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**NGO information to the United Nations Committee on Economic, Social and Cultural Rights**

**For consideration when compiling the List of Issues Prior to Reporting during the 57th Session of the Committee**

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1 February 2016

**I. OVERVIEW**

1. This written submission provides an outline of issues of concern with regard to Bulgaria’s compliance with the provisions of the International Covenant on Economic, Social and Cultural Rights (hereinafter “the Covenant”), with particular focus on the enjoyment of those rights by persons with disabilities. The purpose of the submission is to assist the Committee on Economic, Social and Cultural Rights (hereinafter “the Committee”) in this initial stage of the compilation of the List of Issues Prior to Reporting.
2. The submission has been written by the Mental Disability Advocacy Centre (MDAC) with the support of the Bulgarian Association for Persons with Intellectual Disabilities (BAPID), the Bulgarian Center for Not-for-Profit Law Foundation (BCNL), the Bulgarian Helsinki Committee (BHC), the Chovecolubie Association, the Garden Association and the Minerva Foundation.
3. MDAC is an international human rights organisation which 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](http://www.mdac.org).
4. The Bulgarian Association for Persons with Intellectual Disabilities (BAPID) is a national network of people with intellectual disabilities, their families, advocates and professionals in Bulgaria. BAPID advocates for national and local policy and supports the full involvement of persons with intellectual disabilities and their families in developing, monitoring and control over national, regional, and local policies related to them.
5. The Bulgarian Center for Not-for-Profit Law Foundation (BCNL) is a public-benefit foundation providing support for drafting and implementing legislation and policies aiming to advance civil society, civil participation and good governance in Bulgaria.
6. The Bulgarian Helsinki Committee (BHC) is an independent non-profit non-governmental organisation, established in 1992 and which focuses on the most serious human rights problems. It addresses human rights issues by monitoring, research and human rights advocacy; legal advocacy, pro bono strategic litigation before the domestic and international legal fora and quasi-judicial bodies and free legal aid to victims of severe, systemic human rights abuses and media advocacy and public outreach.
7. The Chovecolubie (Philanthropy) Association is an organisation which works for the development of people’s potential through establishing that mental health is valuable for each individual’s personality and for society as a whole.
8. The Minerva Foundation is an independent NGO aiming to provide psychological and psycho-social support to vulnerable groups of people facing high risk of poverty and exclusion from society. The Garden Association is a non-profit organisation whose mission is to develop and popularise psychology and psychotherapy, aimed at achieving sustainable psychological health, as well as social realisation of vulnerable social groups, marginalised communities and people at risk of social exclusion.

**II. SPECIFIC COMENTS**

**Legal barriers to forming a family (Article 10)**

1. According to Bulgarian legislation, people with disabilities, when deprived of their legal capacity through the operation of guardianship legislation, cannot marry.[[1]](#footnote-1) Not being able to marry means people cannot receive legal recognition as a family, and this constitutes an obstacle in ensuring the protection and assistance to which families are entitled under Article 10 of the Covenant.
2. Besides the protection offered under the Covenant, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) expressly recognises the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent and without discrimination.

**Suggested questions to the Bulgarian Government:**

**When is the Government planning to amend its legislation, particularly by abolishing Article 7 (1) p. 2 of the Family Code, in order to ensure that all people, including all persons with disabilities, have the right to marry?**

**When is the Government planning to abolish guardianship of people with disabilities in order to ensure that their will and preferences are always respected, particularly in matters related to their family rights?**

**Institutionalisation of people with disabilities (Articles 2, 9, 11 and 12)**

1. In Bulgaria over 7,000 people with mental disabilities are still required to live in long-term residential institutions.[[2]](#footnote-2) The overall numbers of people with mental disabilities placed in institutions has not changed substantially in recent years, and there is little support when they try to transition. The exception to this is the decrease in the number of children placed in homes for medical and social care, which halved between 2008 and 2013 as a result of deinstitutionalisation programmes.[[3]](#footnote-3)
2. The Committee has already explained that “segregation and isolation achieved through the imposition of physical and social barriers”[[4]](#footnote-4) is a form of discrimination. Such characteristics constitute an accurate description of Bulgaria’s long-term residential institutions, which effectively segregate people with disabilities for life.
3. The Covenant, in its Articles 11 and 12, guarantees the right to an adequate standard of living and the right to health. There are numerous reports which reveal that institutionalisation of persons with disabilities places them at significantly increased risk of human rights abuses, including living inhuman and degrading conditions, and being subjected to physical and emotional abuse, and forced treatment.[[5]](#footnote-5) Such conditions cannot fulfil the requirements of an adequate standard of living or proper access to health services.
4. People with disabilities in Bulgaria are often placed in institutions against their will. They are not provided with alternatives which enable them to live in the community. At the same time, there is no state policy adequately ensuring basic housing services for people with disabilities within the community, which further represents a violation of their right to social security. Some Bulgarian municipalities have “Municipality houses” (“общински жилища”) available for vulnerable people, and according to the law these houses are also available to people with disabilities. Yet, in practice the number of available homes is insufficient, and there are no official statistics on the number of people with disabilities who need access to such housing.
5. In 2012 the Committee expressed concern about “the reduced impact of existing plans and strategies on children with disabilities who are in institutions and about the lack of services to prepare the integration into society of persons who leave institutional care.”[[6]](#footnote-6) In Bulgaria however the development of community-based services continues to be exceptionally slow and there is a lack of support to persons with disabilities to develop community networks. The Bulgarian Government still has no sustainable policy for the social inclusion of people with mental disabilities.
6. The level of investment in sustainable community-based services, which are vital in securing inclusion for people with disabilities, is significantly lower than the large sums still spent on maintaining and establishing long-term residential institutions.[[7]](#footnote-7) Moreover, the funds that are available, including European Union Structural and Investment Funds, are sometimes used to create ‘homes’ within former institutions. *De facto*, such homes perpetuate the same culture of institutionalisation and segregation of people with disabilities. Sometimes the development of such “community-based services” is achieved simply through changing the name and legal designation of already-existing institutional services. The Government, at present, is not therefore using the maximum of its available resources to ensure that people with disabilities can live in the community and enjoy an adequate standard of living or access to adequate healthcare.
7. There is an urgent need to continue developing deinstitutionalisation policies in relation to children, especially those with more severe or multiple impairments. Moreover, it is necessary to take steps towards ensuring the deinstitutionalisation of adults with disabilities too, while simultaneously ensuring they receive the support they need in the transition to living in the community. Available funding should be used to expand and develop community services and support services for people transitioning to the community, instead of continuing high levels of state investment in residential institutions.

**Suggested questions to the Bulgarian Government:**

**What actions are the Government planning to take in order to ensure the closure of institutions that segregate people with disabilities and to ensure access to community-based services and accommodation, including access to mainstream services?**

**Please provide information on the process of deinstitutionalisation of children, including children with disabilities, and plans on next steps and timeline for the process. What principles and lessons have been learned from this process that the Government can use when pursuing deinstitutionalisation of adults with disabilities?**

**What measures are the Government planning to take to ensure the right of people to choose where and with whom they live, including for those adults with disabilities who are currently placed under guardianship? What support services will the Government make available for people with disabilities who might need them when taking such decisions?**

**Will the Government adopt a moratorium on new admissions to long-term residential social care institutions in order to stop filling up vacancies?**

**How will the Government use available funds, including European Structural and Investment Funds, to the maximum extent, to develop and provide community-based services for persons with disabilities?**

**When will the Government conduct a needs assessment related to the number of people with disabilities in need of housing and their access to general and specialised health services?**

**Health services and informed consent (Article 12)**

1. People with intellectual and psycho-social disabilities can lawfully be subjected to treatment without their full and informed consent in Bulgaria through the operation of a system of guardianship. In such cases, consent for medical or health care interventions can be gained from other people (relatives, guardians etc.), and the person is not provided with adequate information which would enable him/her to take the decision themselves.

**Suggested questions to the Bulgarian Government:**

**What measures will the Government take to ensure that the will and preferences of people with disabilities are respected during the provision of health services and treatments?**

**What are the conditions under which Bulgarian law allows for compulsory admission and treatment in psychiatric facilities? Are such conditions in accordance with international law? What plans do the Government have to align Bulgarian legislation with international law?**

**Denial of the right to education (Article 13)**

1. In Bulgaria, although the right to inclusive education for children with disabilities is enshrined in law,[[8]](#footnote-8) many children with mental disabilities continue to be educated in segregated or institutional environments. Approximately 8,500 children with disabilities continue to receive education in segregated settings, not having the opportunity to meet, socialise or study with their peers without disabilities.[[9]](#footnote-9)
2. The Covenant guarantees, in Article 13, the right to education for all. In addition, the United Nations Convention on the Rights of Persons with Disabilities makes clear in Article 24 that this right must be guaranteed without discrimination and on the basis of equal opportunity. Together, these obligations require the development of accessible educational systems which enable inclusion and life-long learning for all.
3. The Bulgarian Government’s provision of education to children with disabilities in “special schools” and their subsequent exclusion from the mainstream education system constitutes a violation of the right to inclusive education. The Committee has already expressed concern with regards to the segregation of children with disabilities in education in 2012.[[10]](#footnote-10) The situation however has not changed significantly.

**Suggested questions to the Bulgarian Government:**

**What steps will the Government take to ensure that all children with disabilities have access to an inclusive education, and what is the timeframe for this?**

For further information, please contact:

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1. According to art. 7 (1) p. 2 of the Bulgarian Family Code persons who have mental illnesses or “imbecility” cannot marry by virtue of the fact that these are lawful grounds for placement under guardianship. [↑](#footnote-ref-1)
2. Mental Disability Advocacy Centre. (2014). *My Home, My Choice in Bulgaria The right to community living for people with mental disabilities in 2014*, p. 4, available at <http://www.mdac.org/sites/mdac.info/files/my_home_my_choice_-_bulgaria_2014.pdf>. [↑](#footnote-ref-2)
3. Mental Disability Advocacy Centre. (2014). *My Home, My Choice in Bulgaria The right to community living for people with mental disabilities in 2014*, p. 13, available at <http://www.mdac.org/sites/mdac.info/files/my_home_my_choice_-_bulgaria_2014.pdf>. [↑](#footnote-ref-3)
4. Committee on Economic, Social and Cultural Rights. *General Comment No. 5, Persons with disabilities*. (Eleventh session, 1994), U.N. Doc E/1995/22 at 19 (1995), para. 15. [↑](#footnote-ref-4)
5. See (2005). *ECONOMIC, SOCIAL AND CULTURAL RIGHTS. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt*. E/CN.4/2005/51, paras. 9 and 10; Judith Klein. (2010). *Bring Europeans with Mental Disabilities Out of the Shadows*, available at <https://www.opensocietyfoundations.org/voices/bring-europeans-mental-disabilities-out-shadows>. [↑](#footnote-ref-5)
6. Committee on Economic, Social and Cultural Rights. *Concluding observations on the combined fourth and fifth reports o Bulgaria, adopted by the Committee at its forty-ninth session (12-30 November 2012)*, E/C.12/BGR/CO/4-5, para. 14. [↑](#footnote-ref-6)
7. For details see Mental Disability Advocacy Centre. (2014). *My Home, My Choice in Bulgaria The right to community living for people with mental disabilities in 2014*, pp. 19-20, available at <http://www.mdac.org/sites/mdac.info/files/my_home_my_choice_-_bulgaria_2014.pdf>. [↑](#footnote-ref-7)
8. Under Bulgarian law, children with disabilities have the right to attend mainstream schools. These schools have an obligation to accept children with disabilities as their students. Special schools for children with disabilities are open to students where mainstream education options are exhausted (Article 17, paras 3 and 4 and Article 27 para 1 and 2 of the National Education Act, available in Bulgarian at <http://lex.bg/bg/laws/ldoc/2132585473>). [↑](#footnote-ref-8)
9. European Agency for Development in Special Needs Education, Country Data 2010 available at <http://europa.eu/rapid/press-release_IP-12-761_en.htm>. [↑](#footnote-ref-9)
10. Committee on Economic, Social and Cultural Rights. *Concluding observations on the combined fourth and fifth reports o Bulgaria, adopted by the Committee at its forty-ninth session (12-30 November 2012)*, E/C.12/BGR/CO/4-5, para. 22. [↑](#footnote-ref-10)