sup> The APD annually determines the amount of the project funding for employers which it administers.<sup>367</sup> It signs contracts with the employers and provides the funding for approved projects to them. The employer hires persons with permanent disabilities for a period **not shorter than 3 months after the funding period is over.** However, the APD

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<sup>360</sup> Bulgaria, Bulgarian-German Vocational Training Centre, *Action Plan for 2016-2017*, p.15.

<sup>361</sup> Bulgaria, Bulgarian-German Vocational Training Centre, *Action Plan for 2016-2017*, p.6.

<sup>362</sup> Bulgaria, Bulgarian-German Vocational Training Centre, *Action Plan for 2016-2017*, p.15.

<sup>363</sup> Bulgaria, *Integration of Persons with Disabilities Act*, Art.22.

<sup>364</sup> Bulgaria, *Integration of Persons with Disabilities Act*, Art.23.

<sup>365</sup> Bulgaria, *Integration of Persons with Disabilities Act*, Art.24.

<sup>366</sup> Bulgaria, *Integration of Persons with Disabilities Act*, Art.25.

<sup>367</sup> Bulgaria, *Integration of Persons with Disabilities Act*, Art.25, para.2.

mentions in its 2016 report that the employers are obliged to keep the persons with disabilities for **not less than 36 months in order to achieve sustainability of the program.**

If the employer does not receive funding under the Employment Promotion Act he/she may receive: **1.funding from the state budget for 30 percent of the paid by him/her social, health and additional pension security contributions** for his/her employees with disabilities under the *Regulations for Implementation of the Integration of Persons with Disabilities Act*; **2.expenses for access, adaptation and equipment of the workplace** which are reported in the accounting and tax documents. The APD controls the expenditure of the abovementioned funding.<sup>368</sup> The APD reported that in 2016, **only 20 employers applied for this program and 15 were approved with the total amount of BGN 266,671 (EUR 136,754) and thus 45 workplaces for persons with disabilities were adapted and equipped.**<sup>369</sup> However, the APD notes that private companies do not apply for this kind of funding.

## Specialised enterprises

In Bulgaria **specialized enterprises and cooperatives** were set up in the past to employ mainly persons with disabilities; after 2002 the minimum percentage of disabled employees was estimated to 50 % and the percent was reduced further in 2010 reaching minimum 30 and 20 % currently.

According to the Labour Code **the ministers, the managers of state agencies, the municipal councils and the state bodies are obliged to set up specialized state (municipal) enterprises and the employers with more than 300 employees are obliged to set up workshops and other units for persons with reduced working capacity.**<sup>370</sup> The activity of the specialised enterprises, workshops and units is planned and reported separately and for the employees in them **special rules for daily workload, reporting and remuneration are determined by the Council of Ministers.**<sup>371</sup>

According to *the Integration of Persons with Disabilities Act* **the specialised enterprises and cooperatives for persons with disabilities** must be registered under the rules of the Commercial Act or the Cooperatives Act; must be included in the Agency for Persons with Disabilities' register; should produce goods or deliver services; should have relative share of persons with permanent disabilities as follows: for specialized enterprises and cooperatives for blind and persons with partial **sight disability– at least 20 %** of the personnel list; for specialized enterprises and cooperatives for persons with **impaired hearing – at least 30 %** of the personnel list; for specialized enterprises and cooperatives of persons with **other disabilities – at least 30 %** of the personnel list.<sup>372</sup> The specialized enterprises and

<sup>368</sup> Bulgaria, Integration of Persons with Disabilities Act, Art.26.

<sup>369</sup> Bulgaria, Agency for Persons with Disabilities, *2016 Activity Report*, p.6.

<sup>370</sup> Bulgaria, Labour Code (01.01.1987), Art. 316 (last amended in 2009).

<sup>371</sup> Bulgaria, Labour Code (01.01.1987), Art. 316, para.2

<sup>372</sup> Bulgaria, Integration of Persons with Disabilities Act, Art.28.

cooperatives of people with disabilities may be financed by the state budget under targeted projects and programmes.<sup>373</sup>

The **Agency for Persons with Disabilities (APD)** keeps a public on-line register of all specialized enterprises and cooperatives.<sup>374</sup> The enterprises and cooperatives provide information about their registration and the number of their employees to the APD.

The specialized enterprises and cooperatives produce **goods** or deliver **services** part of which are **determined by the Council of Ministers in a special list**.<sup>375</sup> Currently production of goods includes production of foods, electronic systems, papers, furniture, clothes, shoes etc. Delivered services are in the field of tourism, marketing, repair, cosmetics, public laundry, printing books, social services etc. According to the Agency for Persons with Disabilities' online register there are **325 specialized companies providing employment to persons with disabilities in Bulgaria as of the end of March 2017**.<sup>376</sup> Only 2 of them have more than 100 employees in total and the majority have less than 50 employees. According to the 2016 report of the APD, in 2016, **331 enterprises were functioning with the total of 3,503 employees out of whom 1,294 were persons with permanent disabilities**. During 2016 the newly registered enterprises were 95 and other 89 were deleted from the register for unknown reasons.

According to the last 2016 report of the APD out of 41 in total **30 projects of specialised enterprises were approved for funding during 2016 and the total amount of the funding was BGN 1,459,670 (EUR 748,549)**.<sup>377</sup> Sixteen of the projects were focused at improvement of **access, sanitary facilities and safety** of the working environment at the total amount of BGN 546,674 (EUR 280,345). Thus 772 persons out of whom 45 % with disabilities work in better environment.<sup>378</sup> Under other 14 projects **equipment for 26 new workplaces in production of books and dried vegetables** was provided at the cost of BGN 912,995 (EUR 468,202).<sup>379</sup>

Apart from the abovementioned activities of the specialised enterprises funded by the APD a **worrying tendency has grown since 2015**. An NGO analysis shows that extremely high activity of registering specialised enterprises started at the beginning of 2015 – their number has risen only for 7 months in 2015 with 44 % reaching 223. The legal requirement for setting up such an enterprise until 2010 was out of all employees 50 % to be persons with disabilities, but since 2010 the provision was amended and currently requires only 30 % of the employees to be with disabilities. However, the motivation for setting up so many

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<sup>373</sup> Bulgaria, Integration of Persons with Disabilities Act, Art.28.

<sup>374</sup> Bulgaria, Integration of Persons with Disabilities Act, Art.29.

<sup>375</sup> Bulgaria, Council of Ministers, *Decision 591 dated 18 July 2016, List under Art.12, para.1, item. 1 of the Public Procurement Act*, available at: <http://zopplus.com/wp-content/uploads/2016/07/RMS591.pdf>.

<sup>376</sup> <http://ahu.mlsp.government.bg/portal/se/>.

<sup>377</sup> Bulgaria, Agency for Persons with Disabilities, *2016 Activity Report*, available in Bulgarian at: <http://ahu.mlsp.government.bg/home/>.

<sup>378</sup> Bulgaria, Agency for Persons with Disabilities, *2016 Activity Report*, p.4.

<sup>379</sup> Bulgaria, Agency for Persons with Disabilities, *2016 Activity Report*, p.4.

enterprises is the amendment of the *Public Procurement Act* in 2014 which gave extremely preferential position of these enterprises at procurement tenders. **The majority of the newly registered enterprises are not newly set up but regular companies that preferred the “specialised status” for profit purposes.** In practice, the specialised enterprises win the procurement tenders when they produce the respective “protected”<sup>380</sup> goods or services required by the tender. The requirements for registration of specialised enterprises under the *Integration of Persons with Disabilities Act* are very easy to meet. The Agency for Persons with Disabilities does not have capacity and powers to identify and prevent violations. The requirement to have 30 % persons with disabilities in the employees’ list is easy manageable as in this list might be included: persons hired for season and temporary jobs; apprentices; part-time workers; workers hired under employment promotion measures/programmes.<sup>381</sup>

The new government reduced the list with “protected goods and services” to from 400 to 117 in July 2016 but the preferential position of the specialised enterprises at procurement tenders was kept. A new eligibility requirement for registration of specialised enterprises in the new 2016 *Public Procurement Act* is the **term of 3 years before the tender.**<sup>382</sup> Another important requirement is that the specialised enterprise should prove that it **can produce 80% of the required goods and services with its own resources** and that its eventual subcontractors would be also specialised enterprises for persons with disabilities.<sup>383</sup>

The Bulgarian legislation does not contain any eligibility requirements for employees of specialised enterprises and cooperatives. In practice, every person with estimated permanent disability may apply for a job in them and if hired he/she should sign a labour contract under the general provisions provided for in the Labour Code.

The specialized enterprises and cooperatives (SEC) in which work persons with disabilities who are members of the nationally representative organizations of and for persons with disabilities are entitled to the right to apply for funding from the state budget for **50 percent of the paid by them social, health and additional pension security contributions** for the employees with disabilities.<sup>384</sup> During 2016 the SEC that used this measure were 84 and they got back the funding at the total amount of BGN 724,435 (EUR 371,505). The idea of this measure is that the employer can use this funding for improving the working situation of the employed persons with disabilities. In 2016 the reimbursed amount of BGN 699,253 (EUR 358,591) was spent on: medical rehabilitation, additional remuneration of the persons with

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<sup>380</sup> The Council of Ministers adopts a list with goods and services the provision of which is given exclusively to specialized enterprises of persons with disabilities under the rules of the Public Procurement Act (Art.12, para.1, item 1). The government led by Plamen Oresharski (May 2013-August 2014) increased twice the list and thus it contained around 400 activities among which software, construction and tour operating services. According to Art. 12, para.7 of the Public Procurement Act concrete assigned procurements should be kept for specialized enterprises only (they are called “protected goods and services”) and the other candidates’ offers are not taken into consideration if specialized enterprises able to produce the goods or provide services participate in the tender.

<sup>381</sup> Bulgaria, Institute for Market Economy (NGO), *Persons with disabilities – instrument for winning procurements*, article, authors: Yavor Aleksiev, Viktor Trichkov, 8 May 2015, available in Bulgarian at: <http://ime.bg/bg/articles/horata-s-uvrejdaniya-instrument-za-peelene-na-obshtestveni-poryki/>.

<sup>382</sup> Bulgaria, Public Procurement Act (*Закон за обществените поръчки*) (15 April 2016), Art.12, para.5, available at: <http://lex.bg/bg/laws/ldoc/2136735703>.

<sup>383</sup> Bulgaria, Public Procurement Act (15 April 2016), Art. 12, para. 6.

<sup>384</sup> Bulgaria, Integration of Persons with Disabilities Act, Art.40.

permanent disabilities, raising the qualification of these persons, provision of food and technical renovation.<sup>385</sup>

The manager of the Agency for Persons with Disabilities adopts also programmes for **supporting persons with disabilities to start and develop their own business.**<sup>386</sup> The APD reports that the interest to this program is very high. **In 2016 the total of 163 persons with disabilities applied for funding out of whom only 36 projects were approved and implemented at the total amount of BGN 647,767 (EUR 332,188).**<sup>387</sup>

## ARTICLE 28 - ADEQUATE STANDARD OF LIVING AND SOCIAL PROTECTION

**The notion for standard of living and benefits for persons with disabilities is cynical.** The main separation is of benefits that are allocated with and without consideration of the income and with and without taking into consideration the age of the person in need. All benefits are violating the right to inherent dignity of these persons.

**Social and disabilities allowances** provided to children with permanent disabilities is regulated by the *Family Children Allowances Act*<sup>388</sup> and to adults with disabilities - *by the Integration of Persons with Disabilities Act and the Regulation for its Implementation.*<sup>389</sup>

### Children with disabilities

Under *Family Children Allowances Act* (FCAA) the children with **permanent disabilities** have the right to **monthly allowance and single allowances.**<sup>390</sup>

**Monthly allowances for raising a child up to the age of 1 year (EUR 50)** are given to a child with permanent disability until the child reaches the age of 2 irrespective of the income of the family.<sup>391</sup>

Under the FCAA if a child before reaching the age of 2 is diagnosed with permanent disability of 50 and over 50 % reduced ability to adapt, the mother has the right to **single allowance (irrespective of the income) which amount is determined annually with the state budget (for 2017 it is EUR 50).**<sup>392</sup>

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<sup>385</sup> Bulgaria, Agency for Persons with Disabilities, *2016 Activity Report*, p.15

<sup>386</sup> Bulgaria, *Integration of Persons with Disabilities Act*, Art. 31.

<sup>387</sup> Bulgaria, Agency for Persons with Disabilities, *2016 Activity Report*, p.7.

<sup>388</sup> Bulgaria, *Family Children Allowances Act (Закон за семейните помощи за деца)*, (29 March 2002), available in Bulgarian at: <http://lex.bg/bg/laws/ldoc/2135441920>.

<sup>389</sup> Bulgaria, *Regulations for Implementation of the Social Assistance Act (Правилник за прилагане на закона за социално подпомагане)*, (01.11.1998), available in Bulgarian at: <http://lex.bg/bg/laws/ldoc/-13038592>.

<sup>390</sup> Bulgaria, *Family Children Allowances Act*, Art.2, para.3, item. 3 (enforced 2004 and amended in 2015).

<sup>391</sup> Bulgaria, *Family Children Allowances Act*, Art.8, para. 3 (enforced in 2015)

<sup>392</sup> Bulgaria, *Family Children Allowances Act*, Art.6, para. 6 (enforced in 2007, amended in 2008)

If the income of the family is lower than annually estimated income, the families of children with permanent disabilities have the right to receive the **monthly allowance for children with permanent disabilities (until the age of 18 or 20 if the child studies) (EUR 18)** if they do not receive the special irrespective of the income monthly allowance for children with permanent disabilities.<sup>393</sup>

Families of children with permanent disabilities (including families of relatives and foster families who take care of such children as a protection measure under the Child Protection Act) have the right to receive **monthly allowance until the children reach the age of 18 and if they study at high school – until the age of 20 irrespective of the income. The amount is determined annually by the state budget act (in 2015 and 2016 it was 120 Euro)**.<sup>394</sup> During 2015 the average of 25,599 children with permanent disabilities received this allowance and the total amount allocated was BGN 90 million (EUR 45 million).<sup>395</sup> **During 2016 the average of 26,092 children with permanent disabilities received it and the total amount was around BGN 85,5 million (EUR 43,8 million)**.<sup>396</sup>

**Since January 2017** the monthly allowances for children with permanent disabilities up to the age of 18 (in case they study in high school – up to the age of 20) **have been increased**. If the children with permanent disabilities are raised in their **biological (or adoptive families)** and live permanently in Bulgaria the amounts are:

- for children with permanent disabilities with **90 and over 90 % disability** – BGN 930 (**EUR 477**);
- for children with permanent disabilities with **70 to 90 % disability** – BGN 450 (**EUR 231**);
- for children with permanent disabilities with **50 and 70 % disability** - BGN 350 (**EUR 179**).<sup>397</sup>

The monthly allowances for children with permanent disabilities raised **by families of relatives or foster families as a protection measure** under the Child Protection Act (Art. 26) are:

- for children with permanent disabilities with **90 and over 90 % disability** – BGN 490 (**EUR 251**);
- for children with permanent disabilities with **70 to 90 % disability** – BGN 420 (**EUR 215**);
- for children with permanent disabilities with **50 and 70 % disability** - BGN 350 (**EUR 179**).<sup>398</sup>

## Adults with disabilities

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<sup>393</sup> Bulgaria, Family Children Allowances Act, Art.7, para. 8 (enforced in January 2017)

<sup>394</sup> Bulgaria, Family Children Allowance Act, Art. 8d (enforced in 2010, amended in 2016).

<sup>395</sup> Bulgaria, Social Assistance Agency, *2015 Annual Report*, p.13.

<sup>396</sup> Bulgaria, Social Assistance Agency, *2016 Annual Report*, p.19.

<sup>397</sup> Bulgaria, Parliament, 2017 State Budget Act (*Закон за държавния бюджет на Република България за 2017*), Art.61, para.12, available in Bulgarian at: <http://dv.parliament.bg/DVWeb/showMaterialDV.jsp;jsessionid=2CFE10E98AE786CA63DF5ECB1CEAE8BD?idMat=109996>.

<sup>398</sup> Bulgaria, Parliament, 2017 State Budget Act (*Закон за държавния бюджет на Република България за 2017*), Art.61, para.13.

Under the *Integration of Persons with Disabilities Act*, people with permanent disabilities have the right to **monthly financial allowances for transport (EUR 5), information and telecommunication services (EUR 6,7), accessible information (EUR 5), recreation (up to EUR 100/year), education/training (EUR 6,7), food and medicines (EUR 5), and rent for a municipal flat/house (if they are single and signed the contract themselves).**<sup>399</sup> The monthly allowances are **fixed amounts** provided for in the *Regulations for Implementation of Integration of Persons with Disabilities Act* (Art.24-31), although the law repeats that they are tailored to the needs of the concrete individual that are taken into account while the social assessment is done by local assessment commissions.

Apart from that the law, in fact, divides the people with permanent disabilities in three main groups depending on the level of their disability and the reduced working (for children - social adaptation) capacity in this way:

- the **persons with 50 and over 50 % disability** have the right to monthly allowance for **education/training and rent** and if they have **mobility problem** – to **transport**;
- the persons with **70 and over 70 %** have the right to monthly allowance for **transport, education/training, food and medicines** and if they have sight/hearing problem – to **accessible information**;
- the persons with **90 and over 90 % disability** have the right to monthly allowance for **transport, information and telecommunication services, education/training, rent, food and medicines, recreation (if an assistant joins the persons with disability the amount is up to EUR 200/year)** and for persons with sight/hearing disabilities – **accessible information**.

The persons with permanent disabilities are entitled (in case the income of their family members is lower than EUR 65/EUR 100) to several **single allowances**: single allowance of BGN 1,200 (**EUR 615**) for **adaptation or purchase of a vehicle under a number of conditions**; single allowance for **adaptation of a flat/house** BGN 600 (**EUR 300**) under a number of conditions; single allowance for sign language **interpretation** for people with hearing disabilities with over 50 % reduced working capacity for 10 hours annually up to EUR 4/hour (**EUR 40**) in cases when the disabled people visit state, municipal, healthcare, education, cultural establishments; single allowance for **an assistant** for people with severe sight disabilities (with over 90 % reduced working capacity)/with severe mobility problems (with over 90 % reduced working capacity)/severe intellectual disabilities (over 70 % reduced working capacity) for 10 hours annually up to EUR 2,5/hour (**EUR 25**) in cases when the disabled people visit state, municipal, healthcare, education, cultural establishments.<sup>400</sup> The

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<sup>399</sup> Bulgaria, *Integration of Persons with Disabilities Act*, (1 January 2005), Art. 42.

<sup>400</sup> Bulgaria, *Regulation for Implementation of Integration of Persons with Disabilities Act*, Art. 50-53b.

single allowances for interpretation/assistants are allocated by the Agency or Persons with Disabilities to nationally representative organisations of and for persons with disabilities and they are responsible for their provision to the persons with disabilities.

Persons with disabilities also have the right to financial allowance **for one of 14 fixed technical aids and medical appliances**. The producers/importers of such aids and appliances are licensed by the state and the allowances are allocated to persons with disabilities under a clumsy procedure.

**In 2015 the total of 524,504 (out of whom 21,602 children) persons with disabilities were supported with integration allowances at the total amount of BGN 138,5 million (approx. EUR 69,2 million).**<sup>401</sup> In 2015 for technical aids and medical appliances BGN 52 million (EUR 26 million) was spent. Only 8 persons were supported with allowances for purchase and adaptation of a car and only 3 persons were supported to adapt their homes.<sup>402</sup>

**In 2016 the total of 524 459 (out of whom 21 574 children) persons with disabilities were supported with integration allowances at the total amount of BGN 139,5 million (EUR 69,75 million).**<sup>403</sup> **Monthly allowances** for transport were paid to 523,999 persons; for information and telecommunication services – to 87,229 persons; for education/training – to 381 persons; for food and medicines- to 408,555 persons; for accessible information – to 127,985; for recreation – to 6,740 persons; for rent of municipal house - to 999 persons; for adaptation of flat/house – to one person; for adaptation of a vehicle – to 3 persons.<sup>404</sup> The average number of persons who were paid allowances for technical aids and medical appliances was 10,101 persons and the total of BGN 50, 6 million (EUR 25,3 million) was spent on this in 2016.<sup>405</sup>

Persons with disabilities and their families may qualify for social assistance depending on the income and property of the family under the *Social Assistance Act*. This usually applies to **very poor families**. **Social assistance** is limited only to those with very low income (the guaranteed minimum monthly income estimated by the Council of Ministers is 33 EUR). Financial standards (the required financial capacity to access the services) do not exist when the child/person lives with his/her family, while there are such standards for residential institutions and community-based services. However, the principle “money follows the person” is not applied in any of these standards and the individual needs of the children/persons are not met as the budgets of services are allocated from the state to the services per capita and the amount is fixed but does not take into account the concrete needs of the children/persons in each service.

Under the Social Assistance Act, **children and adults with disabilities** have the right to use social services such as a personal/social/domestic assistant, a day-care centre, a centre for

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<sup>401</sup> Bulgaria, Social Assistance Agency, *2015 Annual Report*, p.26.

<sup>402</sup> Bulgaria, Social Assistance Agency, *2015 Annual Report*, p.28.

<sup>403</sup> Bulgaria, Social Assistance Agency, *2016 Annual Report*, p.40.

<sup>404</sup> Bulgaria, Social Assistance Agency, *2016 Annual Report*, p.40.

<sup>405</sup> Bulgaria, Social Assistance Agency, *2016 Annual Report*, p.40.

rehabilitation and social integration or a residential family-type centre. **However, these services are largely unavailable and the existing ones are not evenly distributed across the country.** So, even though children and adults have these rights, they cannot benefit from such services on a regular basis but only where and until such services exist, which is usually done only under EU funded projects. (see chapter on Independent living)

## Assessment of persons with disabilities

In order to be entitled to assistance and financial integration allowances, persons with disabilities are assessed following a rather complex procedure. The commissions that assess their disability are formed by the Social Assistance Departments (SAD). Before that, each person undergoes a medical assessment, on the basis of which a social assessment is then carried out.<sup>406</sup> The social assessment aims at estimating the needs and capacity for rehabilitation, education, employment, social services and social inclusion.<sup>407</sup> The assessment commissions at the SADs assess the circumstances of the persons with disabilities and their families and the measures for inclusion and assistance.<sup>408</sup> The social assessment includes: assessment of the capacities for education; recommendations for social inclusion measures; a reasoned proposal for monthly allowance for social integration (transport, communication, education, physical rehabilitation, rent of a house, accessible information, food or medicines for persons with permanent disabilities); a proposal for single financial allowance (for technical aids/medical appliances, for use of social services, services for rehabilitation, services for education, services for vocational training, services for accessible environment for persons with permanent disabilities).<sup>409</sup> After assessing the person, the commissions issue reasoned proposals for the assistance and the allowances.<sup>410</sup>

In practice, the Ministry of Healthcare **does not have data about the number of children/adults with disabilities** who were diagnosed by medical specialists and of those who were assessed as “disabled” by the commissions at the Social Assistance Departments (these are two different procedures). Thus, the Social Assistance Departments do not work with all children/adults with disabilities who need assistance as not all the cases of the persons with disabilities are referred to them because some parents/relatives and professionals are not aware of this procedure or do not have the capacity or support to refer the case and because **only persons with permanent disabilities** are entitled to the majority of types of assistance and allowance.

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<sup>406</sup> Bulgaria, Integration of Persons with Disabilities Act, Art. 12.

<sup>407</sup> Bulgaria, Integration of Persons with Disabilities Act, Art. 12, para. 2.

<sup>408</sup> Bulgaria, Integration of Persons with Disabilities Act, Art. 13, items 2, 3, 4,5.

<sup>409</sup> Bulgaria, Integration of Persons with Disabilities Act, Art. 13, items 2,3,4,5.

<sup>410</sup> Bulgaria, Integration of Persons with Disabilities Act, Art. 13, items 2, 3, 4,5.

## ARTICLE 29 - PARTICIPATION IN POLITICAL AND PUBLIC LIFE

Two ways of voting for the people with physical and sight disabilities were put in place during the 2013 municipal elections under the revoked in 2014 Electoral Code. The first option in 2013 were specialised voting sections for the disabled established on the ground floor of voting premises with more than one floor.<sup>411</sup> These were available to every person with mobility or visual impairments, including those without a medical assessment document from the Territorial Expert Medical Commission (TEMC) if they present their ID card.<sup>412</sup> Such people could choose to vote in a section of their choice under the condition that they sign a declaration confirming they would not be voting elsewhere.<sup>413</sup> People with mobility or visual impairments could be assisted if their disability, as estimated by the TEMC, does not allow them to perform themselves the actions involved in the voting process.<sup>414</sup> Only under exceptional circumstances a person without a document from TEMC might be assisted during voting.<sup>415</sup>

The second option available to people with permanent impairments who are not able to visit the election place was to vote with a **mobile urn**. It is necessary to submit a written and signed statement indicating this need together with a copy of the TEMC decision to the municipal administration no later than 30 days (amendment from 2016 states 14 days) before the Election Day.<sup>416</sup> The persons with disabilities who did not submit a statement 14 days before the Election Day may vote if they submit a statement 5 days before the day and if there is a mobile urn already approved for this region (again amendment from 2016).<sup>417</sup>

No change has taken place regarding the voting and other political participation and rights of persons with mental health problems or intellectual disabilities. All people under partial or plenary guardianship are still exempt from the right to elect state and local authorities or vote on referenda according to Art. 24, para. 1 of the Bulgarian Constitution.

A person under partial guardianship filed an application before the European Court of Human Rights claiming violation of Article 3, Protocol 1 of ECHR due to the fact that he was not allowed to vote during the elections in 2013. The person is represented by the Bulgarian Helsinki Committee. The case is pending.<sup>418</sup>

## ARTICLE 31 - STATISTICS AND DATA COLLECTION

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<sup>411</sup> Bulgaria, Electoral Code (28 January 2011), Art. 73, available in Bulgarian at: <http://www.lex.bg/bg/laws/ldoc/2135715515>.

<sup>412</sup> Bulgaria, Electoral Code (28 January 2011), Art. 203, para. 1. Electoral Code (5 March 2014), Art.10.

<sup>413</sup> Bulgaria, Electoral Code (28 January 2011), Art.203, para.2.

<sup>414</sup> Bulgaria, Electoral Code (28 January 2011), Art. 204, para. 1.

<sup>415</sup> Bulgaria, Electoral Code (28 January 2011), Art.204, para 2.

<sup>416</sup> Bulgaria, Electoral Code (5 March 2014), Art. 37, para.1 (last amended in 2016), <http://lex.bg/bg/laws/ldoc/2136112596>.

<sup>417</sup> Bulgaria, Electoral Code (5 March 2014) , Art.37,para.2.

<sup>418</sup> Bulgaria, Application No 46274/13 before the European Court of Human Rights.

Reliable **statistical data is not available** in Bulgaria on the following issues: the number of children/adults with disabilities; the number of children/adults with disabilities who receive assistance; the number of children/adults with disabilities who study; the number of children/adults with disabilities who need/use healthcare services; the number of children/adults with disabilities who live in institutions; the number of children/adults who are victims of violence; the number of cases of children/adults with disabilities who received protection as victims of violence. No disaggregated data according to gender, age, ethnicity, place of residence, type of disability, level of functioning, education status, employment status is available. Bulgaria has no monitoring mechanism under the CRPD so far.

## ARTICLE 33 - NATIONAL IMPLEMENTATION AND MONITORING

The Ministry of Labour and Social Policy (MLSP) was responsible for the coordination and setting up of an expert group which was supposed to elect/appoint the authority which would be responsible for coordination and monitoring of the implementation of the UNCRPD. However, **such an authority has not been appointed as of April 2017**. An expert group was established in 2013 to coordinate the implementation of the 2013-2014 Action Plan for Implementation of CRPD. However, according to the new 2015-2020 Action Plan a new expert group for appointment of coordination body was supposed to be set up in 2016. Another expert group is supposed to elaborate the coordination mechanism in 2017. The elaboration of legislative amendments which would provide for the functions of the coordination and monitoring authority is scheduled for 2020.<sup>419</sup>

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<sup>419</sup> Bulgaria, Council of Ministers, Action Plan for Implementation of UNCRPD (2015-2020), available in Bulgarian at: <http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=967>.

## RECOMMENDATIONS

1. Persons with disabilities in Bulgaria do not enjoy full participation into society because of a lack of detailed legislation and mechanisms to ensure effective inclusion. In order to enhance the protection of persons with disabilities, **Bulgarian legislation should provide a clear and consistent definition of “disability” in compliance with the UNCRPD** to serve as a foundation of legislative acts to specifically address the needs and capacities of persons with disabilities.
2. The medical model of the **assessment** of a disability should be **changed to a holistic one** aimed at estimating the functionality and meeting the needs of the persons with disabilities. The International Classification of Functioning, Disability and Health and the WHO Disability Assessment Schedule need to be introduced and adopted in Bulgaria.
3. **Disaggregated data** (by age, sex, ethnic origin, social, educational and employment status and type of disability) about children and adults with disabilities is still not collected. This impedes all efforts for elaboration of policies and legislation and respectively affects the most vulnerable persons (children at risk, children with disabilities, ethnic minority children). Clear provisions about the data that should be collected and processed by each authority should be introduced in legislation and implemented in practice.
4. Children and adults with disabilities in Bulgaria are not fully protected from **discrimination**. Bulgaria still does not have a children’s rights ombudsperson to guarantee independent monitoring and control in observing children’s rights, and it is one of just three EU member states not having such a specialised and independent child protection figure. **A Child Ombudsperson should be set up and sufficient expert, human and financial resources should be allocated to its office.**
5. Responsible state and municipal authorities should elaborate and update regularly sections on their websites concerning the rights of persons with disabilities. Strategies, programs, plans and reports about implementation of disability policies should be **published** on these websites. Information about the **available services and assistance** for persons with disabilities should also be published in a clear and accessible way.
6. Urgent, concrete and clearly funded measures in legislation and practice should be adopted to ensure **accessibility of public and house buildings as well as transport for persons with disabilities.**
7. **A package of minimal services and assistance for families with children/adults with disabilities** should be introduced in legislation and it should be guaranteed to all

persons with disabilities. The **principle “money follows the person”** should be applied to all assistance provided to persons with disabilities, including in inclusive and life-long education.

8. **Early intervention services** should be accessible to every child with a disability regardless of his/her family income and status, place of residence and type of problem.
9. **Healthcare services** should be provided in cooperation with social assistance and education services. Provision, distribution and quality of the healthcare services should be regularly monitored and evaluated.
10. **Professionals** working with persons with disabilities should be sufficiently qualified, supervised and decently paid.
11. Persons with disabilities should receive **special support** when they participate in **judicial proceedings**.
12. **Access to social services and assistance should be ensured to all persons with disabilities in need**. Personal assistance schemes should be based on the principle of personal choice of the assistant and personal assistance budget. Various and sufficient **assistance services** should be available for the family of a child/person with a disability to avoid placement in an institution or residential community-based service.
13. **Protected homes and family-type centres, being the major alternative for the institutionalisation of children and adults with disabilities, are underfinanced**. The methodology for their funding should be reviewed urgently because the current situation is one where persons with disabilities are being moved with the purpose of filling the capacity of the new services and securing funding for them, as opposed to guaranteeing the best interests of each individual person. This would represent a form of re-institutionalisation as opposed to deinstitutionalisation, i.e. a grave misuse of the European funds and a replacement of the will of the European community.
14. **Education system** needs to be fully adapted to the needs of all children (including children with disabilities, minority children). Inclusive education should be ensured in practice by provision of sufficient funding for a supportive environment, decent remuneration of educational professionals, on-going training of teachers, therapists and psychologists and elaboration of individual programs that really meet the needs and develop the capacities of each child.
15. **Regular, thorough and independent monitoring** of residential and day care community-based services and institutions for persons with disabilities should be

performed. **Violations against fundamental human rights of the persons with disabilities should be prosecuted and sanctioned.**

16. Coordination and monitoring bodies and mechanisms for **implementation of the UNCRPD should be urgently adopted** and the work of the bodies should be transparent and reported about at least twice a year.