



**OMCT Appeal
BUL 031208.ESCR**

**The Bulgarian Helsinki Committee, the Mental Disability Advocacy Center
and the World Organisation Against Torture,
call on the Bulgarian Parliament
to adopt effective legislation to protect persons with mental disabilities in Bulgaria from
social exclusion and severe human rights violations
including inhuman and degrading treatment**

Persons with mental disabilities constitute one of the most marginalised and discriminated groups in Bulgarian society. They frequently face discrimination, social exclusion and severe human rights violations, including violence and ill-treatment. Inadequate legislation together with entrenched institutional policies and practices also compromise their socio-economic wellbeing, as well as that of their families. The Bulgarian Family Code is currently under revision and the Bulgarian Helsinki Committee (BHC), the Mental Disability Advocacy Centre (MDAC) and the World Organisation Against Torture (OMCT) express their concern that the current final draft does not meet the needs of persons with disabilities in Bulgaria and does not comply with the basic requirements of international human rights law. These organisations call on Bulgarian Parliamentarians and Government to ensure that the law under consideration is substantially revised before its adoption in order to effectively protect the rights of persons with mental disabilities.

The implications of deprivation of legal capacity

In Bulgaria, persons with mental health problems and intellectual disabilities are still seen primarily as persons with medical problems, and consequently their social needs are largely overlooked. This means that regardless of the skills and capabilities that persons with mental disabilities possess, they are often deemed incompetent, deprived of their legal capacity and institutionalised. Bulgaria's legislation, which is premised on total deprivation of legal capacity, further entrenches these outdated attitudes. The law removes a person's right to make their own decisions and denies the exercise of their basic human rights, including the rights to marry, vote, work, and take legal action and seek judicial remedies. Deprivation of a person's legal capacity also impedes their rights to a fair trial, property ownership, and respect for their personal and family life. In short, guardianship constitutes 'civil death'.

Guardianship, institutionalisation and ill-treatment

In most cases, persons with mental disabilities who are placed under guardianship in Bulgaria are forced to live in large and remote residential institutions for the remainder of their lives. The practice of institutionalisation continues to be sustained by inappropriate funding mechanisms, scarcity of community-based services, and lack of political will. In some cases, families simply do not have the financial means to support their relatives with disabilities at

home. In others, a guardian's decision to place an individual in an institution is not taken in the best interests of the person concerned but, on the contrary, is done in order to exploit that person's finances and property. Moreover, placement in an institution is not a procedure ordered by a court, and persons with disabilities who have been institutionalised following a guardianship order are unable to access a court to contest their placement. This amounts to *de facto* detention.¹ Such institutionalisation is itself a violation of international human rights law binding upon Bulgaria.

Living conditions in some of Bulgaria's institutions have been deemed to amount to inhuman and degrading treatment,² and inside these closed institutions persons with disabilities are at still greater risk of ill-treatment. Indeed, as the UN Special Rapporteur on Torture has recently observed with respect to the practice of institutionalisation, "persons with disabilities are frequently subjected to unspeakable indignities, neglect, severe forms of restraint and seclusion, as well as physical, mental and sexual violence".³ In addition, the fact of being under guardianship – together with a well-grounded fear of retribution – prevents victims from seeking remedies against ill-treatment before the courts. BHC, MDAC and OMCT express their strong concern over allegations of ill-treatment of persons deprived of their liberty in institutions, and in particular, the occurrence of deaths in Bulgarian institutions, neither of which are effectively investigated by the authorities.

Frequently, residents in Bulgaria's institutions receive no form of habilitation, rehabilitation or therapy, including quality education or vocational skills training. As a consequence, there are no opportunities for their reintegration into regular community settings. Institutions also fail to provide them with adequate or appropriate medical care, and persons with disabilities who have been deprived of legal capacity are legally prohibited from consenting to, or refusing, treatment or medication. Speaking in general terms, the UN Special Rapporteur on Torture has noted that, "[d]epending on the circumstances of the case, the suffering inflicted and the effects upon the individual's health may constitute a form of torture or ill-treatment."⁴ Indeed, it has been documented that institutionalisation in poor living conditions and closed environments such as those found in Bulgaria leads to the deterioration of a person's mental and physical health. The lack of individual assessment of health needs and the inadequate provision of healthcare results in a disproportionately high rate of death among persons with mental disabilities deprived of their liberty in institutions.

The economic situation of persons with mental disabilities also often has a bearing on their health status: frequently they lack the funds to seek timely and comprehensive therapies and their appointed guardians are unable or unwilling to support them, including in cases where life-saving interventions and procedures are needed. Furthermore, the physical health of people with mental disabilities may be ignored or overlooked by medical professionals who tend to focus on the mental or cognitive impairments of their patients. As a consequence, the physical condition of persons with mental disabilities may not be treated, or is treated superficially and with delay. This attitude among health professionals can also lead to persons

¹ See Report of European Committee for the Prevention of Torture (CPT) on Bulgaria, CPT/Inf (2004) 21, para. 52.

² See CPT Report on Bulgaria, CPT/Inf (2008) 11. See also CPT Report on Bulgaria, CPT/Inf (2004) 23, paras. 33, 35.

³ Report to the United Nations General Assembly by Manfred Nowak, Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, 28 July 2008, Ref A/63/175, Para. 38.

⁴ UN Special Rapporteur on Torture 2008 report, op cit, para. 63.

with mental disabilities being prescribed and forced to accept treatment or medication for their disability that is incompatible with their physical condition.

Urgent reform of the Guardianship Law

To highlight guardianship and institutionalisation as international human rights concerns, BHC⁵ and MDAC⁶ have undertaken a joint programme of strategic litigation, and currently have six cases pending before the European Court of Human Rights addressing these issues. When these cases are decided upon, Bulgaria will be under a legal obligation to reform its systems in compliance with the decisions. However, it has an opportunity to do so now.

Reform of Bulgaria's guardianship law is crucial to protecting the human rights of persons with disabilities. Under present legislation, guardianship has proven to be an instrument which facilitates the institutionalisation of persons with mental disabilities and hence renders them vulnerable to ill-treatment and exploitation that threaten their health, material wellbeing and personal integrity. The lack of adequate legislation and support services to ensure full inclusion of persons with mental disabilities condemns them to a marginalised existence marred by social isolation and discrimination. Governmental initiatives for amendments to the existing legislation (such as the introduction of a new Civil Procedure Code⁷) have so far failed to give protection and recognition to the rights of persons with mental disabilities.

Guardianship law is, for the most part, covered by the *Bulgarian Family Code*, which is currently under review. The draft amendment⁸ presently before Parliament is consistent neither with the actual needs of people with disabilities, nor with international human rights law.⁹ Specifically, this draft:

- fails to recognise the importance for persons with disabilities of exercising their individual autonomy and independence, by its failure to provide for individual and tailor-made approaches to decision making;
- denies persons facing guardianship proceedings any entitlement to compulsory legal aid to ensure adequate legal representation;
- fails to enumerate a guardian's obligations and responsibilities toward the person under guardianship, nor does it provide a mechanism to effectively monitor guardians;
- fails to put in place community-based support mechanisms for persons with disabilities and their families.

BHC, MDAC and OMCT call upon the Bulgarian Government and Parliament to implement guardianship reform by introducing amendments to the draft Family Code currently before the

⁵ BHC is an independent NGO based in Bulgaria. The objectives of the Committee are to promote respect for human rights, to carry out advocacy for the protection of human rights in line with international human rights standards, and to popularise and make widely available human rights instruments. For more information visit www.bghelsinki.org.

⁶ MDAC is an international NGO working to advance the rights of children and adults with actual or perceived intellectual or psycho-social (mental health) disabilities. For more information visit www.mdac.info.

⁷ Civil Procedure Code, adopted on 20 July 2007, in force since 1 March 2008
<http://lex.bg/bg/laws/ldoc/2135558368>.

⁸ Family Code, Draft Law, adopted on first reading on 2 October 2008
<http://parliament.bg/?page=app&lng=bg&aid=4&action=show&lid=2133>

⁹ The draft Family Code also fails to comply with the UN Convention on the Rights of Persons with Disabilities, which Bulgaria signed in September 2007, as well as Recommendation No. 4 of 1999 of the Committee of Ministers of the Council of Europe on Principles Concerning the Legal Protection of Incapable Adults.

Parliament. Together with guardianship law reform, priority must be given to closing down institutions and enabling community living, as well as to the empowerment of, and provision of support to persons with mental disabilities to ensure the full enjoyment of their human rights - civil, political, economic, social and cultural. A speedy ratification of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol would demonstrate to the Bulgarian people and the international community that the Bulgarian government takes these matters seriously.

Specific actions requested

BHC, MDAC and OMCT call upon:

Members of the Bulgarian Parliament and the Bulgarian Government:

- to halt the overall adoption of the current amendments to the Family Code and include adequate provisions concerning guardianship reform or, alternatively, to include the elaboration and adoption of a new guardianship law in the legislative agenda for the forthcoming year;
- to include the participation of persons with disabilities, and organisations of or for persons with disabilities in the elaboration of the required provisions;
- to ratify the UN Convention on the Rights of Persons with Disabilities, signed by the Government on 27 September 2007, and its Optional Protocol;
- to designate an independent body to promote, protect and monitor the implementation of the rights of persons with disabilities in compliance with Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities;
- to prioritise and take appropriate and concrete measures for the deinstitutionalisation of persons with mental disabilities and to enable their integration into the community;
- to ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in order to establish an independent inspectorate to all places of detention.

The European Commission and European Parliament to ensure that Member States comply with European and international standards on the rights of persons with disabilities and to ensure the full enjoyment of their economic, social and cultural rights.

The UN Special Rapporteurs on Physical and Mental Health, Torture and Adequate Housing to encourage the Bulgarian Government to take the above-mentioned steps and closely monitor the situation.

**Geneva, Sofia and Budapest
3 December 2008**
