Case Summary: *Stankov v. Bulgaria*, Application No. 25820/07, judgment of 17 March 2015

Fourth Chamber judgment

Relevant Articles:
Article 3
Article 5(1), (4) and (5)
Article 6(1)
Article 8
Article 13

Keywords

access to court | access to justice | community living | deprivation of liberty | disability, psycho-social | effective remedy | inhuman and degrading treatment | legal capacity | private life | procedural rights | social care institution | Bulgaria

Case abstract

The case concerns a man with a psycho-social disability whose legal capacity was stripped from him and was placed in two institutions in Bulgaria where he lived for over 15 years. The Court found that Bulgarian law violates Articles 5(1), 5(4) and 5(5) of the European Convention on Human Rights by allowing placement in social care institutions without the consent of the person concerned and without direct access to a court to challenge the detention. Bulgarian legislation violates Article 6(1) by denying people partially deprived of their legal capacity direct access to a court to seek restoration of their legal capacity. Conditions in the social care institutions were found to amount to degrading treatment under Article 3 without an effective remedy under Article 13. The Court did not deal with arguments under Article 8.

Facts

The Applicant is a 56-year-old man with a psycho-social disability. He was deprived of his legal capacity in May 1999 after a mental health crisis. During the proceedings, the Applicant was brought to court but was not informed of the reasons for the proceedings and was not able to participate. Despite being deprived of his legal capacity, he was without a guardian until his mother was appointed in November 2002. While without a guardian and only one month after he was deprived of his legal capacity, his mother requested that he be placed in a social care institution, falsely stating that she was his guardian. By order of the Municipality, he was placed in the Dragash Voyvoda social care institution, against his will,

one week later. No alternative forms of social support were considered. His placement there was not formalised in a contract until over three years later, in August 2002.

In the same month, the Bulgarian Ministry of Labour and Social Policy took the decision to close the Dragash Voyvoda institution in the wake of severe international criticism of living conditions, treatment and care. On 26 September 2002, the Applicant was transferred to the Rusokastro social care institution – again against his will. His placement in this second institution was not fomalised until a year and a half later, in April 2004. At the date of judgment, the Applicant remains in this institution.

In both institutions, the Applicant was subjected to physical violence after attempts to escape. In Dragash Voyvoda, he was beaten by other residents on the orders of staff as punishment. In Rusokastro he was confined in a closed section of the institution for one week. This section was reserved for those individuals with the most severe disabilities who could not communicate with the Applicant. Living conditions in both institutions were deplorable: clothing was shared between residents; the food was insufficient and sub-standard; the institutions were dirty, inadequately heated and insufficiently lit; the toilets and showers were unhygienic and lacked basic facilities. The Applicant was not allowed to manage his own finances or make basic decisions about his life, such as choosing his food or leisure time activities. He was not allowed to work and his personal correspondence was interfered with. Expert evidence reports that therapeutic options for his treatment were not explored.

During this time, the Applicant filed a request with the Prosecutor's Office to apply to the court for restoration of his legal capacity. A denial of this request was upheld through two appeals. Since he had no guardian appointed for three-and-a-half years, he could not request a restoration by that avenue. Once his mother was appointed, there was a clear conflict of interest given that it was on her application that his legal capacity was originally removed. Further, he was unable to establish any contact with her for eight-and-a-half years, despite her status as his guardian.

Judgment

Admissibility

The Court dismissed the admissibility argument raised by the Government to the effect that the six-month time limit for lodging an application should run from the date of the decision to place Mr. Stankov in the Dragash Voyvoda institution. It found that his stay in that institution and subsequent transfer to Rusokastro formed a continuous situation and not a series of separate events. It held that the question of whether he had consented to the latter placement and therefore whether the time limit should run from the date on the contract with that institution was inextricable from the central question of whether he had been

deprived of his liberty under Article 5(1) and so should be joined to the examination of the merits.

Article 5(1)

On the merits, the Court reiterated its settled jurisprudence on Article 5(1): to determine whether someone has been deprived of their liberty within the meaning of Article 5(1), the starting-point must be his specific situation and account must be taken of a whole range of factors such as the type, duration, effects and manner of implementation of the measure in question. In the context of deprivation of liberty on mental health grounds, a person can be considered to be detained even during a period when he was in an open hospital ward with regular unescorted access to unsecured hospital grounds and the possibility of unescorted leave outside the hospital (*Ashingdane v. U.K.*, 28 May 1985, paragraph 42, Series A No. 93). Applying the law to the case before it, the Court found that the Applicant required express permission to go to the nearby village or take part in excursions organised for residents of Rusokastro institution. Moreover, a medical report on the Applicant reported 'regular escapes' and the Court found that the Applicant ran the risk of being sought by the police if he left the institution without permission. The duration of this treatment was indeterminate and the Applicant continued to reside there at the date of judgment, more than fifteen years after his initial placement. This was found to be a sufficiently long time for the Applicant to fully feel the negative effects of the restrictions imposed on him.

Considering the subjective question of consent to detention, the Court noted that the Applicant did not appear to have been consulted regarding the placement in 1999, despite the fact that he was capable of expressing a valid opinion and his consent was necessary under national law. Moreover, he was not a party to the contract signed between the institution and his mother. The Court found that the process for placement in the institution was similar to that in the case of *Stanev v. Bulgaria* (17 January 2012, Application No. 36760/06) and that the Applicant had not consented to the confinement. Referencing its decisions in *Shtukaturov v Russia* (27 March 2008, Application No. 44009/05, paragraph 108) and *Stanev* (paragraph 130), the Court opined that the fact that a person lacks legal capacity does not necessarily mean that he is unable to comprehend his situation. It noted that, even if the Applicant had not explicitly expressed his objections to the placement, he demonstrated this through his attempted escapes and his repeated requests to the directors of the institutions and his guardians to leave. Finally, the Government had not shown that the Applicant's consent was sought according to a fair and proper procedure and that all necessary information was provided to him.

In light of all of these points and the role of the State in his institutionalisation, the Court found that the placement amounted to a deprivation of liberty within the meaning of Article 5(1).

Considering the requirements of 'lawfulness', observance of a procedure prescribed by law and the purpose of that Article 5, namely the protection of individuals from arbitrariness, the Court reiterated that detention must be necessary in the circumstances and can only be justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest. On the facts, the Court found that, despite being under partial guardianship, the Applicant initially had no contract grounding his placement in the institution and, when a contract was signed, it was done without his involvement contrary to national law.

In addition, the detention was not justified under any of the exhaustive list of exceptions in sub-paragraphs (a) to (f) because, as the Court has already found in *Stanev*, Bulgarian law considers placement in a social care institution as a measure of protection taken on the request of the person concerned and not as a coercive measure ordered on one of the grounds under these sub-paragraphs. The Court recalled that, in certain circumstances, the welfare of a person with mental disorders might constitute an additional factor to be taken into account in addition to medical evidence when evaluating the necessity of placing someone in an institution. However, the objective need for accommodation and social assistance must not automatically lead to the imposition of measures involving deprivation of liberty. Any protective measure should reflect, as far as possible, the wishes of persons capable of expressing their will. The failure to solicit the opinion of the person concerned could give rise to situations of abuse and hamper the exercise of the rights of vulnerable persons. Any measure taken without prior consultation of the person concerned will as a rule require careful scrutiny (*Stanev*, paragraph 153).

The Court acknowledged that, had the Applicant not been deprived of his legal capacity on account of his mental disorder, he would not have been deprived of his liberty and the case must therefore be considered under sub-paragraph (e) of Article 5(1). The Court then reviewed the facts according to the Winterwerp criteria (*Winterwerp v. the Netherlands*, 24 October 1979, Series A no. 33, paragraph 39 – the person must be shown to be of unsound mind; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depends upon the persistence of such a disorder). It found that, while a medical report was produced during the legal capacity proceedings, the purpose of the report was not to examine whether the Applicant's state of health required his placement in a home for people with mental disorders, but rather solely to determine the issue of his legal capacity. Relying on *Hutchison Reid v. U.K.* (Application No. 50272/99, ECHR 2003-IV, paragraph 52) and *Stanev* (paragraph 157), the Court reiterated that Article 5(1)(e) allows detention not just for treatment but also to ensure protection of the person concerned or that of others, provided the measure is justified by the seriousness of the person's condition. The facts did not show any evidence of dangerousness in this case. Further, no medical evaluation had been put in place to evaluate on a regular basis whether the detention continued to be necessary and the relevant legislation does not require such.

The Court therefore found a violation of Article 5(1)(e).

Article 5(4)

In finding a violation of this Article, the Court referred to its judgment in *Stanev* at paragraphs 168 – 171 where the relevant principles were set out and where it has already found that national law did not afford that applicant an accessible judicial remedy capable of giving rise to a direct review of the lawfulness of his placement in a social care institution (paragraph 177). It saw no reason to depart from this finding. It found that Bulgarian law does not provide for automatic and periodic judicial oversight of placement of people in social care institutions and that there is no recourse to contest the lawfulness of the detention because it is not viewed in the national legislation as a deprivation of liberty.

Article 5(5)

In relation to the right to compensation under Article 5(5), the Court referred to its finding in *Stanev* that the applicable national legal framework did not afford the Applicant the possibility of entitlement to compensation before the domestic courts (paragraph 187). In the present case, the Court found that the Government had still not submitted any domestic decisions indicating that the relevant provisions are applicable to cases involving the placement of people with mental disorders in social care homes on the basis of civil law agreements. Amendments enacted in 2012 apply only where there has been a deprivation of liberty under national law – such is not the case where a person is placed in a social care institution. The Court therefore found a violation of Article 5(5).

Article 3 and Article 13

The Applicant argued that his rights under Article 3 alone and in conjunction with Article 13 were violated when he was subjected to physical violence and degrading punishments following three escape attempts from the Dragash Voyvoda institution. These arguments were, however, found to be inadmissible on the grounds that they took place prior to September 2002 and therefore the six-month time limit for submitting a complaint had passed.

The Applicant also alleged that conditions in both institutions violated Article 3. The Court reiterated that, in order to fall within the ambit of Article 3, treatment must reach a minimum level of severity, taking into account the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects, and, in some instances, the sex, age and state of health of the victim (*Kudła v. Poland* [GC], Application No. 30210/96, ECHR 2000-XI, paragraph 90). The Court recalled that Article 3 applies equally to all forms of deprivation of liberty: it is immaterial whether the measure entails

detention ordered in the context of criminal proceedings or admission to an institution with the aim of protecting the life or health of the person concerned (*Stanev*, paragraph 206). The Court relied on its jurisprudence in *Z.H. v. Hungary* (Application No. 28973/11, 8 November 2012, paragraph 31) to find that, because the Applicant is a member of a particularly vulnerable group and, as such, should have benefited from reasonable steps by the authorities to prevent situations likely to result in inhuman and degrading treatment, it was incumbent on the Government to prove that they took the requisite measures. It held that the Government had focused on measures taken between 2008 and 2012 to improve conditions in the institution but had failed to discharge its obligation of proof pertaining to conditions and punishments suffered by the Applicant prior to 2008.

The Court stated that, although the Applicant shared a room measuring 16 sq. m with three other residents, he enjoyed considerable freedom of movement both inside and outside the home, a fact likely to lessen the adverse effects of a limited sleeping area. It did, however, find a violation of Article 3 in relation to the conditions in the Rusokastro institution prior to improvements in quality in 2009. The Court took into account that the Applicant was exposed to these conditions for a considerable period of approximately six years and he had already suffered similar conditions during his three years in the Dragash Voyvoda institution.

The Court referred to its settled caselaw whereby compensation for non-pecuniary damage flowing from a breach of Article 3 should, in principle, be part of the range of available remedies under Article 13. Given that national law provided no effective remedy, it found a violation of Article 13.

Article 6(1)

The Court quoted extensively from its judgment in *Stanev v. Bulgaria* on the failure of Bulgarian law to allow the possibility of a person under partial guardianship to apply to a court for restoration of his legal capacity, finding in favour of the Applicant. Bulgarian law does not clearly accord a right of direct access to the courts for people partially or completely deprived of legal capacity to seek restoration of their legal capacity or provide for automatic periodic review of whether the grounds for placing a person under guardianship remain valid. It quoted the statement in *Stanev* that restrictions on a person's procedural rights, even where the person has been only partially deprived of legal capacity, may be justified for the person's own protection, the protection of the interests of others and the proper administration of justice. Access to a court to review a declaration of incapacity is one of the most important rights for the persons concerned and the Court therefore considers it one of the fundamental procedural rights for the protection of those who have been partially deprived of legal capacity.

The Court endorsed the finding in *Stanev* that it would not be incompatible with Article 6 for national legislation to restrict access to court with the sole aim of ensuring that the courts are not overburdened with excessive and manifestly ill-founded applications, for example, by limiting the frequency with which applications may be made or introducing a system for prior examination of their admissibility on the basis of the file. In principle anyone declared partially incapable must have direct access to a court to seek restoration of his or her legal capacity.

Article 8 and Article 13

The Applicant further alleged that his rights under Article 8 alone and in conjunction with Article 13 had been violated by the partial deprivation of his legal capacity and placement under guardianship; his forced placement in the social care institutions which limited the possibility of living in the community and developing relations with other people, resulting in the loss of necessary social abilities required to integrate into society; and interferences with his correspondence by the institution. The Court, however, found that, having regard to its conclusions under Articles 3, 5, 6 and 13, no separate issue arose and it was not necessary to examine this complaint.

Article 46

Under Article 46, the Court indicated that, in order to redress the effects of the violations, the Government should ascertain whether the Applicant wishes to remain in the home in question and to re-examine his situation without delay in light of the findings of the judgment if he should object to his on-going placement in the home. The Court recalled that it has already recommended to the Government that it envisage the necessary general measures to ensure the effective possibility of direct access to a court for a person who has been partially deprived of legal capacity with a view to seeking its restoration. It noted that, despite the Government's submissions that reform of the law is underway, the state of the law and practice has not changed to date. It therefore renewed its recommendations in this regard.

Comments

MDAC is pleased to have received such a positive decision from the Court in this case. The Court has strengthened its previous jurisprudence in the *Stanev* case in relation to deprivation of liberty, degrading treatment and the right of direct access to a court to seek re-examination of a deprivation of legal capacity. For Mr. Stankov, his response when we informed him of the judgment was simply, "At last": his rights have finally been recognised and vindicated and he has a real possibility of leaving the institution in which he has been detained for over 15 years. His right to have the deprivation of his legal capacity reviewed and the degrading treatment he suffered have both been explicitly acknowledged. He will

receive financial compensation for the violations of his rights which will enable him to begin to put his life back together.

Notwithstanding the generally positive outcome in terms of the findings of violations of Articles 3, 5, 6 and 13, there are several aspects of the rationale of the decision which deserve closer scrutiny.

The European Court's persistence in a protectionist approach

In addition to the references to protection of people with mental disabilities included in the outline of the judgment above, the Court stated during its consideration of the subjective element of Article 5(1) and consent to deprivation of liberty that there are situations in which the wishes of a person with impaired mental faculties may be validly replaced by those of a third party acting in the context of a protective measure and that it is sometimes difficult to know the true wishes or preferences of the person concerned (paragraph 89). Relying on *Hutchison Reid v. U.K.* (Application No. 50272/99, ECHR 2003-IV), the Court later reiterated its position that detention on the grounds of 'unsound mind' is permitted if the purpose is "to ensure protection of the person concerned or that of others" and it is justified due to the seriousness of the person's condition. It went on to find that there were no reports on the Applicant's health and behaviour which established that he presented a danger to himself or others (paragraphs 101 and 102). When considering Article 6(1), the Court referred in large part to passages from the *Stanev* judgment which stated that restrictions on a person's procedural rights may be justified for the person's own protection, the protection of the interests of others and the proper administration of justice (paragraph 171).

This analysis reflects a fundamentally protectionist approach, focusing on depriving people of their rights in order to 'protect' them from making 'bad' decisions or from exploitation and abuse instead of empowering people to exercise their rights and protect themselves. It also conflates mental disability with violence and dangerousness which is an unhelpful, inaccurate and discriminatory stereotype. *Hutchison Reid* was decided well over a decade ago in the context of an individual convicted of homicide. The facts are thus completely distinguishable and, indeed, have in common with the current case only that both people were diagnosed with a mental illness. Mr. Stankov has never been convicted of any crime, much less homicide, and there was no allegation at any point in the case that he may have been violent towards himself or others. In fact, the social care institution does not house people who are considered to be a danger to themselves or others, who must instead be placed in psychiatric institutions.

Further, since the decision in *Hutchison Reid*, the UN Convention on the Rights of Persons with Disabilities (CRPD) has changed the international law understanding of mental disability and the rights of people with mental disabilities. A protectionist approach is no longer considered to be the correct approach. As with the *Stanev* case, this case presented the

Court with an opportunity to overcome the stereotypes which have informed its jurisprudence to date and to bring it into line with the principles of the CRPD. Unfortunately, this is an opportunity of which it failed to take advantage.

Although Mr. Stankov is in fact under partial guardianship, it is disappointing that the Court confined its analysis of the Bulgarian legislative framework in the context of compliance with Article 6(1) solely to its effect on those people who have been partially deprived of legal capacity rather than considering the rights of all people deprived of legal capacity. For example, it is unfortunate that it quotes directly from the *Stanev* case in finding that access to a court to review a declaration of incapacity is a fundamental procedural right "for the protection of those who have been *partially* deprived of legal capacity" and that, in principle Article 6(1) guarantees direct access to a court to seek restoration of legal capacity to anyone "declared *partially* incapable" (emphases added, paragraph 171) rather than expanding this fundamental protection to all people deprived of legal capacity.

The distinction between those partially deprived of legal capacity and those wholly deprived of legal capacity is completely arbitrary on two counts: firstly, in practice in Bulgaria the distinction between partial and complete deprivation of legal capacity is negligible. Effectively it amounts to permission for those people under partial guardianship to request their guardians to initiate a review of the decision to deprive them of legal capacity – permission which is denied to people under full guardianship. Secondly, and more importantly, under the principles of the CRPD, deprivation of legal capacity, whether partial or complete, violates the right of people with disabilities to recognition as persons before the law and to enjoy legal capacity on an equal basis with others in all aspects of life. It is incumbent on States to replace such systems and guardianship regimes with an approach based on assessments of the support that people require to exercise their legal capacity and ensuring that they receive such support. The fact that the European Convention does not include an express requirement of this nature is immaterial given the necessity to interpret the Convention as a living instrument, to prevent discrimination on the basis of disability and the fact that, while the Court cannot hold States accountable for violations of rights not enshrined in the Convention, it can and most certainly should ensure that its own analyses and approach are in line with international norms. This is particularly so in light of the commitment of the European Court to harmonise its jurisprudence as much as possible with that of the Court of Justice of the EU (CJEU) given that the latter Court is now also considering matters of fundamental rights following integration of the European Charter of Fundamental Rights into the legal framework of the EU and ratification by the EU of the CRPD in 2010. In light of the foregoing, it is a failing of the Court that it did not step beyond the artificial divide and embrace a CRPD compliant analytical approach.

In the judgment, the principle established in *M. v. Ukraine* (Application No. 2452/04, 19 April 2012) in relation to in-patient treatment in a mental health facility was extended to consent to live in a social care institution given by a person whose legal capacity is restricted

on mental health grounds: consent to admission can be regarded as valid under the Convention only where there is sufficient and reliable evidence suggesting that the person's mental ability to consent and comprehend the consequences thereof has been objectively established in the course of a fair and proper procedure and that all the necessary information concerning placement and intended treatment has been adequately provided to him (paragraph 90).

This, as many other parts of the judgment, is a mixed blessing insofar as it requires States to ensure that there is a fair and proper procedure in place and to provide all necessary information but it evidences a fundamental misunderstanding of the very distinct concepts of mental capacity and legal capacity. It perpetuates the deficits model of assessment – the assessment focusing on establishing a person's incapacity rather than focusing on establishing what supports might be necessary to ensure that their consent is free and informed.

Article 8 – the forgotten provision

The Applicant made substantial submissions alleging violations of Article 8(1), in particular pertaining to:

- Placement under guardianship which is a continuing unjustified and disproportionate interference with his right to private life under Article 8(1), previously recognised as coming within the ambit of this article in *Matter v. Slovakia*, Application No. 31534/96, 5 July 1999, paragraph 68;
- Placement in the social care institutions which amounted to unjustified segregation, limitation of social opportunities, a violation of his right to home – including insofar as it entailed keeping the Applicant from returning to the home he owned in Popovo – and a violation of the State's positive obligation to ensure the Applicant's integration into society; and
- Interference with the Applicant's correspondence whereby letters which he was required to ask the staff to post remained unsent.

The Applicant's submissions expressly distinguished these allegations from those under Articles 5 and 3, arguing that they raised distinct issues and violations. Despite this, the Court found that no separate issues arose. This is a repetitive problem with the Court's jurisprudence in the area of mental disability and was also the case in the *Stanev* decision. Guardianship and institutionalisation, hand in hand, severely restrict a person's right to private and family life – integral elements of Article 19 of the CRPD and the right to live in the community and seriously impacted by violations of Article 12 of the CRPD and the right to legal capacity. The refusal of the Court to even address the arguments under this Article is extremely disappointing, albeit unsurprising.

Individual measures

In the context of its arguments relating to the violation of his right to private life under Article 8 (as well as a request for urgency which was submitted to the Court), the Applicant argued that his guardian and the institution exercised total control over his life; his economic independence was undermined in that he was not allowed to take up regular employment and could not dispose of his pension freely; he was obstructed from forming bonds and maintaining relationships with other people and with his loved ones or forming intimate relationships with women; and he was not allowed to engage in any hobbies, sports or cultural activities. In particular, he argued that he suffers from a syndrome of "social disability" or "institutionalisation" resulting in the loss of abilities to cope with everyday challenges of a normal life outside the institution. He argued that he required intense re-integration therapy and rehabilitation to regain such skills as cooking, washing, budgeting, keeping track of the days of the year, paying taxes, handling things with public administration offices, applying for benefits, etc. When the application was filed in 2008, the Applicant argued that these skills were diminishing and the risk of losing them completely increased every additional day spent in the institution. Under Bulgarian law, the Applicant is eligible for reintegration services, support in the community and rehabilitation therapy. In these circumstances, simply releasing the Applicant from the institution will not remedy the violation or provide sufficient redress.

The Court, while acknowledging these issues in detail under its consideration of Article 46, rightly recalled that it is for the State to choose, under the supervision of the Committee of Ministers, what measures to take in its internal legal order to meet its obligations under that Article. The Court did, however, go on to say that, in its opinion, in order to redress the effects of the breach, the Government should ascertain whether the Applicant wishes to remain in the home in question and to re-examine his situation without delay in light of the findings of the judgment.

This wording is identical to that in the *Stanev* judgment. In practice, in Mr. Stanev's case, his guardian simply had him placed in a different institution in the grounds of a psychiatric hospital where his freedom remained severely restricted and there were no programmes for reintegration or any support or rehabilitation services provided to him or other residents. He remained in similar facilities for almost 18 months after the date of the decision and is now provided with supported housing only through the efforts of NGOs.

It is certainly the case that the European Court is not mandated to enumerate a host of individual measures to ensure implementation of the decision and this rightly falls to the Committee of Ministers ("the Committee") in its supervisory function. However, where the Court does choose to identify a specific individual measure as it has done in both this case and the *Stanev* case, it is under an obligation to ensure that that measure is sufficient to redress the violations and, at a minimum, does not invite the Government to commit further

violations. Had the Court found a violation of Article 8, the Government's obligation to provide redress for this violation in the form of rehabilitation might have been more clearly set out. The continuing crisis relating to non-implementation of judgments of the Court is well-known. Although, as a rule, it affects general measures perhaps more than individual measures and, of course, the final duty to choose and implement the measures of redress rests on States under the supervision of the Committee, the Court does itself no favours in this area by making specific, individual recommendations which do not and cannot in fact remedy the violations in question. Redress should, at a minimum, include restitution through the provision of services to restore the victim as far as possible to the mental and physical health in which he was before the violations. Nothing bars the Court from ordering such explicitly in its judgment while still leaving it to the State authorities to determine the method and manner of providing such restitution.

Conclusion

Despite the fundamental (and unsurprising) entrenchment of the Court in its narrow vision of the rights of people with mental disabilities as set out above, there are other aspects of the judgment which are positive. For example, in addition to extending the jurisprudence in *M. v. Ukraine* as described above, the Court also applied the shift in the burden of proof as set out in *Z.H. v. Hungary* (Application No. 28973/11, 8 November 2012, paragraph 31) to conditions in social care institutions for the first time (paragraph 149). *Z.H. v. Hungary* had established, in the context of detention in a prison, that, as a member of a particularly vulnerable group (persons with disabilities), the applicant should have benefited from reasonable steps on the part of the authorities to prevent situations likely to result in inhuman and degrading treatment and that it is incumbent on the Government to prove that the authorities took the requisite measures. It found that the burden of proof shifted by analogy with situations where an individual is taken into police custody in good health but is found to be injured at the time of release (*Selmouni v. France* [GC], Application No. 25803/94, ECHR 1999-V, paragraph 87). In the present case, the Court found that it fell to the Government to prove that measures had been taken to improve conditions in the social care institutions prior to 2008 in order to avoid liability under Article 3.

It should also be noted that, when evaluating whether the placement in the social care institution is a deprivation of liberty within the meaning of Article 5(1), the Court seems to have taken a slightly more liberal approach than that taken in *Stanev*. In the latter case, the Court discussed the "special circumstances in the present case", referring to the fact that no members of the Applicant's family were involved in his guardianship arrangements and the placement had been carried out by a State official who was assigned as his guardian and had no contact with the applicant. It found that, although there was no indication that the Applicant's guardian had acted in bad faith, the fact that his placement resulted exclusively from steps taken by public authorities and not of acts of private individuals distinguished the case from that of *Nielsen v. Denmark* (28 November 1988, Series A no. 144) in which the

Applicant's mother committed her son, a minor, to a psychiatric institution in good faith. In *Stankov*, the Court found the necessary State responsibility for the detention despite the fact that the deprivation of legal capacity and the placement in the social care institution were both instigated by Mr. Stankov's mother who was subsequently appointed as his guardian.

Further, in the context of the general measures required by the Court which are identical to those in *Stanev*, this judgment will address frequent refrains at the national level that *Stanev* was a "misunderstanding" by the Court. The Government is currently drafting law reform proposals to bring its legal capacity legislation into line with Article 12 of the CRPD as part of its efforts to implement the *Stanev* judgment. Discussions have been protracted and heated, facing resistance from many quarters. The clear statement by the Court for the second time that Bulgaria's current law also violates Article 6(1) of the European Convention strengthens national level advocacy efforts around the new legislation.

Ultimately however, while the judgment represents an extraordinary victory for Mr. Stankov himself and an important impetus for implementation by the Bulgarian Government of the principles set down in *Stanev*, it makes abundantly clear that the European Court of Human Rights remains blinkered when it comes to the human rights of people with intellectual disabilities and people with psycho-social disabilities, entrenched in its outdated, protectionist and deficits based model of disability and obstinate unwillingness to be dragged into the post-CPRD era.