



NGO information to the United Nations Committee against Torture

For consideration when compiling the Concluding Observations on the report of Bulgaria under the International Covenant on Civil and Political Rights

Submitted by:

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I. OVERVIEW

1. This written submission provides information on issues of concern with regard to Bulgaria's compliance with the provisions of the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (hereinafter "CAT" or "the Convention"), with particular focus on the enjoyment of those rights by children with disabilities. The purpose of the submission is to assist the UN Committee against Torture (hereinafter the "Committee") in its consideration of the State Party's report and issuance of its Concluding Observations.

2. The submission has been written by the Mental Disability Advocacy Centre (MDAC). MDAC is an international human rights organisation that uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide. MDAC's vision is a world of equality where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form. MDAC has participatory status at the Council of Europe, and observer status at ECOSOC. For more information, please visit www.mdac.org.

3. The submission will discuss torture and ill-treatment of children with disabilities in institutions in Bulgaria. It will set out why institutionalisation *per se*, particularly in the case of children with disabilities, can constitute a violation of CAT. It will point out the severe Convention violations that are endemic in Bulgarian residential services for children. It will also suggest recommendations for measures that the Bulgarian Government could take to remedy the situation and ensure children with disabilities are free from torture and other forms of ill-treatment.

II. TORTURE AND ILL-TREATMENT IN INSTITUTIONAL SETTINGS

4. Bulgaria has often said that it has finalised a deinstitutionalisation process for children. Since 2010, a significant number of new services, including residential services, have been developed.¹ The foundations of this deinstitutionalisation process were a large number of small residential units called 'family-type placement centres' (FTPCs). These are usually small houses where up to 12 children live together, supported mainly by social workers. In 2016 and 2017, MDAC, together with its partners in Bulgaria, conducted a series of monitoring visits in settings where children with disabilities live.² The following paragraphs set out the findings of these monitoring visits as relevant to the review of the State Party's implementation of CAT. All factual assertions pertain to the specific institutions visited and are drawn from the conclusions documented in the project.³

Physical environment

¹ For more information see UNICEF, Deinstitutionalisation of Children in Bulgaria: how far and where to? 2014. Available at https://www.unicef.bg/assets/PDFs/De_I_Review_Report_EN_small_size.pdf (accessed 31.05.2017).

² More information on this project is available at <http://mdac.info/en/charm-toolkit>.

³ Available at <http://mdac.info/en/charm-toolkit>.

5. Residential institutions for people with disabilities are effectively a form of deprivation of liberty.⁴ The restriction or removal of liberty can have devastating effects. Individuals deprived of their liberty in psychiatric and social care facilities are commonly subjected to non-consensual psychiatric treatment, including highly intrusive drug treatments and therapies. The UN Special Rapporteur on torture has highlighted that the healthcare choices of people with disabilities are often overridden based on their perceived “best interests”, and that inappropriate or unnecessary non-consensual institutionalisation of individuals may amount to torture or ill-treatment as use of force beyond that which is strictly necessary.⁵ Children with disabilities who are placed in institutions can be deprived of educational possibilities and social environments that allow for personal development. When individuals are in these environments for a long period of time, their development of self is substantially stunted. They face a sense of disempowerment and stigma. The Human Rights Committee (HRC) has also emphasised the harm inherent in any deprivation of liberty as well as the particular harms that may result in situations of involuntary hospitalisation.⁶ It has stated that “illegal and arbitrary committal to hospital may cause mental and physical suffering and thus amount to inhuman and degrading treatment or punishment, with the meaning of article 7 of the Covenant. The Committee further observes that involuntary hospitalization or forced treatment applied in order to punish or humiliate is contrary to article 7 of the Covenant.”⁷ The Convention on the Right of the Child (hereinafter “the CRC”) recognises the family as the natural environment for children, while also noting that they may be at particular risk in their families, as well as when separated from them.

6. Children who grow up in an institution rather than in a family environment in a community setting offer suffer serious developmental damage and are at risk of harm in terms of attachment disorders and developmental delays in social, behavioural and cognitive domains.⁸ They may suffer delays in physical growth, delays in language development, impaired interpersonal development, neural atrophy, and abnormal brain development.⁹ In addition, children in institutions suffer a variety of medical problems and sensory integration difficulties and stereotypes (such as body rocking).¹⁰ The findings suggest that the lack of a one-to-one relationship with a primary caregiver is a major cause of harm to children in residential care.¹¹ The evidence indicates that infants who are placed in institutional care will suffer harm to their development if they are not moved to family-based care by the age of six months.¹² Neglect and damage caused by early privation and deprivation are

⁴ Committee on the Rights of Persons with Disabilities, Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities: The right to liberty and security of persons with disabilities, September 2015; Human Rights Committee, General Comment No. 35 on article 9: Liberty and security of person; European Court of Human Rights, *Stanev v. Bulgaria*, Application No. 36760/06, judgment of 17 January 2012.

⁵ UN, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 1 February 2013, A/HRC/22/53, at paras. 20, 61 and 70.

⁶ General Comment No. 35 at para. 19

⁷ *T.V. and A.G. v. Uzbekistan* (2044/2011) at para. 7.10.

⁸ *Variation in neural development as a result of exposure to institutionalization early in childhood*, Sheridan M., Fox N., Zeanah C., McLaughlin K. and Nelson C., *PNAS* v.109, no.31 7 August 2012.

⁹ See Dozier, M., et al. Institutional Care for Young Children: Review of Literature and Policy Implications. *Social Issues and Policy Review*, 6(1), 1-25, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3600163/> and Charles A. Nelson, A Neurological Perspective on Early Human Deprivation, *Child Development Perspectives*, V.1, 2007, pages 13-18, available at: http://www.ecdgroup.com/docs/lib_005520114.pdf.

¹⁰ Nelson C., *A neurobiological Perspective on Early Human Deprivation*. *Child Development Perspectives*, vol. 1, pp13-18.

¹¹ Young children need both stable emotional attachments with and touch from primary caregivers to develop the brain properly and develop caring behaviour and cognitive capacities: Perry B., *Childhood Experience and the Expression of Genetic Potential: What Childhood Neglect Tells Us About Nature and Nurture*. *Brain and Mind*, 2002, vol. 3 pp.79-100.

¹² Other studies suggest that children placed into an institution before their sixth month suffer from long term developmental deprivation: see RUTTER, M. *Developmental catch-up, and deficit, following adoption after severe global early privation*. *Journal of Child Psychology and Psychiatry*, 1998, vol. 39, pp. 465–476; MARCOVITCH, S., GOLDBERG, S.,

considered to be equivalent to violence and research recognises that every child should have the opportunity to grow up in a family environment.¹³ In addition to this violence which is inherent in institutionalisation, the closed nature of institutions and the vulnerability of the children gives rise to real risk of serious acts of specific torture and ill-treatment.

7. The newly developed Bulgarian services ostensibly take into consideration and implement the State's international human rights obligations. However, this is not the case in practice. The newly developed services claim to no longer be "institutions" because they are smaller. Yet, all the services that were visited by MDAC hold institutional features such as those described by the Office of the High Commissioner for Human Rights. These detrimental features include, "isolation and segregation from community life; lack of control over day-to-day decisions; rigidity of routine, irrespective of personal preferences or needs; identical activities in the same place for a group of persons under a central authority; a paternalistic approach in the provision of services; supervision of living arrangements without consent; and disproportion in the number of people with disabilities living in the same environment... it is, above all, about losing control as a result of the imposition of a certain living arrangement."¹⁴ Even though they are newly built and are called "family-style" services, none of the settings where children live that were visited by MDAC and our partners approximated to a typical family home in size, appearance or other key characteristics. Some of the institutions were located in residential areas, which is an important prerequisite for potential contact with neighbours and others living nearby. However, there were many other external features of the buildings that discouraged contact with others outside the institution. These included the large size of the buildings, the presence of fences, walls and locked doors as well as, in many cases, limited access to outside play areas around the buildings. In some cases, access to the institutions remains restricted in fact. We managed to obtain access to the services only because our organisation has a working relationship with some of the municipalities that run them.

Discrimination and segregation

8. The children detained in the institutions visited by MDAC and our partners were overwhelmingly or exclusively children with disabilities. They were placed there and placed together because of their disabilities and typically grouped within the institutions according to assessed level and type of impairment, and according to gender. Age groupings were also apparent, with children mostly sharing rooms with children of the same age. It was not apparent that any of the rooms reflected in any way the specific personality traits or preferences of the individual children.

GOLD, A., Washington, J., Wasson, C., Krekewich, K., Handley-Derry, M. *Determinants of behavioural problems in Romanian children adopted in Ontario*. International Journal of Behavioral Development, 1997, vol. 20, pp. 17-31.

¹³ Johnson R., Browne K.D. and Hamilton-Giachritsis C.E. (2006), Young children in institutional care at risk of harm. Trauma Violence and Abuse, 7(1): 1–26. Also, Marinus H. von Ijzendoorn, et al, "Children in institutional care: delayed development and resilience" Monographs of the Society for Research in Child Development, vol. 76, No. 4, 2011, p. 8-30. The results were also discussed in BROWNE, K. *The Risk of Harm to Young Children in Institutional Care*. London, Better Care Network and Save the Children, 2010, p. 14. The book is available at: http://www.savethechildren.org.uk/sites/default/files/docs/The_Risk_of_Harm_1.pdf.

¹⁴ OHCHR Thematic study on the right of persons with disabilities to live independently and be included in the community, A/HRC/28/37 of 12 December 2014, para. 21. The study goes on in para. 22 to iterate some specific criteria to be taken into account when assessing whether a living arrangement violates Article 19: choice of housemates, who decides when residents can enter or exit, who is allowed to enter a person's home, who decides the schedule of daily activities, who decides what food is eaten and what is bought and who pays the expenses.

9. Most of the activities organised for the children took place inside the residential services, which means that it is impossible for the institutions to vary the activities or adequately take into consideration the individual needs and desires of each resident. This is of significant relevance because reduced activity and stimulation has significant negative impacts on physical and psychological development, especially when imposed from a young age or / and for long periods of time. Studies indicate that reduced sensory input can lead to reduced brain activity.¹⁵

Physical Conditions

10. Despite the new buildings, the physical conditions in which children live in these services are seriously problematic for their well-being and development. For example, some children see their freedom of movement limited because of staff shortages or lack of proper training for staff. Untrained staff often expressed that they felt they did not have the ability to ensure the children's safety at all times, therefore they prefer to keep them all together in restricted spaces as much as possible. Unsafe physical facilities were also evident in some buildings, such as rails positioned badly for residents or insufficient heating in the rooms.

Physical violence

11. We discovered that physical violence does occur in these settings and takes a variety of forms. It can occur between children, between staff and children, and in some instances, between children and members of the wider community. In some of these services, violence among the residents appeared to be regular, to the extent that the monitoring teams experienced an entrenched culture of violence. Reports were also made of violence by staff against residents. For example, in one institution the monitoring team noted that children were afraid of some staff members, particularly of one driver who visited the institution: the children ran away from him.

12. A graphic description of violence in one institution illustrates the degree to which violence (in all its forms) is part of everyday life:

"Cases of physical violence between users are a daily routine in the monitored centre and are manifested by beatings and fights. This fact was established based on the explanations by the staff and the informal log (notebook of incidents). It is obvious that no psychological measures have been taken to prevent and stop this violence, as no specialised help by a psychologist was ensured for the harmed persons. There is also violence from users to the staff against which no appropriate measures are envisaged. According to the monitoring team, there is violence on the part of the staff towards residents, evidenced by the witnessed verbal threats of staff to residents and the obvious fear of users of certain members of the staff."

13. In one particular institution, serious instances of self-harm were witnessed but nothing was done to tend to the wounds and bruising. In a few instances, there were also reports of physical as

¹⁵ Shalev, Sharon. (2008). *A sourcebook on solitary confinement*. London School of Economics and Political Science, Mannheim Centre for Criminology, p. 19.

well as other forms of violence by members of the wider community, for example neighbours and family members, which was traumatic for the children.

Psychological violence and degrading treatment

14. The monitoring teams identified several ways in which psychological violence manifested. For example, residents were given baths by members of staff in the presence of other residents who were waiting for their turn, ignoring rights to privacy and respect that are usual in society. In several institutions, children who had initially entered institutions as minors had remained there for so long that they had reached adulthood. Despite this, staff continued to treat them as children, rather than adults. Negation of individuality was also evident, for example, in the practice of celebrating several children's birthdays collectively on the same day in events that were scheduled every few months, regardless of the individual's actual birth date. In some institutions, all clothing was shared communally among the residents, not separated according to gender, and was locked away from the children by the staff.

15. Clothes for day time and night time use were sometimes not separated, negating culturally appropriate markers for times of day, and clothing selections were made by staff rather than the person who had to wear them. A lack of personal possessions and toys was evident in many institutions. Another form of psychological violence that was evident was the fact of being shut away without contact with the outside world, the severely limited amount of human contact, and neglected development and well-being of many children. Even where staff was aware of ways to help residents who were experiencing distress, such as going for a walk outside, this help was often not given.

Neglect

16. Neglect took a variety of forms. Most of those living in these newly developed services were removed there from large social care institutions where many deaths and cases of severe abuse have been reported. The after-effects of past abuse and trauma on children were never recognised as an issue to address. However, children's need for care arising from these experiences was generally not recognised or met. For most of the children and young people, links with their past lives had been lost. When they were transferred from larger scale institutions, no systematic records were kept about them, their personal belongings were not given to them etc. They were just moved to a new location and their past was effectively erased.

17. Neglect of physical health and wellbeing was evident in many instances, including poor personal hygiene, and especially poor dental hygiene. Lack of recognition of the importance of good health care was evident in the fact that in some instances there were no toothbrushes and, in another instance, cloths used for cleaning toilets were stored together with residents' toothbrushes.

18. Severe neglect was evident, for example, in one instance, where a man who had injured himself had wounds that were left untreated. In the same institution: "in the presence of the monitoring team, one of the inmates got soiled with urine and by the end of the visit, he was not given the opportunity to clean up and change clothes. On the contrary, the person was taken away for siesta in this condition."

Privacy

19. Personal space and privacy is a basic requirement of recognition that an individual is a human being. Denial of personal space for residents who are over 18 was discovered in institutions in Bulgaria, where all residents of an institution are often required to sit in one room under staff supervision during the day, regardless of personal preference. Lack of personal possessions and individual space further limits the development of individuality.

Restraints and seclusion

20. Several instances of restraints and seclusion were observed during these monitoring visits. One team described the following situation: "A user with impaired vision was physically immobilised by tying her hands behind her back. According to the monitoring team, fastening of this girl is a frequent and regular practice, because she kept on putting her hands behind her back and bending every time whenever a staff member approached her."

21. Medication and chemical restraint is clearly also used. In one institution where a previous inspection by the Bulgarian Helsinki Committee had identified problematic over-prescription of medication six years previously, the monitoring visit by MDAC and our partners revealed that nothing had changed: there was still no understanding of appropriate management of aggressive behaviour or self-harming behaviour without over-medication and techniques such as improved communication with residents had not been attempted.

Conclusions

22. Violence occurred in all institutions to at least some extent and ranged from more minor incidents to a sustained culture of serious abuse and violence. There were a range of responses to violence but, in many instances, no measures were in fact taken. In one institution, where violence amongst residents and by staff against residents was considered to be regular and sustained, no attempts were made to deal with this situation. Elsewhere, violent behaviour was often not reported or logged, making it hard to monitor or address in a systematic way. So, although there were triangulated reports of violent incidents (i.e. confirmed by several people), there were no official records that they took place. In another instance, an unofficial log was kept but was hidden from the authorities.

23. It should also be noted that Bulgarian criminal law does not provide a possibility of criminal prosecution for "soft" forms of violence, such as psychological or emotional violence, against children or adults who are detained in institutions. The legislative protections against domestic violence do not apply in institutional settings. Further, violence causing "light" or less severe bodily injuries is not considered to be a "public crime" and so prosecution can only be initiated by the victim her/himself. In the case of a child with a disability in an institution, this is clearly impossible. Such children (and adults under guardianship) must act through their parents or guardians. However, in most cases, children in institutions are dependent on a guardian appointed by the authorities which are not independent from the maintenance and supervision of the institution and which therefore may attract legal liability for acts of violence committed in the institution. Alternatively, the director of the institution may be appointed as their guardian. Where their parents are known, they

are often dis-interested after placing their child in the institution and will provide a power of attorney to the director to make all decisions relating to their child.

24. Taking into consideration all the areas of concern referred to above, it is evident that the newly developed services for children are in reality smaller scale institutions where neglect, abuse and violence amounting to torture and ill-treatment continue to exist in violation of CAT.

III SUGGESTED RECOMMENDATIONS TO THE BULGARIAN GOVERNMENT

- a. Amend national criminal legislation to explicitly prohibit torture, particularly torture on the basis of discrimination and including disability-based discrimination.
- b. Enact a criminal law offence to prohibit all forms of violence against children with disabilities, including psychological and emotional violence, and extend all current protections against violence to children and adults with disabilities in institutions.
- c. Enact explicit recognition in law that the use of physical and chemical restraint of people with mental disabilities is a form of ill-treatment that can amount to torture.
- d. Take all necessary measures to identify, prosecute and punish perpetrators of neglect, abuse and violence against children and adults with disabilities, particularly those in institutions.
- e. Provide legal representation and effective access to justice for victims of torture and ill-treatment in institutions, including the provision of reasonable, procedural and age-appropriate accommodations where necessary.
- f. Ensure that all children and adults under guardianship in institutions or placed into care outside of their family unit in Bulgaria are provided with an impartial and independent advocate of their choice with authority to protect their legal interests and facilitate their access to justice in the event of violence or ill-treatment.
- g. Ensure that all allegations or suspicions of torture or ill-treatment of people with disabilities in institutions, especially children with disabilities, are fully, impartially and independently investigated.
- h. Immediately release all victims of torture and ill-treatment with mental disabilities from institutions in which they have suffered such treatment and provide them with safe, community-based, alternative accommodation.
- i. Ensure full access to redress, including compensation and the creation of and access to individualised medical and psychological rehabilitation and supports in the community, for people with mental disabilities who are victims of torture and ill-treatment.
- j. Take immediate steps to ensure that all institutions for people with disabilities, including social care homes, group homes, supported-living accommodations, family-type placement centres, transitional houses and psychiatric hospitals, are subject to regular monitoring by independent, qualified professionals, including from civil society and disabled persons organisations.
- k. Take concrete steps to inform and train relevant professionals and people with disabilities on the rights of persons with disabilities, particularly children with disabilities.
- l. Review relevant legislation, policy and practices concerning people with disabilities who are institutionalised, in close cooperation with civil society and the disability community, and make

necessary amendments to ensure adequate protection from torture and ill-treatment and guarantees of non-repetition in instances where such violations have already occurred.

- m. Adopt a moratorium on admissions to institutions, particularly for children and young people with disabilities.

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