

ANNEX

Proposed Recommendations to the State related to issues in relation to the initial report of Bulgaria

A. Purpose and general obligations (arts. 1-4)

1. A translation of the Optional Protocol to the Convention on the Rights of Persons with Disabilities must be completed quickly and must be published. The process of ratifications should immediately begin.

2. The Constitution should be amended as follows:

- Disability should be a protected characteristic in the Constitution;
- All articles which are discriminatory on the ground of disability, e.g. the prohibition on voting for persons placed under guardianship, should be abolished.

3. General comments Nos. 2, 3, 4 and 5 of the CRPD Committee should be translated and published on the websites of the Ministry of Justice and other relevant authorities, and widely disseminated.

4. The State should ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on Economic, Social and Cultural Rights, and the Marrakesh Treaty.

Purpose (art. 1)

5. The definition in the national legislation of the disability must correspond to the UNCRPD. An analysis of legislation should be completed with input from DPOs and human rights organisations to ensure conformity with the Convention.

6. New disability legislation must be developed as soon as possible to bring the Bulgarian legal framework into line with the Convention and should provide a sound basis for inclusive policies. Serious reforms are needed in disability assessment procedures and granting disability status, and there should be an end to defining disability purely on the basis of a medical diagnosis. The Government should give serious consideration to the International Classification of Functioning, Disabilities and Health Individual (ICF) – a World Health Organisation approach to disability assessment – and incorporate it into Bulgarian disability legislation. Eligibility factors with regard to disability benefits (pension, allowances, direct payments) and individual supports such as technical aids, accessible and affordable housing, personal assistance and peer support should be the result of disability-related needs assessment.

Definitions (art. 2)

7. The State should:

- Ensure trainings for all relevant authorities regarding the general principles of the Convention, specifically including reasonable accommodations. DPOs, human rights organisations and people with disabilities should be involved in providing training;
- Ensure legislative changes which will make clear that the reasonable accommodations will be provided by every authority and public service and this is obligatory in every area of the public and social life. Concrete measures should be developed in consultation with DPOs, human rights organisations and activists.

- Amend the Law for Protection against Discrimination to define the refusal to provide reasonable accommodations as discrimination.

B. Specific rights (arts. 5-30)

Equality and non-discrimination (art. 5)

8. The State must ensure:

- legal aid for persons with disabilities at all stages of procedures related to protection of their rights, regardless of their income, including free legal aid for consultations and preparation of legal documents. The legal aid must be provided by lawyers who have undergone thorough training related to Convention, human rights principles, discrimination, as well as training on the skills and knowledge necessary to work with people in vulnerable positions (including skills on communication).

- wide promotion of the principle of anti-discrimination as well as the need for effective monitoring related to discrimination based on disability.

- ensuring that the Equality Body starts collecting information regarding gender equality. As already empowered by law, the Equality Body should initiate cases *in proprio motu* where it becomes seized of disability-based discrimination. Where structural problems are identified, the Equality Body should make recommendations for amending legislation must to the relevant authorities.

Women with disabilities (art. 6)

9. The State must guarantee gender equality through collecting data about the multiple, intersectional discrimination of women and girls. The information must be available publicly, DPOs and human rights organisations must be involved in preparation of the criteria for collecting this information, and in the process of forming recommendations to end discrimination.

Children with disabilities (art. 7)

10. The State must ensure that every child with a disability can live with their families or in a family-type environment, and that there is a complete prohibition on the institutionalisation of all children with disabilities, including placement in congregate living centres such as “family-type placement centres”. This means that the State must provide support and alternatives to families who are taking care for a child with a disability. The support must be financial and practical. Day care services or other specific form of non-residential care and treatment must be made available in the community across the country.

11. State authorities must investigate all cases of deaths in group homes and where DPOs, human rights organisations or lawyers have an interest in such cases, they must be informed and asked for consultation.

Accessibility (art. 9)

12. Monitoring of the existing and new constructions should be strengthened and made more effective. Urgent measures are needed to improve accessibility and inclusiveness of mainstream public services – transport including buses and trains, education, healthcare, etc. – to ensure accessibility for all persons with disabilities.

Right to life (art.10)

13. The State must ensure investigations in all cases of deaths in residential care, hospitals and in cases of suspected medical neglect. Where DPOs, human rights organisations or lawyers have an interest in such cases, they must be informed and asked for consultation.

14. The State must ensure regular monitoring of the residential services and hospitals to ensure the right of life is protected.

Equal recognition before the law (art. 12)

15. The State must take immediate steps to adopt the Law on Natural Persons and Measures for Support, thereby abolishing the system of guardianship and replacing it with a system of supports for persons with disabilities to exercise their legal capacity on an equal basis with others, in compliance with article 12 of the Convention and General Comment No. 1.

Access to justice (art. 13)

16. The State must ensure:

- that in every procedure it uses easy to read and understand language and that all documentation is made accessible during court procedures.
- that information on the general and specific rights of citizens and right of the legal aid is made available in an easy to read format, and that accessible information is provided for persons with sensory disabilities.
- that specific technology transforming text to speech is made available in courts and that court staff are prepared to work with people with sensory disabilities (including those who use sign language and who require easy to understand language);
- that legislative amendments are made which guarantee people with intellectual and psychosocial disabilities can receive help from supporters at every stage of criminal, civil and administrative proceedings.
- that legislative amendments are made at the national level related to the right of persons with disabilities to receive support during court proceedings, including at preparatory and appellate stages as required;
- that legislative amendments are adopted to guarantee support and flexibility in court procedures to guarantee the effective participation of persons with disabilities during court procedures. This means that the law must oblige courts to ensure all reasonable, procedural and age-appropriate accommodation during all stages of court proceedings. The law must recognise the lack of such accommodations as discriminatory and that any such decisions or judgments can be appealed;
- that judges and lawyers from the State Legal Aid service are properly prepared to deal with cases of persons with disabilities. Training must include: preparation to apply the Convention; preparation to recognise, prevent and remedy discrimination, including in the court room; preparation to apply general human rights principles; and rules and specific skills for communication with people in vulnerable positions.

Liberty and security of the person (art. 14)

17. The State should:

- close immediately all institutions in the country, regardless of their size;
- ensure the availability and accessibility of a diversity of services across the country to ensure non-institutional, community-based services, including health, are provided;
- end the practice of involuntary confinement in psychiatric hospitals of persons with disabilities, particularly persons with psychosocial disabilities;
- ensure that informed consent is sought in all cases, and that all placement and treatment decisions are based on the voluntary consent of persons with disabilities and following the provision of proper information.
- ensure legislative amendments are made which guarantee that patients in psychiatric hospitals will be not kept there against their will. Where questions arise as to the voluntariness of placement in a psychiatric hospital, the burden of proof should be on the institution or consent medical practitioner to prove that informed consent was obtained in all cases.
- adopt legislative changes to prohibit psychiatric treatment and detention in psychiatric hospitals of persons under guardianship against their will.

18. The State should thoroughly review the case law related to implementation of the amendment of Social Assistance Act regarding court review of decisions related to placement in residential care. Additionally, the State must ensure (including with legislative changes) that during the administrative and court proceedings related to the placement in the residential care, persons with disabilities receive all necessary support to express their will, wishes and preferences, including through ensuring reasonable accommodations during and throughout the procedure. Alternatives to residential placements must be provided.

19. The State must ensure courts apply a human rights-based approach instead of a medical approach during court procedures. This means that decisions should be taken not on the grounds of a diagnosis of the person but on the grounds of his/her abilities and expressed will and preferences. The State must ensure to all persons with disabilities involved in administrative or court procedures related to placement in residential care free access to a suitably qualified lawyer (legal aid) at all stages of such procedures.

20. The State must ensure a diverse range of services related to post-hospitalisation rehabilitation, social housing, services in the community and support in decision making, to guarantee that placement in residential care is avoided.

21. The State must ensure that persons with disabilities in prisons have access to proper medical care. During investigations, persons with disabilities must have all necessary support which will allow them to protect their rights fully. This means: proper interpretation (including for persons with intellectual and psychosocial disabilities), proper support and legal representation at all stages of the process. In case the prosecutor proposes forensic treatment instead of a criminal procedure, the person must have right to choose which procedure will be apply in his/her case.

Freedom from torture or cruel, inhuman or degrading treatment or punishment (art. 15)

22. The State must ensure that violence against persons with disabilities are prevented in all social and medical service in the country (including State and privately-maintained facilities). The State must ensure that DPOs and human rights organisations have guaranteed regular access to such facilities and the right to conduct independent monitoring in these services. The National Preventive Mechanism (the Ombudsman, acting in this role) must make regular visits to all such services and conduct thematic monitoring on a regular basis. All cases of torture, cruel, inhuman or degrading treatment in psychiatric institutions, social care services and in prisons must be investigated, with criminal sanctions for those responsible.

23. The State must ensure that all persons who have been victims of torture or cruel, inhuman or degrading treatment or punishment in social care settings, psychiatric hospitals or prisons have access to remedies, including redress, rehabilitation, guarantees of non-repetition and compensation. The right to initiate such cases should not be extinguished by proscriptio.

Freedom from exploitation, violence and abuse (art. 15)

24. The State must ensure specific trainings for the social workers in Social Assistance Directorates to recognise gender-based violence and ensure they have adequate knowledge and skills to respond. Social workers must also be trained on CRPD principles. The State must ensure that the Social Assistance Directorate is prepared pro-actively respond to cases of gender-based violence. Legislative amendments should be made to oblige social workers to inform the prosecutor in cases of gender-based violence, who in turn should be obliged to initiate proceedings on of behalf victims of gender-based violence who are people with disabilities and who are victimised on the basis of disability.

25. The State must ensure that all services for victims of gender-based violence are assessable to persons with disabilities (including buildings, procedures, length of service provision, communication skills of staff, etc.) The Law for Social Services must be amended to achieve this. Women's rights organisations, DPOs and human rights organisations must be invited to take part in the process of change and their work should be supported by the State.

26. The Penal Code should be amended to criminalise violence against persons with disabilities, including against women and girls with disabilities.

Living independently and being included in the community (art. 19)

27. The State must end all forms of institutionalisation of persons with disabilities, including investments in building and refurbishment of institutions (large or small). All financing, including funding received by the State from European Structural and Investment Funds, must be used to promote independent living in the community for all persons with disabilities, including:

- providing housing in the community where people with disabilities can live independently;
- ensuring the provision of a range of community-based services to support independent living which are responsive to the diversity of needs of persons with disabilities;
- development and implementation of a new system of social support which ensures that financial support to persons with disabilities is adequate, reflects their needs, and that persons have control over how and where support is provided, including the ability to control the financial resources for the social services.

28. The State must provide very clear information about how European funding has been spent so far and to seek responsibility (administrative, financial and if there are reasons – criminal) where such funds have been misspent on building new residential institutions including small residential institutions named “protected homes”, “family type centres” or in any other way.

Education (art. 24)

29. The State must ensure sufficient financial resources for individualised support and reasonable accommodations to students with disabilities in mainstream schools to enable them to enjoy their right to quality inclusive education.

30. The State should carry out research on the economic and social benefits of inclusive education. The research conducted in collaboration with DPOs and human rights organisations including organisations involved in the promotion of inclusive education, who should also be involved at every stage of research

31. The State should conduct a broad national campaign on inclusive education and promote its principles and practical implementation. Inclusive education should be performed with clear and transparent guidance, targets and implementation indicators.

32. Teaching materials, tools and adaptations should be provided to comply with the 2016 Preschool and School Education Act. Acquisition of knowledge, skills and competences on the part of children with disabilities should be a priority in education policies, which in turn will raise their access to the labour market.

Work and employment (art. 27)

33. Support for employers of persons with disabilities should be balanced with personal supports for all person with disabilities on the basis of individual needs assessments for specific job performance. This approach should replace the current practice of opening special jobs and maintaining of special enterprises for persons with disabilities.

34. The State must invest in programs and services related to employment of persons with disabilities, including programmes for finding of work, keeping work, problem solving during the working process between employees and employers, qualification, skill buildings and transformation of the working places to accommodate the needs of persons with disabilities.

Participation in political and public life (art. 29)

38. The State should amend legislation to abolish all prohibitions related to right to vote and to stand and hold public office, and ensure reasonable accommodations and accessibility during the process of voting.