Country Report on Bulgaria for the Study on Member States' Policies for Children with Disabilities

Study for the LIBE Committee
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for the Study on
Member States' Policies for Children with Disabilities

Abstract

Upon request of the LIBE committee, this study looks at the situation of children with disabilities in Bulgaria to identify the gaps in the legal framework and its implementation, the obstacles faced by children with disabilities and best practices. This country study is part of a larger study which analyses all the 28 Member States. In the first phase of the study, a comparative analysis was drawn based on 18 of the country studies. In the second phase of this study, the situation in the remaining ten countries and Scotland has been analysed. The overall report “Member State Policies on Children with Disabilities” provides some recommendations for EU action to enhance the situation of children with disabilities.
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LIST OF ABBREVIATIONS

BHC  Bulgarian Helsinki Committee
Charter  The Charter of Fundamental Rights of the European Union
CPA  Child Protection Act
CPD  Child Protection Department
CRC  United Nations Convention on the Rights of the Child
CRPD  United Nations Convention on the Rights of Persons with Disabilities
CJEU  Court of Justice of the European Union
CoE  Council of Europe
ECHR  Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms
EU  The European Union
FRA  European Union Agency for Fundamental Rights
MEYS  Ministry of Education, Youth and Science
MLSP  Ministry of Labour and Social Policy
NNC  National Network for Children
PADA  Protection against Discrimination Act
PADC  Protection against Discrimination Commission
TEU  Treaty on the European Union
TFEU  Treaty on the Functioning of the European Union
SACP  State Agency for Child Protection
SAD  Social Assistance Department
UN  United Nations
EXECUTIVE SUMMARY

Children with disabilities are a fairly new subject of legislative effort in Bulgaria as it was not until the year 2000 that Bulgaria started drafting and implementing policies specifically relating to children with disabilities. The largest challenges that children with disabilities face in Bulgaria are: discrimination, insufficient access to assistance and social services, a general lack of an accessible environment, inefficient access to inclusive education, and inadequate/ineffective deinstitutionalisation.

The Bulgarian legal framework is incomplete regarding some safeguards such as the right to non-discrimination, the right to be free from violence and the principle of evolving capacities. In addition, the Bulgarian legislation lacks a unified definition of a “child with a disability”. Thus no reliable statistical data is available and thus no policies and legislative acts can be elaborated to meet the needs of these children. However, children with disabilities are granted special protection by the Bulgarian legislation by virtue of falling into the more generalised category of “children at risk” (under the Child Protection Act) or “children with a certain percent of reduced capacity for social adaptation” (under the Integration of Persons with Disability Act). The implementation of this legal framework regarding the rights of children with disabilities is generally satisfactory.

The legislation (Protection Against Discrimination Act) prohibits discrimination on the grounds of disability in a wide range of areas relevant to children (education, healthcare and access to goods and services). Reasonable accommodation is also guaranteed, albeit only with regard to education and employment. Although the special legislative acts provide for protection against direct or indirect discrimination against children on the basis of their disability, these children are not fully protected because of a lack of detailed legislation and mechanisms that ensure inclusive education and full participation in any activity related to children. The gaps in legislation also lead to a vacuum in the prosecution of bias- or hate-motivated crime against them on the basis of their disability.

While the Bulgarian legal framework generally guarantees the rights of children with disabilities, it does not contain sufficient safeguards to ensure that the rights of children with disabilities are implemented in practice. Specifically, there are no provisions ensuring that they can effectively exercise their right to be heard during administrative, civil or criminal court proceedings as these procedures are not adapted to the needs of children with disabilities. Upholding the right to inclusive education can also be identified as a challenge due to a lack of financial resources, an inaccessible environment, a lack of individual programmes and of qualified staff. Early intervention and assistance are still not developed and access to healthcare and social services is inadequate. The legislation needs to address the training, payment, workload and supervision of social workers, and other professionals who work with children with disabilities, in order to help these children in evolving their capacities. Bulgaria adopted a plan for the implementation of the CRPD. However, it does not contain any figures for funding. No plan for the implementation of the CRC has been identified. The National Programme for Guaranteeing the Rights of Children with Disabilities (2010-2013)\(^1\) includes actions on introducing, among others, accessible architecture, inclusive education and the

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integration of children with special educational needs in mainstream schools. However, it should be noted that the Programme did not mention any funding to be allocated for the implementation of these measures.
INTRODUCTION

In December 2010, the European Union (EU) became a party to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). In doing so, the EU recognised the challenges faced by persons with disabilities in securing their rights and highlighted the need for supportive EU actions to be firmly on the agenda of the European Union and its Member States.

Children with disabilities are already vulnerable because they are children. Their disability renders them particularly vulnerable. As such, they deserve specific safeguards and protection from the EU and its Member States.

The key legal framework for EU action in this field is the EU decision to ratify the CRPD, the requirement under Article 10 of the TFEU for the EU to combat discrimination based on disability, as well as the EU objective of promoting the rights of the child found under Article 3 of the TEU. This framework provides the EU with a unique position to push forward for further protection of the rights of children with disabilities, and to develop legislative or policy initiatives. The UN Convention on the Rights of the Child (CRC) provides another basis for action in this area2.

This national report for Bulgaria is part of a larger study, the goal of which is to provide the European Parliament with an overview of the situation of children with disabilities in all the EU Member States, as a means of evaluating the need for European legislation to enhance the rights of children with disabilities in the European Union. This project reviews the existing legal, political and institutional frameworks in the Member States. Each country report analyses the implementation of international principles and rights stemming from the CRPD and the CRC to uncover any particular issues that necessitate further policy and legislative actions at national and EU level. In the first phase, 18 selected countries were analysed, the results of which formed the basis for a comparative analysis in the overall report called “Member States Policies for Children with Disabilities” published in 2013. In the second phase, which took place in 2014, the situation of children with disabilities in the remaining 10 countries, as well as Scotland, were analysed in separate country reports, including this present report.

The key elements deriving from the CRC and the CRPD regarding children with disabilities include:

- The obligation to act in the best interests of the child
- The right to non-discrimination
- The consideration of the evolving capacities of the child
- The right to be heard/to participate
- The right to be free from violence
- The right to family life
- The right to assistance
- The right to education, including inclusive education.

2 All 28 Member States have ratified the CRC and all 28 Member States have signed the CRPD (Finland, Ireland and the Netherlands have signed but not yet ratified it).
Given their ratification\(^3\) of both UN Conventions, the Member States are obliged to take necessary measures to ensure that the rights set forth for each child or person with a disability within their jurisdiction are upheld. The Member States should take the appropriate measures to ensure that children are protected against all forms of discrimination or violence, including adopting all appropriate legislative, administrative and other measures for the implementation of those rights. Moreover, the protection of the rights of children with disabilities should be mainstreamed in all policies and programmes in accordance with Article 4(3) of the CRPD on the involvement of persons with disabilities in all decision-making processes.

Due to the scale of this subject and the scarcity of materials available, the scope of this study does not cover in detail the wide range of issues arising from and relating to the situation of children with disabilities. It does not aim to provide an in-depth analysis, but rather an overview of the situation of children with disabilities' rights in Bulgaria. This study presents a snapshot of some of the major issues and obstacles faced by children with disabilities and their families, a legal analysis of the implementation of the main rights and principles recognised in the CRC and the CRPD and relevant in the context of the situation of children with disabilities, and points to some potential solutions at national and EU level to improve their situation.

Each country report is structured as follows: it first looks at the situation of children with disabilities at the national level. It describes the national legal and institutional framework for the protection of children with disabilities and analyses the national implementation of the principles and rights developed in the UN Conventions (CRC and CRPD). It then considers specific issues relevant to the situation of children with disabilities, including children as suspects, gender issues and education. Finally, the report covers the mechanisms that are in place to implement the legal framework, highlighting gaps, problems, best practices, and recommendations found in the literature or via interviews with stakeholders.

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\(^3\) Except for Finland, Ireland and the Netherlands which have signed but not yet ratified the CRPD.
1. OVERVIEW OF THE SITUATION AND CHALLENGES FOR CHILDREN WITH DISABILITIES IN BULGARIA

KEY FINDINGS

- The national policy focuses on the following areas: accessible environment, access to inclusive education, non-discrimination, access to assistance and social services, and deinstitutionalisation.

- A Strategy for Ensuring Equal Opportunities for People with Disabilities 2008-2015 has been adopted aiming at synchronising the national framework with the CPRD and with the European Disability Strategy 2010-2020.

- The following gaps, problems and challenges have been identified: the environment is far from accessible; inclusive education lacks the necessary safeguards to be efficient and accessible for all children with disabilities; children with disabilities are still largely discriminated against; social services are not tailored to the specific needs of these children; there is a shortage of personnel overall, as well as staff with adequate qualifications, and access to these professionals is not available for all children in need; and the process of deinstitutionalisation is very slow (and in some cases, inadequate).

In the legislation, children with disabilities are regarded as children at risk who deserve special protection.

Since 2000, specific provisions in the legislation and specific policy documents, such as the Child Protection Act, Protection against Discrimination Act, Integration of People with Disabilities Act, Public Education Act and the National Strategy for the Child 2008-2018, have been elaborated to enhance the protection of their rights. The provisions are dispersed throughout different pieces of legislation, and different ministries and agencies are in charge of their implementation. For example, the right to non-discrimination against children with disabilities is provided by several laws.

Several NGOs’ reports on the condition of children with disabilities in Bulgaria have identified issues related to children with disabilities’ right to life, to healthcare, to education and to family life. In addition, very few implementation measures have been taken to date to ensure the full implementation of the legislation and policies. Indeed, detailed legislative provisions, concrete responsible authorities and budgets for the implementation of the policy measures for protection of children with disabilities, do not exist yet. There is no definition of a “child with disability” and no data about the number of these children, which makes the elaboration of policy documents and legislation difficult and inefficient.

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1.1. Introduction to the situation of children with disabilities in Bulgaria

According to the 2011 National Census, the number of children officially recognised as having a ‘diagnosed disability’ that were aged 15 years old and under reached 9,039, while the number of children with disabilities between the ages of 16 and 18 was unclear. The children who participated in the census were only those whose parents gave consent to do so.

Prior to 1989, children with disabilities were not a topic of public discussion and policies. It was only after 2000 that these children’s rights started to be recognised in the legislation and policies. In 2000, the adoption of the Child Protection Act provided that the state policy on child protection must be implemented on the basis of a national strategy to be adopted by the Parliament on the proposal of the Council of Ministers. For the implementation of this strategy, National Programmes for Child Protection have been adopted annually by the Council of Ministers since 2003. There are also special programmes for the protection of children with disabilities, which are mentioned below.

The National Strategy for the Child 2008-2018 (Национална стратегия за детето 2008-2018) focuses on child poverty, social inclusion, equal access to education, health protection, and encouraging the participation of children in the elaboration and the implementation of the policies related to children’s rights and obligations.

A National Strategy for Protection and Social Integration of Children with Disabilities 2003-2005 (Национална стратегия за закрила и социална интеграция на децата с увреждания 2003-2005), and a National Programme on Guaranteeing the Rights of Children with Disabilities (2010-2013) (Национална програма за гарантиране на правата на децата с увреждания 2010-2013) aimed to provide equal access and opportunities for the development to such children. No policy documents specifically concerning children with disabilities were identified for the 2005-2010 period. The National Programme for Guaranteeing the Rights of Children with Disabilities (2010-2013) was adopted by the Council of Ministers in July 2010. It included actions on introducing accessible architecture, inclusive education and the integration of children with special educational needs in mainstream schools; training support for teachers, educational professionals and parents; lowering the number of children with special educational needs under the care of...

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5 Bulgaria, National Statistical Institute, 2011 National Census, Persons with Disabilities as of 1 February 2011, available in Bulgarian at: [http://www.nsi.bg/sites/default/files/files/pressreleases/Census_Disability2011.pdf](http://www.nsi.bg/sites/default/files/files/pressreleases/Census_Disability2011.pdf). Of all 9, 039 children, 42% were girls and 58% were boys. Of all 9,039 children 73% lived in cities and 27% lived in villages.


7 All programmes for child protection are available here in Bulgarian at: [http://sacp.government.bg/programi-dokladi/strategii-programi-planove/](http://sacp.government.bg/programi-dokladi/strategii-programi-planove/).


one special pedagogue; channelling children with special educational needs towards vocational training schools; prenatal diagnostics to prevent genetically induced developmental disabilities; healthcare support and prevention of the abandonment of children with disabilities; specialised training of social workers; cooperation with the media to fight prejudice and discrimination against children with disabilities; and setting up of a national register of children with disabilities. However, it should be noted that the Programme did not mention any funding to be allocated for the implementation of these measures.

On 23 May 2012, the government adopted an updated version of the **Strategy for Ensuring Equal Opportunities for People with Disabilities 2008-2015**. The strategy aims to synchronise the national framework with the CPRD and with the European Disability Strategy 2010-2020. The main goals of the new strategy are the same as the ones of the previous strategies and include the measures mentioned in the European Disability Strategy, namely: accessibility of public buildings and public and private transportation, quality day care and education for children with disabilities, quality vocational training, high school and university education for young people with disabilities, complex medical and social rehabilitation, widening of the employment options for people with disabilities, priority development of community-based social services for people with disabilities, access to cultural, tourist and sport activities and designated areas for people with disabilities, and raising awareness about the problems of people with disabilities.

The process of deinstitutionalisation has been initiated with the closure of social care homes for children with intellectual and multiple disabilities, where children were transferred to community-based services, adoption, their biological families with assistance and foster care. Early intervention services are currently being developed.

### 1.2. Review of issues and identification of possible regulatory gaps

One of the issues is the lack of legislative follow-up of the bills aimed at enhancing the protection of children. The Consolidated State Third, Fourth and Fifth Report about the implementation of the CRC for the period 2008-2012 in Bulgaria, stated that three new drafts of legislation were being elaborated to fully reflect the last recommendation of the UN Committee for the Rights of the Child – new Child Protection Act, new Preschool and School Education Act and new Act for children with delinquent behaviour. However, none of these drafts were presented to the Parliament and there is no information about the developments related to them.

According to the 2014 report of the National Network for Children (NNC is an umbrella NGO with over 100 NGO members working with children), children with disabilities continue to be discriminated against regardless of where they live (with families or in institutions) because of the traditional medical mind-set that regards them as “ill”, as well as the medical assessment of their “reduced capacity for social adaptation”. A change towards the

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needs’ assessment model, as well as the establishment of a Children Ombudsperson, should be provided in legislation in order for discrimination to be effectively overcome\textsuperscript{15}.

Many kindergartens and schools are not in a position to enrol children with disabilities because of an \textit{inaccessible environment}, a lack of individual programmes and a \textit{lack of qualified staff}\textsuperscript{15}. New legislation for preschool and school education needs to be developed to meet the needs of all children with disabilities\textsuperscript{17}.

Despite the legislative efforts towards deinstitutionalisation of children living in institutions, in practice, they are not always provided with an individual approach, assistance or support\textsuperscript{18}. One of the main reasons for this is that the social workers at the Child Protection Departments (who are in charge of working on the cases of these children) are insufficient in number (720 in 2013 for the whole country) and suffer from work overload; they also lack adequate training, supervision and flexibility in their work. There are currently no \textit{social workers’ standards} when working with children\textsuperscript{19}. Professional standards for social work with children, training of staff and supervision of social workers would need to be required by legislation\textsuperscript{20}.

A particularly problematic sector concerns \textit{early intervention and assistance}, which is yet to be developed across the country. Similarly, \textit{access to healthcare services} is a serious problem, especially for ethnic minority populations and for children with disabilities\textsuperscript{21}. However, significant progress has been made thanks to an EU-funded project, “Direction-Family” („Посока семейство“), which managed to significantly reduce the number of infants placed in “babies’ institutions”, where children were placed shortly after their birth in the hospitals. The project only concerns eight such “babies’ institutions”. In 2009, the minister of healthcare issued methodological guidelines for the \textit{prevention of the abandonment of children} (mainly children with disabilities) which aimed at establishing cooperation between medical doctors in hospitals, Social Assistance Departments and service providers when working on a case of a child at risk of being abandoned. After the project started, this cooperation brought about actual results. Only 30 children were placed in these eight institutions, compared to 705 children that were placed in the other 21 institutions of the same type for the same period in 2013\textsuperscript{22}. The EU-funded projects contributed largely to the success of this project. Obviously, a more significant legislative and policy effort should be made in order to ensure the prevention of abandonment and the access to quality early intervention services for children with disabilities.

Many children with disabilities live in institutions. The deinstitutionalised process did not remove institutions. Indeed, children may then be placed in “alternative services”, which are just smaller institutions often located in the same building or an annex of the building of the institution where they were previously placed\textsuperscript{23}. Community-based social services are often inadequate in number and deal with issues similar to institutions: regarding the working approach, the qualification of the staff and the lack of individual

\textsuperscript{17} Bulgaria, National Network for Children, 2014 Notebook, p.109.
\textsuperscript{21} Bulgaria, National Network for Children, 2014 Notebook, p.79.
\textsuperscript{23} Bulgaria, National Network for Children, 2014 Notebook, p.41-42.
approach towards the children. The deinstitutionalisation therefore resulted in breaking down institutions into smaller services, while keeping an institution type of approach to care and education. The main reason for having such a type of deinstitutionalisation is that instead of providing a uniform set of rules for the establishment and the functioning of such services, the legislation lays out only methodological guidelines elaborated by the Social Assistance Agency that are not binding.

Social assistance is limited only to those with very low income (the guaranteed minimum monthly income estimated by the Council of Ministers is 33 EUR for 2013)\textsuperscript{24}. Financial standards (the required financial capacity to access the services) do not exist when the child lives with his/her family, while there are such standards for residential institutions and community-based services. However, the principle “money follows the child” is not applied in any of these standards and the individual needs of the children are not met as the budgets of services are allocated from the state to the services per capita and the amount is fixed but does not take into account the concrete needs of the children in each service\textsuperscript{25}. A package of minimal services and assistance for families with children with disabilities should be introduced in legislation and it should be guaranteed to all children. The principle “money follows the child” should be applied in all assistance provided for children with disabilities, including in inclusive education\textsuperscript{26}.

\textsuperscript{24} Bulgaria, National Network for Children, 2014 Notebook, p.42.
\textsuperscript{26} Bulgaria, National Network for Children, 2014 Notebook, p.48.
**2. OVERVIEW OF THE NATIONAL LEGAL FRAMEWORK**

### KEY FINDINGS

- Bulgaria signed and ratified the CRC on 3 July 1991 and the CRPD on 26 January 2012.
- The basic principles and rights of children with disabilities have been transposed in Bulgarian legislation. However, full implementation of the Conventions requires more detailed legislation and a significant focus on coordination and funding for its implementation.

#### 2.1. General overview of the national legal and institutional framework

Bulgaria is a parliamentary republic and has a continental legal system. The Parliament (a single-camera body consisting of 240 members) adopts legislation and the courts (district, regional, appellate) apply it. No specialised courts for children are in place. The Constitution is the main law consisting of legislation that is made up of codes and laws. Laws are detailed in secondary legislation such as regulations and ordinances.

International treaties which have been ratified in accordance with the constitutional procedure, promulgated and having come into force with respect to the Republic of Bulgaria, are part of the legislation of the State. They have primacy over any conflicting provision of the domestic legislation.

The Convention for the Rights of the Child and the Convention for the Rights of People with Disabilities were ratified by Bulgaria in 1991 and 2012, respectively, and thus became part of the domestic legislation. When domestic legislation differs from them, the courts may directly apply the Conventions. However, Bulgarian courts do not tend to follow this practice.

The Government adopts policies and drafts legislative acts related to children. The governmental institutions that are most engaged with children’s issues are the Ministry of Healthcare, the Ministry of Labour and Social Policy and the Ministry of Education and Science. A State Agency for Child Protection (SACP) was set up by virtue of decree No. 226 on 30 October 2000 of the Council of Ministers and became operational on 1 January 2001. The SACP is a specialised body of the Council of Ministers responsible for the management, coordination and control in the field of child protection.

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2.2. Children with disabilities specific legal and institutional framework

2.2.1. Legal framework

Under the Bulgarian Constitution (adopted in 1991), disability is not a protected ground. The Child Protection Act (adopted in 2000) provides for special protection of children at risk and other vulnerable groups such as children with disabilities. There is no specific legislation on children with disabilities; rather the legislation and policies concerning children with disabilities in Bulgaria are elaborated both through the approach to children’s rights and to disabled people’s rights. For example, the Public Education Act and its Regulations for Implementation (amendments in 2002) and the Social Assistance Act and its Regulations for Implementation (amendments in 2003) contain certain provisions regarding inclusive education and social services provided to children with disabilities. The Child Protection Act and the Integration of Persons with Disabilities Act and their Regulations for Implementation (adopted in 2005) also contain such provisions providing for protection measures and medical and social rehabilitation and assistance to children with disabilities and their families. The Protection Against Discrimination Act was adopted in 2005 and also contains such provisions.

2.2.2. Institutions and authorities

According to the Child Protection Act (CPA), the state child protection policy is determined by the Parliament on the basis of the national strategy for child protection as proposed by the Council of Ministers. The State Agency for Child Protection (SACP) has the main executive power on drafting and implementing child protection policies. The SACP drafts and adopts the annual National Programmes for Child Protection. It licenses and controls the activities of providers of social services for children. Other responsibilities include carrying out monitoring of compliance with the rights of children, including children living in institutions and drafting legislation concerning children’s rights.

A National Council of Child Protection has been created within the State Agency for Child Protection. It has consultative and coordinative functions and was set up to include deputy-ministers of all relevant ministries in the child protection field, as well as child care and child protection non-governmental organisations, in policy and legislation planning, drafting and implementation.

The Ministry of Education and Science (MES) and the municipalities are responsible for the provision of education to all children from ages six (or seven depending on parents’ choice) to 16, including children with disabilities. The ministry prepares draft legislation, allocates funding, controls and manages the activities and provides the main methodological guidance to the schools in Bulgaria. The national policy on school education is prepared by the Council of Ministers and is adopted by the Parliament.  

30 Bulgaria, Child Protection Act (13 June 2000), Art. 1, para. 3.
32 Bulgaria, Child Protection Act (13 June 2000), Art. 18.
33 Bulgaria, Public Education Act (Закон за народната просвета), (18 October 1991), Art. 34, para. 4 and Art. 36, available in Bulgarian at: http://lex.bg/bg/laws/ldoc/2132585473.
34 Bulgaria, Public Education Act (18 October 1991), Art 34, para.1.
The Ministry of Labour and Social Policy (MLSP) is responsible for the provision of institutional and community-based social services and social welfare for the children and their families\textsuperscript{35}, as determined by the Council of Ministers. The central Social Assistance Agency (SAA), which is subordinate to the Ministry of Labour and Social Policy, is responsible for the methodological guidance of the local structures of social assistance and for the supervision and control of their activities\textsuperscript{36}. The Social Assistance Agency has departments at regional and municipal levels. The Social Assistance Departments are responsible for providing social benefits and for referring children and families to the respective social services. Within the structure of the Social Assistance Departments, the Child Protection Departments (CPD) operate with the main function of protecting children’s rights, preventing institutionalisation (abandonment) of children who are at risk in their families, and referring children for adoption, foster care and placement at their relatives’ families when their own biological family cannot take care of them\textsuperscript{37,38}.

The Ministry of Healthcare is responsible for ensuring healthcare services to children\textsuperscript{39} and provides medical assessment to children with disabilities\textsuperscript{40}. It is still in charge of 31 institutions for abandoned babies and children aged 0 to 3, the majority of whom have disabilities. The State policy of healthcare is determined by the Council of Ministers and implemented by the Ministry of Healthcare.

Since 2009, the municipalities have been obliged to also establish local commissions on child protection\textsuperscript{41} where all local departments of the ministries and local non-governmental organisations participate to draft the municipal child protection policies after assessing the needs of the children and their families.

Every child with a disability and his/her parents/legal guardians may file a complaint about discriminatory attitudes before the Protection against Discrimination Commission (PADC)\textsuperscript{42}. The PADC was established as a single-equality body with a mandate to uniformly provide protection on all grounds, including disability. It consists of nine members, five of whom are elected by Parliament, and the others are appointed by the President\textsuperscript{43}. Their term of office is five years and their powers include: receiving and investigating complaints

\textsuperscript{35} Bulgaria, Social Assistance Act (Закон за социалното подпомагане), (19 May 1998), Art. 4, available at: \url{http://lex.bg/bg/laws/ldoc/2134405633}.
\textsuperscript{36} Bulgaria, Social Assistance Act (19 May 1998), Art. 5 and 6.
\textsuperscript{37} Bulgaria, Social Assistance Act (19 May 1998), Art. 5, para. 5 and 6.
\textsuperscript{38} In December 2006, the internal regulations of the Social Assistance Agency at the Ministry of Labour and Social Policy were amended. This led to the closure of some Child Protection Departments (CPD) within the reduced Social Assistance Departments. They were reduced from 272 to 148 in number. In 63 CPD, there is only one person appointed in charge of child protection. In 81 CPD, the staff consists of a lawyer (or a social worker) and a head of the department. Also see National Network for Children – Bulgaria (umbrella NGO of 48 childcare NGOs), Contribution to the Universal Periodic Review, Sofia, April 2010, "As a whole, the work carried out by the Child Protection Departments (CPD) is exceptionally unsatisfactory. This fact is supported by a range of surveys and analyses undertaken by various Bulgarian and international organizations. As of 31.12.2008, there are 750 people who work in the CPDs out of which the social workers are only 450. According to the SAA annual 2008 report data, one social worker in the country works on 112 cases on average. The salaries of the social workers in the CPDs are some of the lowest in the auxiliary professions sphere and very often they do not get any introductory or supporting training nor any professional supervision."
\textsuperscript{39} Bulgaria, Health Act (Закон за здравето), (1 January 2005), Art. 117, available in Bulgarian at: \url{http://lex.bg/bg/laws/ldoc/2135489147}.
\textsuperscript{40} Bulgaria, Health Act, (1 January 2005), Art. 101.
\textsuperscript{41} Bulgaria, Regulation for Implementation of Child Protection Act (Правилник за прилагане на Закона за закрила на детето), (25 July 2003), Art. 6, available at: \url{http://www.lex.bg/bg/laws/ldoc/2135469520}. The local commissions elaborate the municipal programs for child protection assessing the needs of the children and their families and cooperates, assists and coordinates the exchange of information between the competent authorities and organisations in the municipality.
\textsuperscript{42} Bulgaria, Protection Against Discrimination Act (1 January 2004), Art. 50.
\textsuperscript{43} Bulgaria, Protection Against Discrimination Act (1 January 2004), Art. 41.
by victims, as well as third parties, without limitation; issuing binding rulings declaring discrimination and imposing financial sanctions; issuing binding instructions to prevent, stop or require abstention from discrimination and/or restore the status quo ante; carrying out surveys and publishing independent reports; bringing court action and joining court proceedings in an amicus curiae capacity; making recommendations to other authorities to reform legislation or practice; giving opinions on draft legislation; and providing independent assistance to victims of discrimination\textsuperscript{44}. The PADC has quasi-investigative powers, including accessing any testimony, documents or facilities for on-site inspections, which allow it to be proactive in gathering evidence, thus relieving the victim. Its proceedings are exempt from any fee or cost and can also be initiated \textit{ex officio}.

A general Ombudsperson was established in Bulgaria in 2005. The Ombudsperson Act provides that the Ombudsperson has the powers to intervene when citizens’ rights and freedoms have been violated by actions or omissions of the State and municipal authorities and their administration, as well as by the persons assigned with the provision of public services\textsuperscript{45}. Thus, the Ombudsperson may act on his/her own initiative when he/she has established that the necessary safeguards for protecting citizens' rights and freedoms have not been created. If the Ombudsperson determines that the announcement of the unconstitutionality of a law is needed, he/she may propose to one of the following entities to approach the Constitutional Court: one fifth of the MPs, the president, the Council of Ministers, the Supreme Cassation Court, the Supreme Administrative Court or the chief prosecutor. The Ombudsperson can receive complaints from citizens, including from children with disabilities and their parents. He investigates on the basis of the complaints and reports received; makes proposals and recommendations for reinstatement of the violated rights and freedoms before the respective authorities and providers of public services (both public and private); mediates between the administrative authorities and the persons concerned for overcoming the violations admitted; and makes proposals and recommendations for eliminating the reasons and conditions which may lead to the violation of rights and freedoms.

In 2006, the Ombudsperson declared that the priority areas of his activities had been determined by the reports and complaints of the citizens and, among others, were: protection of the rights of people with disabilities and implementation of mechanisms for real social integration, equal access to quality education, right to healthcare, and protection of the rights to social services/welfare\textsuperscript{46}. However, according to the Ombudsperson’s reports, the majority of the individual complaints received concerned the right to real estate/property, the right to public services, and the right to social services/welfare. In 2007, the Ombudsperson chose several priority areas for intervention and active involvement among which was the right of children to have access to social services, family, alternatives to institutionalisation, and quality care\textsuperscript{47}. It is also worth mentioning that, although broadly declared, some of the priority areas of action of the Ombudsperson during the period 2005-2010 were not implemented with the necessary scope and impact. For example, the fundamental rights of the child, the access to education, the right to healthcare and social services for people with intellectual and psychosocial disabilities were

\textsuperscript{44} Bulgaria, Protection Against Discrimination Act (1 January 2004), Art. 47.
\textsuperscript{45} Bulgaria, Ombudsman Act, Art. 2.
not even discussed as principal human rights’ problems deserving special attention as they concern vulnerable citizens.

In 2011, the newly elected Ombudsperson started working more actively on the rights of children with disabilities by monitoring care homes for children with intellectual disabilities. The 2012 amendments to the Ombudsman Act48 broadened the powers of the Ombudsperson to expressly include: authorisation to submit opinions to the Council of Ministers and the National Assembly on bills relevant to human rights49; protect children’s rights by the means provided for in this Act50; and make proposals and recommendations to the Council of Ministers and the National Assembly concerning the signing and ratification of international acts in the field of human rights51. These amendments led to a more active involvement of the Ombudsperson in issues concerning children with disabilities while, previously, he/she had not shown such interest and commitment.

In 2013, the Ombudsperson prepared a report on his monitoring of care homes for children with intellectual disabilities and homes for medico-social care for children aged three and below (where 50% of the children have disabilities), which is however very vague (see more under section 3.1.8)52.

The National Network for Children is an alliance of civil society organisations and supporters, working with and for the children and families across the whole country53. The NNC plans and implements advocacy campaigns in order to guarantee the rights of children and improve the wellbeing of Bulgarian families and children. It works in active partnership with the NGO sector, businesses, institutions and individuals with the active participation of the children. The Network is also actively working with children and families.

2.2.3. Definitions
In Bulgarian legislation there is no definition of “a child with a disability”.

According to the Family Code and the Child Protection Act, a “child” is defined as “a physical person under the age of 18”54.

According to the Integration of Persons with Disabilities Act a “disability” is defined as “any loss or impairment of anatomical structure, physiological or mental state of an individual”.55 A “person with permanent disability” is a “person who, as a result of anatomical, physiological or mental impairment, has permanently reduced capacities to perform activities in the way and at the level of a healthy person and for whom the medical assessment authorities have estimated a level of reduced working capacity of 50 and more percent”56.

48 Bulgaria, Ombudsman Act, amendments from 11 May 2012.
49 Bulgaria, Ombudsman Act, Art. 19, item 8.
50 Bulgaria, Ombudsman Act, Art.19, item. 9.
51 Bulgaria, Ombudsman Act, Art.19, item. 10.
54 Bulgaria, Child Protection Act, (13 June 2000), Art. 2.
56 Bulgaria, Integration of Persons with Disabilities Act (1 January 2005), Additional provisions, item 1 and 2.
3. LEGAL FRAMEWORK FOR CHILDREN WITH DISABILITIES IN BULGARIA

KEY FINDINGS

- Overall, the legal framework is incomplete and sometimes very complicated, i.e. with regards to the right to assistance. It does not contain sufficient safeguards for the rights of the children with disabilities.

- The CRPD and the CRC rights and principles have basically been integrated into Bulgarian legislation. The right of having the best interests of the child considered as primary consideration is not explicitly guaranteed in legislation however, the best interests of the child must be considered under sector specific legislation. The protection from discrimination is provided for in Bulgarian legislation in the field of education and accessibility, however, its implementation is not guaranteed. The right to be heard is provided for in the Child Protection Act but the legislative provisions lack details especially regarding the type of professionals who are to approach the child, the type of location as well as the way in which the child is informed about the hearing, and the location and the way in which the child is heard. The right to assistance is provided in several legislative acts but assistance is provided mainly on the basis of a medical diagnosis or based on the income of the family rather than a needs’ assessment. The right to inclusive education is also provided for in the Public Education Act and the secondary legislation but needs to be further elaborated on, the qualification of professionals and the number of professionals per child and teaching materials and tools need to be adapted. The right to consider the evolving capacities of all children with disabilities is not explicitly recognised or guaranteed.

3.1. Implementation of the provisions of the CRPD and CRC

3.1.1. Best interests of the child (Art. 3 CRC; Art. 7 CRPD)

Definition

The Child Protection Act provides for the protection of the child through ensuring the most effective procedures and conditions to protect the best interests of the child\(^\text{57}\). The Act applies in all spheres of children’s lives and has priority over other acts where they concern children. While the Act does not explicitly state that the child’s best interests should be systematically considered as a primary consideration in all actions concerning them, the requirement of ensuring effective procedures and conditions results in the best interests being a primary consideration and covers all aspects of the child’s life.

It defines the best interests of the child as an assessment of the wishes and feelings of the child, the physical, mental and emotional needs of the child, the age, the gender, the past and other characteristics of the child, the danger or the damage caused to the child or the possibility that such damage may be caused, the ability of the parents to take care of the child, the consequences for the child when the circumstances change and other circumstances relevant to the child\(^\text{58}\).

\(^{57}\) Bulgaria, Child Protection Act, (13 June 2000), Art. 3, item 3.

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**Procedural safeguards**

The best interests of the child are at stake in all administrative, civil and criminal proceedings in which the child’s interests are involved. The Child Protection Act regulates the participation of children in both administrative and court (civil and criminal) proceedings that relate to their interests (e.g. separation of parents, parental responsibility, deprivation of family environment, adoption, presence of parents at court hearings for criminal matters involving a child, etc.). It provides that in each court proceeding (civil and criminal) related to child protection, where children’s rights and interests are involved, it is obligatory that any child over the age of ten is heard, unless the hearing violates the interests of that child. When a child has not yet reached the age of ten, he/she may be heard, depending on the level of his/her development and understanding. The decision of the hearing of the child should be reasoned.

In all cases, the hearing and the consultation of the child should be carried out in an environment appropriate for his/her age and in the presence of a social worker from the Social Assistance Department at the permanent address of the child and, when necessary, in the presence of another specialist. The court may order the hearing to be held in the presence of a parent, guardian or other person close to the child, unless this is not in the child’s best interests. Children’s hearings are conducted by the judge in the presence of a social worker.

In each case where the child is a party in civil or administrative justice proceedings or a witness/victim in criminal justice proceedings, the court must notify the Social Assistance Department (SAD) to ensure that the best interests of the child are taken into account. The report prepared by SAD must be issued at least 14 days prior to the hearing and must contain information about the subject of the proceedings, the parties, the task of the SAD and the deadline for its implementation. The SAD appoints a representative (social worker) who presents a statement or the SAD sends a report if the representative is not able to be present at the hearing. The report contains information about the child’s family situation, about his/her relationship with the parents, the material living conditions, school attendance and healthcare issues. The statement/report helps the judge to interview the child by providing information from an independent body about the interests of the child in the specific situation. To prepare the statement/report, the social workers visit the home of the child and collect information about the child’s situation from the child’s family, teachers and general practitioner. The SAD may represent the child in cases regulated in the legislation such as when a child is placed in a crisis centre as a protection measure (when he/she is a victim of domestic violence or trafficking and needs access to healthcare or education). The child has the right to legal aid and the right to appeal in all proceedings related to his/her interests and rights.

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60 Bulgaria, Child Protection Act, (13 June 2000), Art. 15, para. 2.
64 Bulgaria, Child Protection Act, (13 June 2000), Art. 15, para. 6 (9 May 2006).
3.1.2. Non-discrimination (Art. 2 CRC; Arts. 3 and 5 CRPD)

**Definition**

Disability is not a protected ground under the Bulgarian Constitution (adopted in 1991). According to Article 6 of the Bulgarian Constitution, “all persons are born free and equal in dignity and rights” and “all citizens shall be equal before the law and there shall be no privileges or restriction of rights on the grounds of race, national or social origin, ethnic self-identity, gender, religion, education, opinion, political affiliation, personal or social status or property status”. While children with disabilities are neither entitled to protection under the Constitution nor under the Public Education Act, they are protected against discrimination under the Protection against Discrimination Act (adopted in 2005). This act covers all types of persons who might be discriminated against on a wide array of grounds. However, it does not have the same legislative weight as the Constitution and many professionals are not aware of it.

The Child Protection Act (CPA) provides that there must be no restrictions of the children’s rights on the grounds of disability, race, nationality, ethnic background, gender, origin, property status, religion, education or beliefs. In implementing the principle of non-discrimination, the act provides for special protection of children at risk and other vulnerable groups such as children with disabilities and children from ethnic minority groups.

The Protection Against Discrimination Act (PADA) provides that “any direct and indirect discrimination on the grounds of gender, race, nationality, ethnicity, citizenship, origin, religion and faith, education, beliefs, political affiliation, personal or public status, disability, age, sexual orientation, family status, property status or any other ground, provided by a law or international treaty to which the Republic of Bulgaria is a party shall be prohibited”. The law applies both to the public and private sectors (including education, access to healthcare, public transportation, and goods and services). The PADA provides for reasonable accommodation, albeit limited to education and employment. Schools and employers must provide reasonable accommodation for persons with disabilities unless the costs are unreasonable and would seriously hinder the employer or school.

In addition, the Integration of People with Disabilities Act prohibits direct and indirect discrimination against people with disabilities.

Under the PADA directors of educational institutions must take effective measures to prevent all forms of discrimination by members of the teaching or administrative staff, or by students. Educational institutions must take appropriate measures to compensate for persons with disabilities’ limited opportunities to effectively exercise their right to education and training, unless the cost is “excessive” and “would seriously burden the institution”, which can be considered as a right to reasonable accommodation specific to

69 Bulgaria, Constitution of the Republic of Bulgaria (13 July 1991), Art. 6 (1).
70 Bulgaria, Constitution of the Republic of Bulgaria (13 July 1997), Art. 6 (2).
72 Bulgaria, Protection Against Discrimination Act (Закон за защита от дискриминация) (1 January 2004), Art. 4, available in Bulgarian at: http://lex.bg/bg/laws/ldoc/2135472223.
73 Bulgaria, Protection Against Discrimination Act (1 January 2004), Art. 16 and 32.
74 Bulgaria, Integration of People with Disabilities, (1 January 2005), Art. 3.
the sector of education. A specific example of direct discrimination can be found in the 2011 report of the PADC concerning a hyperactive child in first grade at school. The parents of the child complained that instead of ensuring proper education for their child, the school organised the parents of the children without disabilities to sign a petition against the hyperactive child to make the child leave the school. The school authorities insisted that the child should be supported by a special teacher but the parents refused this. The child was also punished by the school authorities for his hyperactive behaviour. The PADC found direct discrimination in this case and obliged the school to stop it and to prevent further such acts.

The results of the 2012 research conducted by the Ministry of Labour and Social Policy reveal that children with disabilities are most heavily affected by discriminatory attitudes and that direct and indirect discrimination on the grounds of disabilities is shown both amongst children and by educators and the broader public. Discrimination against children, including disability amongst other grounds, is recognised as an issue in the National Strategy for the Child 2008-2018, yet the application of existing strategies and programmes for prevention and combatting discrimination has remained unsatisfactory and their effect on children is vague and uncertain.

Accessibility

The Integration of Persons with Disabilities Act ensures persons with disabilities have an accessible architectural and living environment. This applies to public buildings such as kindergartens, schools, day care centres, post offices, administrative offices etc. Most complaints submitted to the Protection against Discrimination Commission (see section 2.2.2) relate to the lack of accessibility.

3.1.3. Evolving capacities of the child (Art. 5 CRC and Art. 3 CRPD) The principle of evolving capacities of the child is not recognised under Bulgarian law. There are no legal provisions or requirements that provide greater capacity for children to take responsibilities for decisions affecting them as they acquire more experience and competences. However, some elements of the principle are reflected. Such elements include the requirement to inform and consult the child as the child’s capacities develop.

Under the Child Protection Act, every child has the right to be informed and consulted by the child protection authority, even without the consent of his/her parents or

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76 Bulgaria, Protection Against Discrimination Act (1 January 2004), Art. 32.
79 Bulgaria, Ministry of Labour and Social Policy (2012), The Discrimination against Children in Institutional Care: Covert, Pretended or Real and Perceivable, p. 57.
81 Bulgaria, Ministry of Labour and Social Policy (2012), The Discrimination against Children in Institutional Care: Covert, Pretended or Real and Perceivable, p. 57.
82 Art. 4, para. 4 of the Integration of Persons with Disabilities Act the integration of persons with disabilities.
83 Presentation delivered by a member of the Commission at a conference on the UN CRPD, June 2011.
84 The concept of evolving capacities of the child establishes that as children acquire enhanced competencies and experience, there is a reduced need for direction and a greater capacity for the children to take responsibility for decisions affecting their lives. In light of the CRC, the concept of evolving capacities of the child entails that parents (or persons legally responsible) should have the right and the duty to provide, in a manner consistent with the evolving capacities of the child, appropriate guidance in the exercise by the child of his/her rights. See the overview project report for a more detail description of the concept.
caregivers/guardians if this is in the child’s best interests and if informing the parents would violate his/her best interests. As part of their freedom to express opinions on all matters of their interests provided for in Article 12 of the Child Protection Act, children can also ask for assistance from child protection bodies and the persons in charge of their protection under the act. Children can report independently, or with their parents, before every child protection body about violations of their rights.

Under Bulgarian legislation, children up to the age of 14 are minors and decisions concerning them are taken by their parents. Children aged 14 to 18 are adolescents and they make decisions in the sphere of education and health with the consent of their parents/legal guardians.

As stated above, regarding administrative and judicial proceedings, Bulgarian legislation provides every child over the age of ten with the right to be heard. When a child has not yet reached the age of ten, he/she may be heard depending on the level of his/her development and understanding. The Child Protection Act provides for the protection of the child through ensuring the most effective procedures and conditions to protect the best interests of the child.

**Procedural safeguards**

The social workers at the Child Protection Departments make the initial assessment of the child’s case by talking to him/her and all other persons who know the child – teachers, medical doctors, parents/relatives - and are in charge of proposing to the court the hearing of the child if this is in his/her best interests. However, the legislation does not provide for the training of social workers and other professionals who work with children with disabilities about evolving capacities.

3.1.4. The right to be heard/to participate (Art. 12 CRC; Arts. 7 and 30 CRPD)

**Right to be heard**

**Definition**

While there is no general right of the child to be heard in all decisions affecting them, the right of the child to be heard is recognised in some areas (such as in relation to administrative and judicial proceedings). In addition, every child has the right to freely express his/her opinion on all matters of his/her interest.

It is noted that, as mentioned above, decisions concerning children up to the age of 14 are taken by their parents, while children aged 14 to 18, as adolescents, make decisions in the sphere of education and health with the consent of their parents/legal guardians.

**Procedural safeguards**

The Child Protection Act provides that in each court proceeding (civil and criminal) where children’s rights and interests are involved (including divorce, custody, placement in an institution, adoption, domestic violence, criminal proceedings), it is obligatory that every child over the age of ten is heard, unless this hearing violates the interests of that

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When a child has not yet reached the age of ten, he/she may be heard, depending on the level of his/her development and understanding. The decision of the hearing of the child should be reasoned.

Before hearing the child, the court should ensure that he/she receives the necessary information to form his/her own opinion, and should inform the child of the possible consequences of his/her wishes or opinions and of each decision of the court. There are no provisions in the legislation about the person, the location, the time, nor the way in which the court should provide information to the child. This negatively affects children with disabilities as there are no provisions in Bulgarian legislation which ensure that they would be actually heard because there are no provisions safeguarding that the court and the child protection authorities would adapt to the needs of children with disabilities.

In all cases, the hearing and the consultation of the child should be carried out in an environment that is appropriate for his/her age and in the presence of a social worker from the Social Assistance Department at the permanent address of the child, and, when necessary, in the presence of another specialist. The court orders the hearing to be held in the presence of the parent, guardian or another person close to the child, unless this does not correspond to the interests of the child. Here again, neither the obligation to inform the child prior to the hearing, nor the actual hearing of the child, are regulated in a way that ensures that the needs of children with disabilities are taken into account.

**General recognition of the right to participate**

According to the SACP, children have the right to participate in all important processes of policy and draft legislation discussions. On 9 May 2012, the SACP and UNICEF organised a discussion with the participation of children called “Children in Support of the Institutions”. The goal was to promote children and youth participation on national, local and international levels and to respect the right to be heard. The deputy-minister of education, the mayor of Sofia, the chair of UNICEF-Bulgaria, the Ombudsperson, the representatives of the Association of the Municipalities and Regional Inspectorates on Education, as well as NGOs, participated in the discussion.

For the purposes of child participation, the SACP elaborated a mechanism and a charter for child participation. The charter sets out the requirements for child participation at school, municipal and regional levels in the elaboration of policy papers related to children and youth and the implementation of all activities involving children and youth.

Child participation is ensured by electing representatives of each school class to participate in the School Student Councils. Then representatives of each student council participate in the children’s municipal council which has a consultative status in decision-making about issues concerning children and youth. Representatives of these children’s municipal councils participate in the children’s regional councils and work for the implementation of state

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93 Bulgaria, Child Protection Act, (13 June 2000), Art. 15, para. 3.
96 Bulgaria, SACP, Written reply 05-00-06, 1 August 2012, signed by Darinka Yankova, deputy chairperson of the SACP, p. 6.
policies for the children at regional level. Out of all the children’s regional representatives, 33 children are elected to participate in the Children's Council at the SACP. The mechanism for child participation provides for the way children are elected to participate in the councils, the potential topics, policy and legislative acts and activities in which the children councils would be involved and the bodies and persons that assist children in these discussions. There are no specific provisions for the participation of children with disabilities in the above mentioned councils. However, the student councils could be considered an opportunity for integration of children with disabilities if an appropriate assistance is provided.

The 2014 report of the National Network for Children (NGO) warns that the mechanism works at present on a project and pilot basis and that there is no evidence that it could become a sustainable practice. In addition, the report states that children from vulnerable communities are not represented in the project, even at this stage.

3.1.5. Freedom from violence (Art. 19 CRC; Art. 16 CRPD) and its implementation

**General recognition**

In Bulgaria, at national level, the Child Protection Act includes protection from all forms of violence against children. According to the law, children who are at risk of abuse, or are victims of abuse, are classified as "children at risk" (including children with disabilities). In particular, a "child at risk" is considered to be any child who is permanently deprived of parental care, a victim of abuse, violence, exploitation or any other inhumane or degrading treatment or punishment either in or outside of his/her family environment as well as any child whose physical, mental, moral, intellectual and social development is endangered or has a disability. There are measures provided for the protection of these children, including police protection in those cases when the child is a victim of a crime or in case of an immediate danger to his/her health or life, or in cases when the child is involved in a crime.

**Protection from crimes**

The Criminal Code is the criminal law under which violence against children is prosecuted. It provides for aggravated penalties for crimes committed against children such as, for example, murder or rape. In this law, there is no specific provision directly stipulating that the disability of the victim is an aggravating circumstance. It should be noted that the provision for aggravated cases of murder, for example, uses the term...
“murder of a person in a helpless state”\textsuperscript{109}. According to the legal theory and the established practice “helpless state” could mean a number of conditions ranging from deep sleep and unconsciousness to sickness\textsuperscript{110} and, therefore, it could be speculated whether the said provision could be applied in cases of a murder of a person with disabilities (adult or child). During the present research, however, no case-law could be found that specifically identifies disability as a form of “helpless state”.

The Criminal Code also contains provisions prosecuting certain acts causing harm specifically to children\textsuperscript{111}. However, not all types of bodily harm inflicted on a child are considered a crime. For example, a public prosecutor cannot prosecute on its own initiative a person who committed average bodily harm against a family member, as these cases are not considered to be in the public interest\textsuperscript{112}. The victim must initiate criminal proceedings by him/herself without the public prosecutor participating in the proceedings\textsuperscript{113}. When the victim is a child, his/her parents as the child’s legal representatives are entitled to initiate criminal proceedings. When the interests of the child and his/her parents are in conflict, a special representative (a legal counsel) is appointed by the investigating authority or the court\textsuperscript{114}.

There are no tailor-made mechanisms to protect children with behavioural disorders or children with intellectual or psychological disabilities when participating in criminal proceedings or proceedings for protection against discrimination as victims or witnesses. Generally, both investigating authorities and judges lack the knowledge and/or training regarding expertise needed in such cases. The law has specific provisions only with regard to hearing children with hearing and/or speech impairments\textsuperscript{115}. If victims or witnesses do not understand the official language (Bulgarian) the court, prosecutor or investigative body is obliged to appoint a translator or an interpreter for them\textsuperscript{116}. However, such obligation arises only in cases where pre-trial or trial criminal proceedings had already been instituted. There is no obligation for the investigating authorities or the court to appoint a translator or an interpreter outside the said proceedings. There is also no requirement for a specific request for an interpreter/translator (for children with hearing/sight/communication problems) – the authorities can appoint one on their own motion if they find it necessary.

However, the practice shows that some children with intellectual disabilities are not protected from the risk of injuries and death. Even if the prosecutors carried out an investigation, their protection is not guaranteed. The Supreme Cassation Prosecution Office and the regional offices of several authorities like the Ministry of Healthcare, Ministry of Education, State Agency for Child Protection, Ministry of Labour and Social Policy and the BHC have carried out joint, on spot, investigations in all institutions for children with intellectual disabilities in the country during 2010. On 1 June 2011, the Bulgarian Helsinki

\textsuperscript{109} Bulgaria, Criminal Code, (02 April 1968), Art. 116, para. 1(5).
\textsuperscript{111} Bulgaria, Criminal Code, (02 April 1968), Art. 187 provides in a certain way a specific penal response to child abuse: “Whoever tortures a minor or underage person placed under his care or whose bringing up is assigned to him, unless the act represents a more serious crime, shall be punished by imprisonment of up to three years or by corrective labour, as well as by public reprobation”.
\textsuperscript{112} Bulgaria, Criminal Code, (02 April 1968), Art. 129 and 161, para. 1.
\textsuperscript{114} Bulgaria, Criminal Procedure Code, (26 April 2006), Art. 101.
\textsuperscript{115} Bulgaria, Criminal Procedure Code, (26 April 2006), Art. 142, para. 4. The provision is general – when the accused person or the witness has a hearing or speech disability, an interpreter should be appointed.
\textsuperscript{116} Bulgaria, Criminal Procedure Code , (02 April 2006), Art. 21, para. 2.
Committee (BHC) and the deputy chief prosecutor in Bulgaria held a press conference, “Care Homes for Children Eight Months Later: Substantial Deficits, Significant Attainments – Questionable Justice”, to announce the results of the investigation of death and injury cases in institutions for children with intellectual and psychosocial disabilities\(^\text{117}\). During the press conference the deputy chief prosecutor at the time, Galina Toneva, announced that the Prosecutor’s office initiated 248 pre-trial proceedings on death and injury cases. The bulk of the proceedings are for “unknown perpetrators” (meaning that the prosecutors were not able to estimate who the actual perpetrators were). According to the BHC “the prosecutors have issued a number of investigation cases on the failure to treat a child’s abscess; to provide specialised dental care to a child; to a child abused by means of ill appointed tranquillisers; cases of sexual abuse, hypotrophy and pneumonia-related deaths; and bodily damage.” The BHC highlighted that over 60% of the notified prosecutorial decrees were subject to further investigations. At present, the Prosecutor’s office has terminated all pre-trial proceedings. The BHC filed applications to the European Court of Human Rights regarding three of the most severe cases.

**Domestic Violence**

First of all, the Family Code prohibits parents to use violence against their children and to apply methods of upbringing that humiliate the child and lower his/her dignity\(^\text{118}\). The Code also obliges the parents to take care of the physical, mental, moral and social development of the child, as well as the child’s education and the child’s personal and property interests\(^\text{119}\).

Child victims of domestic violence (including children with disabilities) are also protected under the Protection Against Domestic Violence Act\(^\text{120}\). Under the Act, the civil court must issue a civil law order for the protection of the child victim\(^\text{121}\). It may also be used in cases of sexual abuse perpetrated by a family member, although the procedure under the law does not exclude criminal prosecution\(^\text{122}\). The Act covers child victims of psychical, emotional, economic and mental abuse, or witnesses of such abuse, against their parent\(^\text{123}\). The practice shows that sexual abuse perpetrated by a family member is not prosecuted even if a signal/complaint is submitted to the police/prosecution office.

Civil law orders for protection usually prohibit the offender from abusing a child victim and/or approaching the child or his/her residence, school or other place of activity\(^\text{124}\). The court can also order the removal of the abuser from the child’s place of residence\(^\text{125}\). Children above 14 years of age may seek protection from domestic violence on their own motion (without the intervention of their legal representatives)\(^\text{126}\). Younger children obtain this protection with the intervention of the parent who is not the offender\(^\text{127}\). The law is silent about the cases in which both parents are offenders or the child does not have a second parent. If the child is under 14 or has a disability, the proceedings could be

\(^{117}\) Bulgaria, Joint investigation between the BHC and the Prosecutor’s Office carried out in all homes for mentally disabled children in Bulgaria [Съвместни проверки на БХК и Прокуратурата в домовете за дечи с умствени увреждания в България] (2010), available in English at: http://forsakenchildren.bg.helsinki.org/en/.


\(^{119}\) Bulgaria, Family Code, (1 October 2009), Art. 125, para.2.

\(^{120}\) Bulgaria, Protection against Domestic Violence Act (Закон за защита от домашното насилие), (29 March 2005), available in Bulgarian at: http://lex.bg/bg/laws/ldoc/2135501151.

\(^{121}\) Bulgaria, Protection against Domestic Violence Act, (29 March 2005), Art. 7.

\(^{122}\) Bulgaria, Protection against Domestic Violence Act, (29 March 2005), Art. 1, para. 1 and 2.

\(^{123}\) Bulgaria, Protection against Domestic Violence Act, (22 December 2009), Art. 2, para. 1 and 2.

\(^{124}\) Bulgaria, Protection against Domestic Violence Act, (29 March 2005), Art. 5, para. 1(3).

\(^{125}\) Bulgaria, Protection against Domestic Violence Act, (29 March 2005), Art. 5, para. 1(2).

\(^{126}\) Bulgaria, Protection against Domestic Violence Act, (29 March 2005), Art. 8, para. 1.

\(^{127}\) Bulgaria, Protection against Domestic Violence Act, (29 March 2005), Art. 8, para. 3.
started by a motion of the director of the local Social Assistance Department which is a local structure of the central Social Assistance Agency which is subordinated to the Ministry of Labour and Social Policy.128

The Criminal Code considers as aggravating cases, or as specific bias-motivated crimes, only criminal acts motivated by race, nationality, ethnicity and religion.129 On 9 April 2012, the Ministry of Justice published on its website the draft of the new Criminal Code of 30 March 2012. The draft law introduced for the first time the term “protected grounds”. According to the legal definition given in the same text, it covers: “race, belonging to a national group, nationality, ethnicity, origin, religion, belief, health status, gender and sexual orientation”.131 Therefore, the new draft legislation broadens the scope of vulnerable groups of victims who are protected by criminal law. The use of the term “health status” instead of “disability” could be considered as a positive step (taking into consideration the current situation of the medical model of assessment), as “health status” is a broader term and covers a larger group of people who might not have a formal diagnosis and/or an expert’s assessment which officially certifies that they have a disability. The consideration of the “health status” is, therefore, going further than the medical approach, taking into account the overall health of the individual rather than only medically defined disabilities. The new draft law provides that a bias-motivated (i.e. motivated by “protected grounds”) murder or bodily injury represents an aggravated case. It also broadens the scope of specific bias-motivated crimes titled “crimes against equality” by aggravating the criminal responsibility of state officials who incite discrimination or crime against protected groups. A new development is the prosecution of persons who attack State officials performing duties for protection against discrimination. An aggravation of sentences for persons who participate in a mob gathered to attack protected groups was also introduced. The draft Criminal Code recognises as bias-motivated crimes, not only criminal acts based on actual grounds, but also on perceived grounds. The draft Criminal Code has been submitted for vote in the Parliament in May 2013. The current status is unclear as there were recent changes in Parliament as well as two changes of government during the period 2013-2014 and new elections in October 2014.

No specific policy document directly addressing violence against children with disabilities or bias-motivated crime against such children could be identified. There is also no particular mention of violence against children with disabilities or hate crime against children on the basis of disability in the policy documents described above. Discrimination against children, including disability amongst other grounds, is recognised as an issue in the National Strategy for the Child 2008-2018 but not in the possible aspect of violence against children or hate crime.139

128 Bulgaria, Protection against Domestic Violence Act, (29 March 2005), Art. 8, para. 4.
129 Bulgaria, Criminal Code (02 April 1968), Art. 116, para. 10, Art. 131, para. 12, Articles 162-166.
130 Bulgaria, Ministry of Justice, Draft Criminal Code, at the date of writing the text was no longer available on the website of the Ministry of Justice http://www.justice.government.bg/ where it was published in April 2012.
131 Bulgaria, Draft Criminal Code, Supplementary provision, §1 (22).
133 Bulgaria, Draft Criminal Code, Chapter 17, Section I, Articles 170 – 173 and Articles 176 – 179.
134 Bulgaria, Draft Criminal Code, Art. 170, para. 3.
135 Bulgaria, Draft Criminal Code, Art. 171, para. 3.
137 Bulgaria, Draft Criminal Code, Articles 171 and 172.
Interviewed experts recognised the problem of discrimination against children with disabilities but are concerned as to the authorities’ abilities to identify and address such acts, like acts of bias-motivated violence or hate crime, due to the lack of training.

A 2014 research showed that, as a rule, both children with and without disabilities who are placed in institutions are not heard as there is no alternative for their placement in cases where they have been victims of domestic or sexual abuse.

Overall, the right to be free from violence is recognised in the legislation. However, there is an important gap in procedural safeguards in the sense that prosecutors do not use their ex officio powers to pursue violence against children.140

3.1.6. Right to family life (Art. 9 CRC; Art. 23(3) CRPD)

The Constitution141 states that family, motherhood and children are under the protection of the State and society, and it provides that the raising and upbringing of children, until they become of legal age, shall be a right and obligation of their parents and shall be assisted by the State142. It also states that mothers must be the subject of special protection by the State and are guaranteed prenatal and postnatal leave, free obstetric care, light duty at work and other social assistance143. Children born out of wedlock enjoy equal rights with those born in wedlock and abandoned children enjoy the protection of the State and society.

The Child Protection Act provides that the protection of the child is based on the principle of raising the child in the family environment144 and support for the family145. Protection is provided, first and foremost, through support, services and cooperation rendered in the child’s family environment146, as well as providing further special care for children with disabilities147.

The main safeguards for the family life of children with disabilities are set in the Child Protection Act. The measures for child protection in family environments are the provision of psychological, legal, and pedagogical support for the parents; referral to community-based social services; appropriate consultation and provision of information to the child; consultation on social assistance and social services issues; cooperation on the improvement of the social and material conditions of living; social work to facilitate the relationship between parents and children; assessment of the child’s individual needs and capacity in order to be referred to the most appropriate school; help finding a job for children over the age of 16; and help and assistance in adoption procedures and assistance to adults who take care of children in the implementation of their functions148.

Another safeguard for the right to family life is the provision that recommends that placement outside of the biological family or with other family members and into residential or foster care should be used by the Child Protection Departments only as a last resort.

146 Bulgaria, Child Protection Act, (13 June 2000), Art. 4, item 1.
147 Bulgaria, Child Protection Act, (13 June 2000), Art. 4, item 12.
when all other options for raising up the child in his/her biological family have been exhausted\textsuperscript{149}.

Every child has the \textbf{right to personal relationships} with his/her parents unless the court has decided the opposite based on the principle of the best interests of the child\textsuperscript{150}.

On 31 May 2014, the Ombudsperson issued a statement to the Minister of labour and social policy, the Minister of healthcare and the State Agency for Child Protection (after performing a monitoring action in two centres) about problems related to the removal of children with intellectual disabilities from institutions and their relocation to family-type centres. The statement points out that the children are not properly prepared for the transition, that they are placed together with young adults which leads to abuse of the younger children, that the staff in the family-type centres is not sufficient and that the health and life of these children are threatened\textsuperscript{151}.

3.1.7. Right to assistance (Art. 23 CRC; Arts. 23(5), 26 and 28 CRPD)

\textbf{Social assistance} is defined as the provision of allowances in cash or in-kind benefits and services necessary for the satisfaction of the basic living needs of citizens in those cases where their labour or property income are not adequate. All Bulgarian citizens, families, and cohabitants who, due to health, age, social or other reasons beyond their control, are unable either individually or with the help of their legal dependants to obtain, through their labour or property, sufficient income to meet their basic necessities of life, have a right to social assistance\textsuperscript{152}. Children with disabilities and their families may qualify for such assistance depending on the income and property of the family. It usually applies to \textbf{very poor families}.

\textbf{Social assistance} is provided to children or their parents/guardians in the form of either financial support or as social services such as consultations, therapy, group work on a certain problem, or provision of in-kind assistance. Social assistance is regulated by the Family Children Allowances Act\textsuperscript{153}, the Social Assistance Act and the Rules for its Implementation\textsuperscript{154}.

\textbf{Child allowances} include the following: one-off financial allowance for pregnancy (only for poor families); one-off financial allowance for the birth of a child; monthly allowances for a child until he/she graduates from secondary school but not after s/he reaches 20 years of age (only for poor families); monthly allowances for raising a child up to one year of age (only for poor families); special allowances for students (ages 7 to 20 in primary and high schools) (only for poor families). In 2010, one additional type of monthly allowance was introduced for all children with permanent disabilities and their families until the children reach the age of 18 or, if they are attending high school, until the age of 20\textsuperscript{155}.

Under the Social Assistance Act, \textbf{children with disabilities} have the right to use social services such as a personal assistant, a day-care centre, a centre for rehabilitation and

\textsuperscript{149} Bulgaria, Child Protection Act, (13 June 2000), Art. 25, para. 2.
\textsuperscript{150} Bulgaria, Family Code, (1.10.2009), Art. 124, para. 2.
\textsuperscript{152} Bulgaria, Article 2, paragraph 2, of the Social Assistance Act.
\textsuperscript{153} Bulgaria, Family Children Allowances Act (Закон за семейните помощи за деца), (29 March 2002), available in Bulgarian at: http://lex.bg/bg/laws/idoc/2135441920.
\textsuperscript{154} Bulgaria, Regulations for Implementation of the Social Assistance Act (Правилник за прилагане на закона за социално подпомагане), (1 November 1998), available at: http://lex.bg/bg/laws/idoc/-13038592.
\textsuperscript{155} Bulgaria, Family Children Allowances Act, (29 March 2002), Art. 2, item 10.
social integration or a residential family-type centre. However, these services are largely unavailable and the existing ones are not evenly distributed across the country\textsuperscript{156}. So, even though children have these rights, they cannot benefit from such services on a regular basis but only where and until such services exist, which is usually done under EU funded projects.

The types of \textbf{personal assistance services} include\textsuperscript{157}: a personal assistant (a person assisting a child or an adult with a permanent disability or a serious illness with her/his everyday needs)\textsuperscript{158}, a social assistant (a person providing consultations in relation to the user’s recreational and social activities)\textsuperscript{159}, and a domestic assistant (a person assisting the user with household and personal hygiene maintenance, and home cooking)\textsuperscript{160}. These types of assistance to persons with disabilities are provided on a project and programme base whenever \textbf{EU funding} is available. Consequently, the provision is inconsistent and the eligibility criteria are different. In this way, access to such assistance of all persons/children with disabilities is not ensured in a systematic way.

In practice, in 2003 there were 6,230 personal assistants, in 2006 there were 1,000 personal assistants, and in 2011 there were 3,000 personal assistants employed in providing the relevant services\textsuperscript{161}. The difference in numbers is a result of the fact that assistants are paid under \textbf{different projects that have different durations}. As a result, this variance of offering of personal assistance can be confusing to children and their families.

There is a practice to employ family members of persons with disabilities to serve as personal, social or domestic assistants. The rationale behind this practice, although disputed by NGOs, is to achieve two goals at the same time – first, to provide personal assistance services in the community, and second – to reduce unemployment, as the programme is aimed at \textbf{unemployed persons as service providers}\textsuperscript{162}. In 2010, under the \textbf{National Program Assistants for People with Disabilities}, 4,194 adults and children with disabilities benefited from having personal assistants. As of July 2011, the number of beneficiaries was 3,194\textsuperscript{163}. During the period March 2010-March 2011, 7,900 adults and children with disabilities were involved as users of the service “personal assistant”.

In the period January-June 2011, a total of 513,178 persons with disabilities received financial integration benefits for a total amount of BGN 62,479,599 (EUR 30,842,020)\textsuperscript{164}. During the same period, the assistance for auxiliary needs was provided in 92,665 cases for

\textsuperscript{156} Bulgaria, Social Assistance Agency, list of available community based services - http://www.asp.government.bg/ASP_Client/ClientServlet?cmd=add_content\&lng=1\&sectid=24\&s1=23\&selid=23.

\textsuperscript{157} Bulgaria, Regulations for Implementation of Social Assistance Act, (Правилник за прилагане на Закона за социалното подпомагане), Art. 36, para. 2, items 1-3 (the article was enforced on 1 May 2003; last amended 7 April 2009), available in Bulgarian at: http://lex.bg/laws/idoc/-13038592.

\textsuperscript{158} Bulgaria, Regulations for Implementation of Social Assistance Act, Additional provisions, Para. 1, item 17 (the article was enforced on 1 May 2003).

\textsuperscript{159} Bulgaria, Regulations for Implementation of Social Assistance Act, Additional provisions, Para. 1, item 18 (the article was enforced on 1 May 2003).

\textsuperscript{160} Bulgaria, Regulations for Implementation of Social Assistance Act, Additional provisions, Para. 1, item 19 (the article was enforced on 1 May 2003).

\textsuperscript{161} Bulgaria, Ministry of Labour and Social Policy, Written reply 01-39/15.08.2011, signed by Ginka Mashova, director of Social Protection and Equal Opportunities Department at the MLSP, p.18.

\textsuperscript{162} Bulgaria, Ministry of Labour and Social Policy, Written reply 01-39/15.08.2011, signed by Ginka Mashova, director of Social Protection and Equal Opportunities Department at the MLSP, p.18.

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a total amount of BGN 19,205,810 (EUR 9,848,133). However, according to the Ombudsperson’s observations, many people with disabilities cannot benefit from programmes ensuring personal and social assistants as the eligibility criteria and the actual implementation of the programmes are quite different, complicated and bureaucratic. In this way many people who need services and assistance do not have access to them in practice. They also added that the State policy that was officially announced as being inclusive turned out to be inconsistent and discriminatory. As of 30 November 2012, there were 71 day care centres for children with disabilities with a capacity of 1,868 (there is no data aggregated by the type of disability).

The 2011 and 2012 National Programs for Protection of the Child estimated that there was a need for a minimum guaranteed package of services to be provided to families and children at risk (including children with disabilities). However, this has not been achieved in practice and this measure has not been included in the National Program for 2013.

In order to be entitled to assistance and financial allowances, children with disabilities must be subject to an assessment of their disability following a rather complex procedure. The commissions that assess their disability are formed by the Social Assistance Departments. Before that, each child undergoes a medical assessment, on the basis of which, a social assessment is then carried out. The social assessment aims at estimating the needs and capacity for rehabilitation, education, employment, social services and social inclusion. The assessment commissions at the SADs, assess the circumstances of the families and the measures for inclusion and assistance. The social assessment includes: assessment of the capacities for education, recommendations for social inclusion measures, a reasoned proposal for monthly allowance for social integration (transport, communication, education, physical rehabilitation, rent of a house, accessible information, food or medicines for persons with permanent disabilities), a proposal for one-time financial assistance for auxiliary means, for use of social services, services for rehabilitation, services for education, services for vocational training and services for an accessible environment for persons with permanent disabilities. Children with an assessed type and level of disability are entitled to a monthly allowance for transport, education and accessible information, as well as the right to physical rehabilitation once a year if it is prescribed by a specialist. Children with an assessed disability of 71 percent or over have the right to a monthly allowance for information and telecommunication services and a right to a monthly allowance for food for specialised diets and medicines. After assessing the child, the commissions issue reasoned proposals for the assistance and the allowances.

The reality is that the Ministry of Healthcare does not have data about the number of children with disabilities who were diagnosed by medical specialists and of those who were assessed as “disabled” by the commissions at the Social Assistance Departments (these are

166 See data at the website of the Social Assistance Agency at: http://asp.government.bg/ASP_Files/APP/DCDU.xls.
169 Bulgaria, Integration of Persons with Disabilities Act, (1 January 2005), Art. 13, para. 2.
170 Bulgaria, Integration of Persons with Disabilities Act, (1 January 2005), Art. 13, items 2, 3, 4, 5.
171 According to Art. 13, items 2,3,4,5 of the Integration of Persons with Disabilities Act.
172 Article 42c (чл. 42а) and Article 42d (чл. 42r) of the Integration of Persons with Disabilities Act.
173 Article 42e (чл. 42д) and Art. 42g (чл. 42ж) of the Integration of Persons with Disabilities Act.
174 Bulgaria, Integration of Persons with Disabilities Act, (1 January 2005), Art. 13, items 2, 3, 4, 5.
two different procedures). Thus, the Social Assistance Departments do not work with all children with disabilities who need assistance as not all the cases of the children with disabilities are referred to them because some parents and professionals are not aware of this procedure, or do not have the capacity or support to refer the case. In 2013, centres for early intervention for children aged seven and below were set up in district cities, but the majority of them did not start functioning because of a lack of funding\textsuperscript{175}. However, the Ministry of Healthcare plans to open early intervention centres for children aged three and below and has started public discussions about this. The physical rehabilitation services that are currently available are insufficient and the Ministry of Healthcare does not monitor their activities\textsuperscript{176}.

Depending on their needs, people with permanent disabilities have the right to monthly financial \textit{allowances} for transportation, information and telecommunication services, accessible information, recreation, education, food and medicines, and rent for a flat/house\textsuperscript{177}.

\textbf{3.1.8. The right to inclusive education (Art. 28 CRC; Art. 24 CRPD) and its implementation}

Since 2002, under Bulgarian legislation, children with disabilities/their parents/legal guardians have the \textbf{right to choose} what kind of school and type of education they would like to attend\textsuperscript{178}. Under the Public Education Act, children with special educational needs are \textbf{to be educated in mainstream schools} that are \textbf{obliged to enroll} them free of charge\textsuperscript{179}. Children with disabilities are enrolled in special schools only after all other options are exhausted, \textbf{as a last resort} and with the written expressed wish of their parents/guardians\textsuperscript{180}. Training of education providers, as well as authors of textbooks and teaching materials, must present information and apply methods of training and education in a manner designated to overcome negative stereotypes of persons with disabilities\textsuperscript{181}.

As mentioned above, the PADA guarantees \textbf{reasonable accommodation} of children with disabilities in schools. The PADA also established a duty for a director of an educational institution to provide information to a person alleging a violation of the right to education.

Children with disabilities are assessed by commissions at the Regional Inspectorates on Education that direct them to the most appropriate form of education\textsuperscript{182}. Resource centres are set up at the Inspectorates to facilitate the education of children with disabilities. The Ministry of Education and Science ensures the preschool and school education of children with disabilities in mainstream schools, a supportive environment for inclusive education, early hearing and sight, speech and psychological rehabilitation/therapy, textbooks, teaching materials, technical devices and vocational training for children with disabilities\textsuperscript{183}. The Ministry of Education also creates opportunities for the education of children with special educational needs who are not enrolled in mainstream schools\textsuperscript{184}.

\begin{flushright}{\small\textsuperscript{175} Bulgaria, National Network for Children, 2014 Notebook, p.80.}\textsuperscript{176} Bulgaria, National Network for Children, 2014 Notebook, p.81.\textsuperscript{177} Bulgaria, Integration of Persons with Disabilities Act, (1 January 2005), Art. 42.\textsuperscript{178} Bulgaria, Public Education Act, (18 October 1991), Art. 9.\textsuperscript{179} Bulgaria, Public Education Act, (18 October 1991), Art. 27.\textsuperscript{180} Bulgaria, Public Education Act, (18 October 1991), Art. 27, para. 4.\textsuperscript{181} Bulgaria, Protection Against Discrimination Act (1 January 2004), Art. 35.\textsuperscript{182} Bulgaria, Integration of Persons with Disabilities Act, (1 January 2005), Art. 16.\textsuperscript{183} Bulgaria, Integration of Persons with Disabilities Act, (1 January 2005), Art. 17.\textsuperscript{184} Bulgaria, Integration of Persons with Disabilities Act, (1 January 2005), Art. 18.\end{flushright}
Since 2000 the majority of the special schools for children with disabilities have been gradually closing. **Inclusive education was introduced**, which is a positive departure from the institutionalisation model, although inclusive education suffers from many obstacles, such as lack of a tailored budget and the lack of specialised teachers and working professionals (see more under Section 3.1.8)\(^{185}\). As a result of the amendments introduced in 2002 and the effort to create a supportive environment in mainstream schools, the number of children with disabilities who study in special schools has declined\(^{186}\):

<table>
<thead>
<tr>
<th>Year</th>
<th>Special Schools</th>
<th>Students</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003/04</td>
<td>76 schools</td>
<td>9,163 students</td>
</tr>
<tr>
<td>2004/05</td>
<td>75 schools</td>
<td>9,154 students</td>
</tr>
<tr>
<td>2005/06</td>
<td>72 schools</td>
<td>7,884 students</td>
</tr>
<tr>
<td>2006/07</td>
<td>62 schools</td>
<td>6,256 students</td>
</tr>
<tr>
<td>2007/08</td>
<td>59 schools</td>
<td>5,679 students</td>
</tr>
<tr>
<td>2008/09</td>
<td>53 schools</td>
<td>4,591 students</td>
</tr>
<tr>
<td>2009-10</td>
<td>51 schools</td>
<td>3,590 students</td>
</tr>
<tr>
<td>2010-11</td>
<td>50 schools</td>
<td>3,484 students</td>
</tr>
<tr>
<td>2011-12</td>
<td>49 schools</td>
<td>3,376 students</td>
</tr>
<tr>
<td>2012-13</td>
<td>49 schools</td>
<td>3,234 students</td>
</tr>
</tbody>
</table>

As of November 2012, 49 special schools were in operation - 28 residential and 21 non-residential. The total number of students attending the residential special schools was 1,980\(^{187}\). During the academic year of 2012/2013, the total number of classes for students with intellectual disabilities who finished 8th grade at special schools and continued their education with vocational training, was 64\(^{188}\).

In 2011, the Ministry of Education, Youth and Science (MEYS) stated that although the integration of children with disabilities in mainstream schools is progressing, problems with needs’ assessment, adequacy of the provided support and the lack of an individual approach have been identified. To address them, in 2011, the MEYS formed several working groups to elaborate a new draft of the Education Act and a Standard for Inclusive Education. The groups are still working at this time\(^{189}\).

The MEYS reported that during the 2009-2010 academic year 8,925 children and students with disabilities aged 3 to 18 were studying in mainstream schools in Bulgaria. During the 2010-2011 academic year, the number of these children was 10,304\(^{190}\). The MEYS received

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\(^{186}\) Bulgaria, Ministry of Education, Youth and Science, Written reply No. 94-21499 on 14 November 2012.


\(^{188}\) Bulgaria, Ministry of Education, Youth and Science, Written reply No. 94-21499 on 14 November 2012.

\(^{189}\) Bulgaria, Ministry of Education, Youth and Science, Written reply 1104-08/28.09.2011, signed by the minister Sergey Ignatov, p.5.

\(^{190}\) Bulgaria, Ministry of Education, Youth and Science, Written reply 1104-08/28.09.2011, signed by the minister Sergey Ignatov, p.4.
BGN 10 million (EUR 5 million) under the Human Resources Operational Program to ensure a supportive environment for children with disabilities in mainstream schools for the period 2011-2014. To ensure accessibility of the architectural environment, the MEYS built seven ramps, three toilets and ten lifting platforms in six schools during the period January-June 2011. By the end of 2011, 42 more schools and kindergartens were adapted to the needs of children with disabilities. The project is being implemented in cooperation with the resource centres for integration of children with special needs in mainstream schools and the nationally represented organisations of and for people with disabilities. The project envisages the testing of several pilot models: a model for increasing the capacity of mainstream schools to provide inclusive education for children with special needs and a model for reforming the residential special schools to be able to provide modern inclusive education for children with intellectual and multiple disabilities.

On 12 July 2011, the minister of education approved the scheme Support for the Education of Children with Special Educational Needs under which 44 projects were approved for the total amount of BGN 8,568,527 (EUR 4,394,116). The objectives of the operation were: the provision of inclusive education, a supportive environment, the development of programmes and teaching tools, vocational skills for students and professional skills with teachers, rehabilitators, speech therapists, psychologists as well as parents. The budget for the operation is EUR 5,112,919.

The aim of the project Acquiring Literacy, with a budget of BGN 7,669,378 (EUR 3,933,014), is to elaborate programmes for adults to enable them to finish their elementary education or to acquire literacy.

Inclusive education is identified as a challenge by the Ministry of Labour and Social Policy in the light of future operations in the inclusive education field which envisage early assessment and prevention of the difficulties in education for children with special needs, ensuring a transition between an integrated and an inclusive approach in education, establishment of a new functional model for inclusive education for children with sensory disabilities and children with intellectual disabilities. Another challenge is distance university education.

An NGO report states that, in 2013, the schools received EUR 154 per child with disabilities for the school year in order to create a supportive environment and support inclusive education. Those funds were extremely insufficient. This amount was allocated as a result of implementing the Council of Minister’s decision 20/10 January 2013.

In their 2010 Annual Report, the Ombudsperson identified that children with disabilities are not ensured access to quality education. He recommends that financial resources and a supportive environment and expertise should be provided to ensure that all children with

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194 Bulgaria, Ministry of Labour and Social Policy, Written reply 01-39/15.08.2011, signed by Ginka Mashova, director of Social Protection and Equal Opportunities Department at the MLSP, p. 13.
195 Bulgaria, Ministry of Labour and Social Policy, Written reply 01-39/15.08.2011, signed by Ginka Mashova, director of Social Protection and Equal Opportunities Department at the MLSP, p. 15.
196 Bulgaria, Ministry of Labour and Social Policy, Written reply 01-39/15.08.2011, signed by Ginka Mashova, director of Social Protection and Equal Opportunities Department at the MLSP, p. 15.
disabilities can study and choose the type of education relevant to their abilities and wishes. He also urges authorities to put more effort into ensuring mandatory pre-school education for all children so as to enable them to have an equal start. He mediates between parent organisations of children with disabilities and the Ministry of Education, Youth and Science for the drafting of a new Education Act. He insists that all school age children should be enrolled and kept in mainstream schools.

On the other hand, the Ombudsperson’s 2013 monitoring report of care homes for children with intellectual disabilities and homes for medico-social care for children aged three and below (in those homes 50% of the children have disabilities) is very vague. A discouraging statement of the Ombudsperson is, for example, that it is a good tendency that the number of children living in institutions for children with intellectual disabilities who are involved in education is increasing although these children have been entitled to inclusive education since 2002 and it was expected that by 2013 all children would be enrolled in mainstream schools.

The Ombudsperson has also highlighted shortcomings such as the fact that in one of these institutions several children studied in a classroom that has been set up for them inside the institution although in this way they do not meet other children outside the institution and are not integrated into the community and, in fact, the effects of the educational process are not monitored at all.

3.2. Specific issues faced by children with disabilities

3.2.1. Gender vulnerability

The expert did not identify any specific protection legislation or policy against gender discrimination that children with disabilities may face. Parents can have their girl child sterilised without her consent if the child is under 14 years of age. In the case where the child is aged 14 to 18, her consent is needed as well as the consent of her parents. The professionals who work with girls with disabilities are not trained to recognise problems that these girls might have.

3.2.2. Children as vulnerable suspects

Bulgarian legislation (Criminal Procedure Code) does not envisage any specific provisions regarding children with disabilities when they participate in judicial proceedings as witnesses or victims as well as when they are suspects. The same applies to adults with disabilities. This can affect children's right to participate in any administrative and judicial proceedings that involve their interests. In general, children’s rights and views are not respected and this is also valid, even to a greater extent, for children with disabilities. The only measure that a judge can apply to children and adult suspects with intellectual or psychosocial disabilities is to undertake a psychological assessment to estimate whether

the person was able to perceive the facts and circumstances properly and whether he/she is able to be criminally responsible\textsuperscript{205}.

A recent FRA research on this topic\textsuperscript{206}, including interviews with children with disabilities who had participated in judicial proceedings, showed that this was particularly problematic.

\subsection*{3.2.3. Other particular issues faced by children with disabilities in Bulgaria}

Children with disabilities face a lot of challenges, mainly in the implementation of their rights. First of all, the \textbf{medical model of assessment} of their needs hinders their full participation and enjoyment of rights and they are often discriminated against even only on the basis of a lack of an accessible environment. \textbf{Early intervention and assistance} are still not developed and access to healthcare services is a serious problem, especially for the ethnic minority population. Many of these children live in \textbf{institutions} and, even when some of them are deinstitutionalised, they are placed in the so called “alternative services” that are just small institutions often located in the same building or next to the building of the institution that they were removed from\textsuperscript{207}.

It would appear that children with disabilities from \textbf{poor families or of Roma origin} are particularly vulnerable to discrimination and access to services. However, no research has been identified to support such findings.


\textsuperscript{207}Bulgaria, National Network for Children, 2014 Notebook, p. 41-42.
4. ASSESSMENT OF THE PRACTICAL IMPLEMENTATION OF THE RIGHTS AND LEGAL PRINCIPLES

KEY FINDINGS

- Enforcement and complaints mechanisms: children with disabilities and their parents are entitled to the right to complain to state and municipal authorities. The same applies to everyone who is aware of a violation against a child with a disability. However, these mechanisms are not proving to be sufficiently effective in protection of children in need.

- The main gaps identified in relation to the practical implementation relate to the inaccessible environment, lack of individual programmes, lack of qualified staff in mainstream schools and kindergartens; the lack of early intervention services as well as in the lack of adequacy of the community-based services in terms of their number, distribution and qualification of their staff.

- Data: lack of statistical data and clear provisions in different laws about the collection of such data are a crucial problem.

- Recommendations: a clear and unified definition of “a child with a disability” needs to be adopted in legislation; a child ombudsperson needs to be established; the medical model of assessment of children with disabilities should be replaced with a holistic one; early intervention services and inclusive education should be further developed and clearly regulated through legislation; provisions about the hearing of children with disabilities should be introduced.

4.1. Enforcement and reporting mechanisms

Every child has the right to be informed and consulted by the child protection authority, even without the consent of his/her parents or caregivers/guardians, if this is in the best interests of the child\(^\text{208}\). As part of their freedom of expression, as stipulated in Article 12 of the Child Protection Act, children can also ask for assistance from child protection bodies and the persons who take care of the child\(^\text{209}\). Children can report independently, or with their parents, before any child protection body.

Under Article 7 of the Child Protection Act (adopted on 1 January 2003) anyone who is aware of a child in need of protection, is obliged to notify the Social Assistance Department, the State Agency for Child Protection and the Ministry of the Interior. Anyone who is aware of such a child as a result of his/her profession and professional activity is also obliged to notify the abovementioned authorities\(^\text{210}\). A report about a child at risk might be submitted orally, in writing or through active needs’ assessment fieldwork of social workers at the department\(^\text{211}\). There are no restrictions about the persons who can submit such reports.

\(^{210}\) Bulgaria, Child Protection Act, (13 June 2000), Art. 7, para. 2.
\(^{211}\) Bulgaria, Rules for Implementation of the Child Protection Act, Article 10.
There are several reporting mechanisms, and they are as follows:

1. The National Phone Line for Children 116 111, which works 24 hours per day and is completely free of charge²¹².
2. The special website of the SACP for the prevention of sexual exploitation and violence against children²¹³ which has an option for reporting and in the 2012 – 2013 period, 374 reports were recorded.
3. Bulgarian Line for Online Security 124 123, which also can be reached through Skype and e-mail²¹⁴.
4. Online Hotline for Combatting Illegal and Harmful Content on the Internet²¹⁵.

Regardless of the method of notification, all reports are referred to the Child Protection Departments to work on them.

A Coordination Mechanism for interaction while working on cases of child victims or children at risk of abuse, as well as interaction during crisis intervention, was introduced in 2010. It encompasses cooperation between the State Agency for Child Protection, the Ministries of Labour and Social Policy, the Interior, Education and Science²¹⁷, Justice, Foreign Affairs, Culture and Health, the Social Assistance Agency and the National Association of Municipalities in the Republic of Bulgaria²¹⁸.

The mechanism for the referral of children to child protection measures is regulated by the Child Protection Act and the Rules for its Implementation. According to the Rules, child protection is provided after the investigation based on a report by the Social Assistance Departments/Child Protection Departments at the place of residence of the child who needs protection. The report can be submitted by the child, the parents, other persons, state bodies and legal entities²¹⁹.

The social worker at the relevant Child Protection Department carries out research and investigates the claims in the report by collecting information about the family and the child from the school, the kindergarten, the childcare institution, the relatives, the friends and the neighbours, as well as from other Social Assistance Departments, the general practitioner (personal doctor of the child) and other sources if needed²²⁰. If, after this initial

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²¹² Bulgaria, National Phone Line for Children (Национална телефонна линия за деца), available at: http://116111.bg/.
²¹³ www.stoppech.sacp.government.bg
²¹⁵ Bulgaria, Online Hotline for Combatting Illegal and Harmful Content on the Internet (Онлайн гореща линия за борба с вредното и незаконно съдържание в българското интернет пространство), available at: http://web112.net/.
²¹⁷ Bulgaria, The Ministry responsible for education encompasses varying policy areas, respectively as Ministry of Education, Youth and Science (July 2009- May 2013) (Министерство на образованието, младежта и науката) and Ministry of Education and Science (May 2013-) (Министерство на образованието и науката). The Ministry of Youth and Sports (Министерство на младежта и спорта) became a separate ministry again in 2013.
²¹⁸ Bulgaria, State Agency for Child Protection (Държавна агенция за закрила на детето), Coordination Mechanism for interaction when working on cases of child victims or children at risk of abuse as well as interaction during crisis intervention (Кoordинационен механизъм за взаимодействие при работа в случаи на деца, жертви или в риск от насилие и за взаимодействие при кризисна интервенция), 15 March 2010, available in Bulgarian at: http://sacp.government.bg/media/cms_page_media/19/%D0%9A%D0%9C-nasilie%20(1)_1.doc.
investigation, the social worker determines that the child is at risk, he/she opens a case\textsuperscript{221}. Based on the assessment, the social worker prepares an action plan which is communicated to the parents/the guardians/the persons who take care of the child. The social worker discusses the plan during regular meetings with all interested parties, where revision of the assessment and the implementation of the action plan take place\textsuperscript{222}. The social worker is obliged to open a file for the child with all documents on his/her case. The goal of the protection measures in the family environment\textsuperscript{223} is to support both the family and the child so that the child can be raised in the family\textsuperscript{224}. The family/guardian/substitute caregiver can refuse to cooperate in the implementation of these measures and then the Social Assistance Department’s director can issue obligatory instructions in order for the rights of the child to be protected\textsuperscript{225}.

**Other enforcement mechanisms**

The children can also file complaints to the Ombudsperson and the Protection Against Discrimination Commission.

- **Protection against Discrimination Commission (PADC)**
  As mentioned in section 2.2.2, the PADC has the power to receive and investigate complaints filed by children with disabilities and their parents and to issue binding rulings. It also has the power to carry out surveys on its own initiative\textsuperscript{226}. The PADC may issue binding decisions and it has been involved in 268 cases of discrimination on the grounds of disability over the last five years, most of which refer to the lack of accessibility\textsuperscript{227}.

- **Ombudsperson**
  As mentioned in Section 2.2.2, the Ombudsperson has the powers to intervene when citizens’ rights and freedoms have been violated\textsuperscript{228}. Children with disabilities and their parents may file complaints to the Ombudsperson for every violation of the rights of the child. Complaints and reports may be submitted to the Ombudsperson by natural persons irrespective of citizenship, gender, political affiliation or religious beliefs\textsuperscript{229}. They may be written or verbal, and submission may be done by post, personally or by other means of communication including by e-mail\textsuperscript{230}. The Ombudsperson should reply to complaints and reports within one month and, in more complex cases, within three months.

The Ombudsperson must inform the Prosecutor’s Office about the results of his/her checks/investigations when the investigation uncovers information about crimes that have

\textsuperscript{221} Bulgaria, Regulations for Implementation of Child Protection Act, (25 July 2003), Art. 15.
\textsuperscript{222} Bulgaria, Regulations for Implementation of Child Protection Act, (25 July 2003), Art. 16a.
\textsuperscript{223} Pursuant to Art. 23 of the Child Protection Act the measures for child protection in the family environment are: provision of psychological, legal, pedagogical support for the parents, referral to community-based social services, appropriate consultation and provision of information of the child, consultation on the social assistance and social services issues, cooperation on the improvement of the social and material conditions of living, social work for facilitation of the relationship between the parents and the children, assessment of the child’s individual needs and capacity in order to be referred to the most appropriate school, help for finding a job for the children over the age of 16, help and assistance in adoption procedures and assistance to adults who take care of children in the implementation of their functions.
\textsuperscript{224} Bulgaria, Protection Against Discrimination Act (January 2004), Art. 47.
\textsuperscript{225} Presentation delivered by a member of the Commission at a conference on the UN CRPD, June 2011.
\textsuperscript{226} Bulgaria, Ombudsman Act, Art. 2.
\textsuperscript{227} Bulgaria, Ombudsman Act, (Закон за омбудсмана) (1 January 2004), Art. 24, available in Bulgarian at: http://lex.bg/bg/laws/idoc/2135467520.
\textsuperscript{228} Bulgaria, Ombudsman Act, Art. 25.
been committed. There are no other indications in the legislation regarding the thematic mandate of the Ombudsperson.

4.2. Gaps, problems and issues in the implementation

According to the 2014 report of the National Network for Children, children with disabilities continue to be discriminated against, regardless of where they live (families or institutions) because of the traditional medical concept of regarding them as ill and the "medical assessment of their reduced capacity for social adaptation".

Kindergartens and schools are not in a position to enrol children with disabilities because of an inaccessible environment, a lack of individual programmes and a lack of qualified staff.

Despite the efforts for the deinstitutionalisation of children living in institutions, the reality is that an individual approach, assistance and support are not provided to them. Social workers at the Child Protection Departments are insufficient in number (720 in 2013 for the whole country) and suffer from work overload and a lack of training, supervision and flexibility in their work. Moreover, they still do not have any standards to follow in their work with children.

Many of the children with disabilities live in institutions and even when some of them are deinstitutionalised, they are placed in the so called “alternative services”, which are just smaller institutions often located in the same building or the yard of the building of the institution they were in previously. Community-based social services are inadequate in number and distribution, and their staff lack proper training.

However, significant progress was made by an EU funded project called “Direction-Family” which managed to significantly reduce the number of babies from the hospitals placed in eight baby institutions shortly after birth (see section 4.3).

Early intervention and assistance are still not well developed and access to healthcare services is a serious problem, especially for the ethnic minority population and for children with disabilities. Social assistance is provided only to those who have an extremely low income (the guaranteed minimum monthly income estimated by the Council of Ministers is EUR 33 for 2013). Financial standards for taking care of a child in the family do not exist, while there are such standards for the residential institutions and community-based services. However, the principle “money follows the child” is not applied in any of these standards and the individual needs of the children are not met.

The plan for the implementation of the CRPD does not contain any figures for funding. In the funding sections it is only stated “from the state budget” or “from the state budget and EU funding”. No plan for the implementation of the CRC was identified by the expert.

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4.3. Best practices

Significant improvements in regard to children with disabilities are slow to take place so only a few good practices could be identified.

As far as legislation is concerned, one promising positive development was that the **draft of the new Criminal Code**, which introduced for the first time the term “protected grounds” of discrimination, listed “health status” as one of them. Although there was no specific mentioning of children with disabilities, the use of the term “health status” instead of “disability” was a positive step overall, as the term “health status” covers a larger group of people whose diagnosis might not yet have been formally diagnosed as a disability. It is unfortunate that the draft of the Criminal Code was not developed further and was not proposed to the Parliament for vote. Drafts of a new Child Protection Act, Preschool and School Education Acts (to replace the Public Education Act) and one to replace the Combatting Delinquent Acts of Minors and Adolescents Act were also elaborated but had not reached the phase to be voted by the Parliament until 2013 when a new government and parliament were elected.

A positive practical example is the EU-funded project "Direction-Family", which aimed at the **prevention of the abandonment and institutionalisation** of children with disabilities. This project necessitated cooperation among medical doctors in hospitals, Social Assistance Departments and service providers and thus brought about really positive practical results in that fewer children were placed in baby institutions as a result. However, the project concerns only eight out of 28 institutions for babies.

For the same project, the Ministry of Healthcare issued methodological guidance for the prevention of the abandonment of children (mainly children with disabilities) in 2009 which aimed for cooperation between the medical doctors in hospitals, the Social Assistance Departments and the service providers when working on a case of a child at risk to be abandoned. After the project started, this cooperation brought about actual results. Only 30 children were placed in these eight institutions, compared to 705 children that were placed in the other 21 institutions of the same type for the same period in 2013.

However, the 2014 report of the National Network for Children (NGO) warns that the mechanism works at present on a project and pilot basis and that there is no evidence that it could become a sustainable practice. In addition, the report states that children from vulnerable communities are not represented in the project, even at this stage.

4.4. Data and monitoring mechanisms

The reality is that the Ministry of Healthcare does not have data about the number of children with disabilities who were diagnosed by medical specialists and of those who were assessed as “disabled” by the commissions at the Social Assistance Departments (these are two different procedures). Thus, the Social Assistance Departments’ work does not cover all children with disabilities who need assistance as not all the cases are referred to them.

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The lack of reliable statistical data impacts all aspects affecting children with disabilities among which: the number of children with disabilities, the number of children with disabilities who receive assistance, the number of children with disabilities who study, the number of children with disabilities who use healthcare services, the number of children with disabilities who live in institutions, the number of children who are victims of violence and the number of cases of children with disabilities who received protection as victims of violence. Bulgaria has no monitoring mechanism under the CRPD so far.

4.5. Recommendations

Considering the legal analysis and assessment of the gaps in legislation and implementation discussed in this report, a few recommendations can be drawn. First, the notion of disability should be clearly and consistently defined in the legislation concerning persons with disabilities. When defining the notion of disability, it would be important to take a holistic approach to children and persons with disabilities based on the child’s needs, rather than the current medical approach. Indeed, the implementation of the rights of children with disabilities would greatly benefit from moving away from the medical model of the assessment of a disability and towards a holistic approach aimed at meeting the needs of the child, rather than only producing a medical diagnosis.

Early intervention services are crucial for children with disabilities and their family. It, therefore, should be accessible to every child with a disability, regardless of his/her family income and status, place of residence and type of problem.

Services to children with disabilities and their families would benefit from a holistic approach rather than the current fragmented approach. To this end, healthcare services should be provided in cooperation with social assistance and education services. Support services should be available to the family of a child with a disability and their intervention should focus on ensuring that the child is not placed in an institution or to reduce the number of children in an institution to the minimum possible. Similarly, in order for the deinstitutionalisation of children with disabilities to be successful, effective cooperation among the healthcare, social and educational services is key and needs to be promoted through legislation and appropriate funding.

Several measures would be needed to ensure effective inclusive education for children with disabilities, including through the adoption of new school and preschool education legislation and professional standards for educators and social workers; sufficient funding for a supportive environment should be provided together with the training of teachers, therapists and psychologists required to cover all children's needs; the elaboration of individual programmes that really meet the needs and capacities of each child should also be required.

Overall, professionals working with children with disabilities should be trained in order to ensure that they are sufficiently qualified, supervised and paid. Children with disabilities need to receive the adequate support in order to access services and claim their rights, such as support when they participate in judicial proceedings or to support children with disabilities’ participation in social and cultural life.

There is a need for reliable statistical data about children with disabilities in Bulgaria to better inform on policies targeting them. Data should be compiled so as to serve as a basis for further improvement of the legislative framework, as well as a tool for the monitoring of its effective implementation.
Lastly, the Child Ombudsperson should be established in order to have a more focused, competent and regular monitoring and protection of children with disabilities’ rights is ensured.
5. CONCLUSIONS

The Bulgarian legislation on children with disabilities is based on the rights and principles as outlined by the CRC and the CRPD. However, the current national legislative framework is incomplete, which is a major contributing factor to its ineffective implementation in practice.

Another contributing factor is that there is no unified definition of a “child with a disability”, which hinders the compiling of reliable data and the drafting of relevant policies. Overall, the Bulgarian legal framework does not contain sufficient safeguards for the rights of children, especially regarding the right to be heard (the existing legal procedures are not adapted to the needs of children with disabilities) and the right to inclusive education (legislation fails to provide for funding to secure an accessible environment, individual programmes and specialised training, as well as adequate payment for staff). Access to social services is not ensured to all children with disabilities as some of the services and allowances are available only for families and children with extremely low income, only for severely disabled children and after a very complicated and clumsy procedure. Early intervention and assistance are still not developed and access to healthcare and social services is scarce and inefficient.

Children with disabilities in Bulgaria are not fully protected from discrimination and do not enjoy an equal opportunity to be involved in all aspects of social life because of a lack of detailed legislation and mechanisms to ensure inclusive education, full participation in any children-related activities and policy making and full acknowledgement and prosecution of discrimination-related violations/crimes against them.

In order to enhance the protection of children with disabilities, first and foremost, Bulgarian legislation should provide a clear and consistent definition of “disability” to serve as a foundation of legislative acts to specifically address the needs of children with disabilities.
REFERENCES

1. Legislation
   a. International Law
   b. National Law
      • Constitution of the Republic of Bulgaria
      • Child Protection Act
      • Regulations for the Implementation of the Child Protection Act
      • Public Education Act
      • Social Assistance Act
      • Regulations for the Implementation of the Social Assistance Act
      • Family Allowances for Children Act
      • Ombudsperson Act
      • Protection against Discrimination Act
      • Protection against Domestic Violence Act
      • Family Code
      • Criminal Code
      • Criminal Procedure Code
      • Integration of Persons with Disabilities Act
      • Health Act

2. Literature
доклад за 2007 “Доброто управление, правата на хората и органите на властта),
• Ombudsperson, 2010 Annual report
• National Programme “Assistance for Persons with Disabilities” (Национална програма “Асистенти за хора с увреждания,” available in Bulgarian at: http://www.az.government.bg/Projects/Prog/AHU/Frame_AHU.htm.
• State Agency for Child Protection (Държавна агенция за закрила на детето), Coordination Mechanism for interaction while working on cases of child victims or children at risk of abuse, as well as interaction during crisis intervention (Координационен механизъм за взаимодействие при работа в случаи на деца, жертви или в риск от насилие и за взаимодействие при кризисна интервенция), 15 March 2010, available in Bulgarian at: http://sacp.government.bg/media/cms_page_media/19/%D0%9A%D0%9C-nasilie%20(1)_1.doc.
3. **Other**

- Ministry of Labour and Social Policy, Written reply 01-39/15.08.2011, signed by Ginka Mashova, director of Social Protection and Equal Opportunities Department at the MLSP.
- State Agency for Child Protection, Written reply 05-00-06, 1 August 2012, signed by Darinka Yankova, deputy-chairperson of the SACP.
### ANNEX 1 – SUMMARY TABLE

#### Analysis of the legal implementation of CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated into English)</th>
<th>Comments/assessment on the implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Best interests of the child</strong></td>
<td>Effective implementation</td>
</tr>
<tr>
<td>Art. 3, para. 3, Child Protection Act: “Protection of the child is done through ensuring the most effective procedures and conditions to protect the best interests of the child”.</td>
<td>While the Act does not explicitly state that the child’s best interests should be systematically considered as primary consideration in all actions concerning them, the requirement of ensuring effective procedures and conditions results in the best interests being a primary consideration and covers all aspects of the child. In addition, the legislation provides for some procedural safeguards.</td>
</tr>
<tr>
<td>Additional Provisions, para 1., item 5, Child Protection Act: “The best interests of the child is an assessment of: wishes and feelings of the child; physical, mental and emotional needs of the child; the age, the gender, the past and other characteristics of the child; the danger or the damage caused to the child or the possibility such damage to be caused; the ability of the parents to take care of the child; the consequences which will take place for the child when the circumstances change and other circumstances relevant to the child”.</td>
<td></td>
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<tr>
<td>Procedural safeguards</td>
<td></td>
</tr>
<tr>
<td>Art. 15, para. 1, the Child Protection Act: “In each administrative and court proceeding in which the child’s rights and interests are involved, it is obligatory that any child over the age of ten is heard, unless this hearing damages the interests of that child.” Para. 2 “When a child has not yet reached the age of ten, he/she may be heard, depending on the level of his/her development and understanding. The decision of the hearing of the child should be reasoned.”</td>
<td></td>
</tr>
<tr>
<td><strong>Non-discrimination</strong></td>
<td>Incomplete implementation</td>
</tr>
<tr>
<td>Art. 6, Constitution of the Republic of Bulgaria: “All persons are born free and equal in dignity and rights” and “[a]ll citizens shall be equal before the law [and t]here shall be no privileges or restriction of rights on the grounds of race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status or property status”.</td>
<td>The implementation is considered incomplete. While the Child Protection</td>
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</table>
### Analysis of the legal implementation of CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated into English)</th>
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<tbody>
<tr>
<td>Art. 10, para. 3, Child Protection Act: “All restrictions and privileges based on race, nationality, ethnic belonging, gender, origin, property status, religion, education, beliefs and <strong>disability</strong> are prohibited.”</td>
<td>Art and the Protection Against Discrimination Act prohibit direct and indirect discrimination on the grounds of disability and age, the right to reasonable accommodation is not fully guaranteed. The Protection Against Discrimination Act guarantees to some extent reasonable accommodation in education. It is noted that enforcement mechanisms exist to ensure that child victims of discrimination can complain.</td>
</tr>
<tr>
<td>Art. 4, Protection Against Discrimination Act: “Any direct and indirect discrimination on the grounds of sex, race, nationality, ethnicity, citizenship, origin, religion and faith, education, beliefs, political affiliation, personal or public status, <strong>disability</strong>, age, sexual orientation, family status, property status or any other ground, provided by a law or international treaty to which the Republic of Bulgaria is a party to shall be prohibited”.</td>
<td></td>
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<tr>
<td>Art. 3, Integration of People with Disabilities Act: “Direct and indirect discrimination against people with disabilities is prohibited”.</td>
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</tr>
<tr>
<td>Art. 29, para. 3, Protection Against Discrimination Act: “A director of an educational institution shall take effective measures to prevent all forms of discrimination in the place of study by members of the teaching or administrative staff, or by students”.</td>
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</tr>
<tr>
<td>Art. 32, Protection Against Discrimination Act: “Educational institutions take <strong>appropriate measures to compensate</strong> for persons with disabilities’ limited opportunities to effectively exercise their rights to education and training, unless the cost is excessive and would seriously burden the institution.”</td>
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</tr>
<tr>
<td>Art. 35, Protection against Discrimination Act: “Providers of training of education, and drafters of textbooks and teaching materials shall present information and apply methods of training and education in a manner designated to overcome negative stereotypes of persons with disabilities.”</td>
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<tr>
<td>Art. 4, para. 4, Integration of Persons with Disabilities Act: “Integration of persons with disabilities is ensured through <strong>accessible</strong> living and architectural environment.”</td>
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</table>
**Analysis of the legal implementation of CRPD and CRC rights and principles**

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<tr>
<th>National legislation (translated into English)</th>
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<tbody>
<tr>
<td><strong>Evolving capacities of the child</strong></td>
<td>Incomplete implementation</td>
</tr>
<tr>
<td>Art. 13, Child Protection Act: “Every child has the right to be informed and consulted by the child protection authority even without the consent of his/her parents or caregivers/guardians if this is in the best interests of the child and the informing the parents or guardians would violate the best interests.”</td>
<td>The principle of evolving capacities of the child is not recognised under Bulgarian law. There are no legal provisions or requirements that provide greater capacity for children to take responsibilities for decisions affecting them as they acquire more experience and competences. Some elements of the principle are, however, reflected. Such elements include the requirement to inform and consult the child and greater capacity as the child gets older.</td>
</tr>
<tr>
<td>Art. 12, Child Protection Act: “Every child has the right to freely express his/her opinion on matters of his/her interests. The child can ask for assistance from the bodies and persons who are in charge of his/her protection under this act.”</td>
<td></td>
</tr>
<tr>
<td>Art. 15, para. 1, the Child Protection Act: “In each administrative and court proceeding in which the child’s rights and interests are involved, it is obligatory that any child over the age of ten is heard, unless this hearing damages the interests of that child.” Paragraph. 2: “When a child has not yet reached the age of ten, he/she may be heard, depending on the level of his/her development and understanding. The decision of the hearing of the child should be reasoned.”</td>
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</tr>
<tr>
<td>Art. 15, para. 4, Child Protection Act: “Court and administrative bodies ensure an appropriate environment for child hearing, adapted for his/her age. During the hearing and the consulting of the child it is obligatory that a social worker from the Social Assistance Department is present and if needed – also another professional.”</td>
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**Right of the child to be heard/right to participate**

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<tr>
<th>Comments/assessment on the implementation</th>
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<tbody>
<tr>
<td>Incomplete implementation</td>
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<tr>
<td>The Child Protection Act explicitly sets the right to be heard and the right to express views on all matters of his/her interest, as well as procedural</td>
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</tbody>
</table>
### Analysis of the legal implementation of CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated into English)</th>
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<tr>
<td>Art. 15, para. 3, Child Protection Act: “Before hearing the child, the court or the administrative body should ensure provision of the information necessary to help the child form his/her opinions, and should inform the child of the possible consequences of his/her wishes or, opinions, and of each decision of the court.”</td>
<td>safeguards for the child to be heard in judicial and administrative proceedings. However, the right of the child to be heard is not recognised for all the decisions affecting her/him but only certain types of decisions (judicial and administrative). Therefore the legal implementation is incomplete.</td>
</tr>
<tr>
<td>Art. 15, para. 5, Child Protection Act: “The Court or the administrative body orders that the child hearing should be performed in the presence of a parent, guardian, person who takes care of the child or other close person to the child, except in cases when this contradicts the interests of the child.”</td>
<td>Right to be free from violence</td>
</tr>
<tr>
<td>Art. 13, Child Protection Act: “Every child has the right to be informed and consulted by the child protection authority even without the consent of his/her parents or caregivers/guardians if this is in the best interests of the child and the informing the parents or guardians would violate the best interests.”</td>
<td>Incomplete implementation</td>
</tr>
<tr>
<td>Art. 12, Child Protection Act: “Every child has the right to freely express his/her opinion on all matters of his/her interest. The child may ask for cooperation from the bodies and persons who are in charge of his/her protection under this law.”</td>
<td>The Child Protection Act guarantees the protection of children from all forms of violence. The criminal law criminalises violence against children and provides for aggravated penalties. However, the legal implementation is considered</td>
</tr>
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</table>

#### Right to be free from violence

| Art. 11, para. 1, Child Protection Act: “Every child has the right to protection from involvement in activities what would harm his/her physical, mental, moral or educational development”. Paragraph 2: “Every child has the right to protection from methods of upbringing that harm his/her dignity, physical, mental or other form of abuse and forms of influence that contradict his/her interests”. Paragraph 3: “Every child has the right to protection from use for begging, prostitution, dissemination of pornographic materials and receiving illegal income as well as sexual abuse”. Paragraph 4: “Every child has the right to protection against involvement in political, religious and |
**Analysis of the legal implementation of CRPD and CRC rights and principles**

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<th>National legislation (translated into English)</th>
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<tr>
<td>Art. 125, para. 2, Family Code: “The parent has no right to use violence or other methods of upbringing of the child that harm his/her dignity”.</td>
<td>incomplete due to an important gap in procedural safeguards in the sense that prosecutors do not have ex officio powers to prosecute violence against children.</td>
</tr>
</tbody>
</table>

**Right to family life**

Art. 14, Constitution of the Republic of Bulgaria: "The family, motherhood and children shall be under the protection of the state and society".

Art. 47, Constitution of the Republic of Bulgaria: para. 1 : "The raising and upbringing of children until they come of legal age shall be a right and obligation of their parents and shall be assisted by the State". Paragraph 2: "Mothers shall be the object of special protection by the State and shall be guaranteed prenatal and postnatal leave, free obstetric care, alleviated working conditions and other social assistance". Paragraph 3: "Children born out of wedlock shall enjoy equal rights with those born in wedlock". Paragraph 4: "Abandoned children shall enjoy the protection of the State and society". Paragraph 5: "The conditions and procedures for the restriction or suspension of parental rights shall be established by law".

Art. 3, item 2, Child Protection Act: "The protection of the child is based on the principle of upbringing in family environment" and item 12: "support of the family".

Art. 4, item 1, Child Protection Act: "The protection is done by provision at the place of support, services and cooperation in family environment" and Art.4, item 12: "special care for children with disabilities".

Art. 25, para. 2, Child Protection Act: "Placement of the child outside the family is applied as a protection measure after the exhaustion of all other options for protection in the family, except
### Analysis of the legal implementation of CRPD and CRC rights and principles

#### National legislation (translated into English)

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in the cases when urgent removal is needed”.

Art. 124, para 2. Family Code: "Every child has the **right to personal relationships** with his/her parents unless the court had not decided the opposite”.

#### Right to assistance

Art. 2, item 10, Family Allowance for Children Act: “**Family allowances** are: monthly allowances for children with permanent disabilities until the children reach the age of 18 or if they study at high school - until the age of 20.

Art. 2, para. 2, Social Assistance Act: “Social assistance is the provision of **allowances in cash or in-kind benefits and services** necessary for the satisfaction of the basic living needs of citizens in those cases where their labour or property income is not adequate. All Bulgarian citizens, families, and cohabitants who, due to health, age, social or other reasons beyond their control, are unable either individually, or with the help of their legal dependants, to obtain through their labour or property, sufficient income to meet their basic necessities of life have a right to social assistance”.

Art. 36, para. 2, Regulations for Implementation of Social Assistance Act: “**community-based social services** are: personal assistant, social assistant, domestic assistant”.

Additional provisions, para. 1, Regulations for Implementation of Social Assistance Act: “personal assistant is a person assisting a child or an adult with a permanent disability or a serious illness with hers/ his everyday needs), social assistant is a person providing consultations in relation to the user’s recreational and social activities), and a domestic assistant is a person assisting the user with household and personal hygiene maintenance, and home cooking”.

Art. 13, items 2,3,4,5, Integration of Persons with Disabilities Act: “**Social assessment** includes: assessment of the capacities for education, recommendations for social inclusions measures, reasoned proposal for monthly allowance for social integration (transport, communication, Effective implementation

The legal implementation is considered effective as the legislation provides allowances and specific assistance depending on the disabilities. The assistance approach is however largely dependent on the medical diagnosis and not based on needs.
**Analysis of the legal implementation of CRPD and CRC rights and principles**

<table>
<thead>
<tr>
<th>National legislation (translated into English)</th>
<th>Comments/assessment on the implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education, physical rehabilitation, rent of a house, accessible information, food or medicines for persons with permanent disabilities), reasoned proposal for one-time financial assistance for auxiliary means, reasoned proposal for use of social services, services for rehabilitation, services for education, services for vocational training, services for accessible environment or persons with permanent disabilities).</td>
<td></td>
</tr>
<tr>
<td>Art. 42в, Integration of Persons with Disabilities Act: “Children with estimated type and level of disability have the right to monthly allowance for transport, education and accessible information”.</td>
<td></td>
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<tr>
<td>Art. 42г, Integration of Persons with Disabilities Act: “.....Children with estimated type and level of disability have the right to physical rehabilitation once a year if it is prescribed by a specialist”.</td>
<td></td>
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<tr>
<td>Art. 42д, Integration of Persons with Disabilities Act: “.....Children with estimated 71 or over 71 percent of estimated disability have the right to monthly allowance for information and telecommunication services”.</td>
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</tr>
<tr>
<td>Art. 42ж, Integration of Persons with Disabilities Act: “.....Children with estimated type and level of disabilities 71 and over 71 percent of disability have the right to monthly allowance for food and medicines under rules provided for in an ordinance of the minister of healthcare and the minister of labour and social policy”.</td>
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</table>

**Right to education (including inclusive education)**

| Art. 7, para. 1, Public Education Act: “School education up to the age of 16 is obligatory. Para. 2. School education starts at the age of 7 at first grade. Children at 6 are entitled to be enrolled at first grade if their physical and mental development, assessed by their parents or guardians, allows this. |
| Art. 9, Public Education Act: “Every citizen exercises his/her right to education in a school and... |
| Effective implementation of the right to education is ensured to all children with disabilities, including the right to inclusive education. Children with disabilities must be accepted by...
### Analysis of the legal implementation of CRPD and CRC rights and principles

<table>
<thead>
<tr>
<th>National legislation (translated into English)</th>
<th>Comments/assessment on the implementation</th>
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</thead>
<tbody>
<tr>
<td>type of education chosen by him/her according to his/her preference and capacities”. Paragraph 2: “The right of the minors is exercised by their parents or guardians”. Art. 27, para. 1, Public Education Act: “Children with special educational needs/chronic diseases are to be educated in mainstream schools”. Paragraph 2: “Obligation of the mainstream schools is to enrol children with special educational needs/chronic diseases”. Art. 27, para. 4: “Children with disabilities are enrolled in special schools only after all other options are exhausted, as a last resort and with the written expressed wish of their parents/guardians”.</td>
<td>mainstream schools. Lastly, children with disabilities may receive a monthly allowance for their education (see right to assistance). The legal implementation of the right is considered effective, albeit further detailed legislation would need to be elaborated to ensure a supportive environment for all children with disabilities in practice.</td>
</tr>
</tbody>
</table>
## ANNEX 2 – STATISTICAL INFORMATION

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of violation(^{242})</th>
<th>Violence</th>
<th>Gender discrimination</th>
<th>Other discrimination</th>
<th>Criminal suspects</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2010</td>
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<td>2011</td>
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<td>2012</td>
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<tr>
<td>2013</td>
<td></td>
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</tbody>
</table>

No data could be identified.

\(^{242}\) Cases reported to any relevant body; depending on the availability of data.
ANNEX 3 – STUDY ON MEMBER STATES' POLICIES FOR CHILDREN WITH DISABILITIES - EXECUTIVE SUMMARY

There are about 100 million children in the European Union and about 80 million European persons with disabilities. While the number of children and the number of persons with disabilities is well documented, the same cannot be said of children with disabilities. Children with disabilities combine different factors of vulnerability. As children, the protection of their rights requires the adoption of special measures that are recognised by the UN Convention on the Rights of the Child (CRC). As individuals with disabilities, they are particularly vulnerable EU citizens who deserve specific safeguards and protection as acknowledged by the UN Convention on the Rights of Persons with Disabilities (CRPD).

Children with disabilities and their families face on a daily basis specific problems such as the lack of assistance and support for their inclusion in schools, experiences of violence and the lack of proper tools for reporting them, difficulties in accessing buildings or services or troubles in being heard and participating in decisions affecting their lives.

The Conventions include provisions addressing these concerns and providing protection to the right to enjoy all human rights and freedoms with no discrimination ensuring:

- equality of opportunities and accessibility
- the best interests of the child as a consideration in all actions concerning them
- the evolving capacities of children with disabilities as a consideration in decisions affecting them
- the right to be heard in proceedings and decision-making processes affecting the child and the right to a full and effective participation
- the right to family life
- the right to effective access to education and inclusive education
- the right to health care
- the right to assistance
- freedom from violence.

This study is structured to mirror the requirements of both conventions reflecting the main rights of children with disabilities to be implemented generally in the EU due to the high rate of ratification by EU Member States. Moreover, in December 2010, the European Union became a party to the CRPD. In doing so, the EU recognised the challenges persons with disabilities face in securing the fulfillment of their rights and assumed the responsibility for its implementation alongside Member States. The EU’s responsibility towards the implementation of the CRC is of a different scale. Despite the lack of ratification by the EU, the CRC rights and principles guide the EU’s policies and actions since the Treaty recognizes the rights of the child as an EU objective.

This study assesses the current situation with respect to the rights of children with disabilities in the EU and the need for EU legislation or for other measures. The options to act at the EU level are framed within the extent of the competences conferred by the Treaties, which can be exclusive, shared or supporting competences (Article 2 TFEU).

The current EU legislative and policy framework give recognition to the Conventions’ rights and principles applicable to children with disabilities and a certain degree of implementation. However, the existing EU legislation relevant to this area is mainly sectoral.
(i.e., employment or immigration). The legislation addresses the situation of persons with disabilities separately from the rights of the child, whereas there is a need to consider children with disabilities as they face multiple discrimination on the basis of age as well as disability, and to tailor measures to ensure that their rights are respected.

A. Comparative analysis of national legal frameworks

The comparative analysis of the national legal frameworks on children with disabilities’ rights in 18 Member States\(^\text{243}\) is based on a set of criteria developed to enable an assessment of comparable data reported in each national study. The criteria are based on the requirements within each of the rights and principles identified as pertinent to the situation of children with disabilities.\(^\text{244}\) The criteria are derived from the text of both conventions and the CRC General Comments on their interpretation.

Overall, the 18 Member States have in place comprehensive legal frameworks reflecting the main aspects of the rights and principles identified under the CRPD and CRC. While it may be stated that the rights of children with disabilities are broadly recognised under national legal systems either through general or specific legislation, their practical implementation was revealed to be problematic in most Member States.

Consideration of the principle of best interests of the child is generally recognised under national laws. However, implementation is mostly limited to family and social protection decisions affecting children and the specific needs of children with disabilities are not recognised. The country studies found a lack of understanding of what the principle entails, along with insufficient development of the concept through law or jurisprudence and an overall lack of implementing rules.

The right to non-discrimination based on disability or age is reflected in national legislations, however, the implementation of the right is generally only partial and the reasonable accommodation measures are generally insufficient to guarantee the right. In practice, accessibility remains a key problem in most Member States. Reference to the multi-discrimination factors faced by children with disabilities or girls with disabilities is rarely acknowledged. There is a lack of monitoring results and of data on cases of right’s violations that could help define more effective measures.

Most countries partially take account of the evolving capacities of the child mainly on the basis of considerations of age, maturity and development of the child. However, the situation of children with disabilities is not specifically acknowledged. The implementation is limited to a certain type of decision and Member States tend to primarily take into consideration the child’s age, which for children with disabilities may not be relevant and which can effectively exclude them from decision making processes that affect them.

The rights to participation and to be heard in decision making processes affecting children with disabilities are recognised under the legislation of the 18 Member States. However, their implementation is often limited to some sectoral procedures mostly regarding family

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\(^{243}\) For the first phase of this study, 18 selected Member States’ legal frameworks have been analysed: Belgium, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Ireland, the Netherlands, Malta, Poland, Romania, Slovenia, Spain, Sweden and the United Kingdom. Those countries have been selected by the European Parliament in the Terms of Specifications of this study.

\(^{244}\) Eight rights and principles have been identified as most relevant to the situation of children with disabilities: the best interests of the child, the right to non-discrimination, the consideration of evolving capacities, the right to participation/to be heard, the right to be free from violence, the right to family life, the right to assistance and the right to education.
law and at a certain extent in education. In practice, children with disabilities are not systematically involved and do not get to participate in public and private life at the same level than their able-peers.

In general freedom from violence is recognised by Member States’ legislation. However, abuse against children with disabilities is a key problem acknowledged in all country reports. Violence occurring in institutions is of particular concern. The lack of systematic data and the difficulty for victims to report abuses do not allow an overview of the situation needed for the adoption of appropriate policies and measures.

The right to family life is widely recognised in the laws of the selected Member States. However, insufficient guidance and support to families for the integration of the child with disabilities and for helping them in their day to day lives is a key problem in most of the 18 Member States. Without proper assistance, families with difficulties might give up on their responsibility leading to a situation where alternative options are unlikely and institutionalisation is the only response available.

Overall, the right to various forms of assistance (financial, social, health care, etc.), both for children with disabilities and for their families, is recognised in legislation or regulatory rules. However, again in most cases, assistance is sectoral (mainly social and health) and insufficient (financially and human assistance). The economic crisis is contributing to the removal and reduction of assistance in most Member States. Access to assistance is often perceived not as an instrument enabling protection of rights but rather as a discretionary measure subject to budget constraints.

All Member States recognise the right to education in their Constitutions or legal frameworks; however, the ability to access the school of choice for children with disabilities remains very challenging in practice. Mainstream schools remain largely inaccessible to children with disabilities in many Member States, while in other countries schools have insufficient resources and support for the child with disabilities is scarce. In addition, teachers in mainstream schools lack training and awareness of the needs of children with disabilities and programmes are not systematically adapted to them.

Compliance mechanisms are weak and lack adaptation to the situation of children with disabilities. Lack of information and guidance to families with children with disabilities on their rights, procedures and competent authorities decreases their ability to access these tools.

On the basis of these findings, the study sets forth conclusions and recommendations for EU action, taking into account the competence of the EU conferred by the Treaties on a range of policy areas, including disability and children’s rights.

**B. 1 The role of the European Union**

The EU has no explicit competence on children with disabilities. However the EU framework contains provisions recognising the EU’s role to promote the protection of the rights of the child as an EU objective as well as its competence to combat discrimination based on disability. Furthermore, the Charter of Fundamental Rights of the European Union, with similar legal value as the Treaties, recognises the right to non-discrimination on the grounds of disability in Article 21 and the rights of the child under its Article 24. This recognition, while important, cannot extend the competences of the EU as conferred by the Treaties.
The EU, together with Member States in areas of shared competence or national competence, is bound by the CRPD obligations and is required to take the necessary measures to combat discrimination on the grounds of disability within the framework of Article 19 TFEU or in other matters falling within EU competence. Article 19(1) TFEU provides the legal basis for EU action (see among others the proposal for equal treatment Directive of 2008) but the unanimity requirement makes achieving agreement under this legal base difficult. Article 19(2) provides the possibility for the EU to adopt basic principles and incentive measures to support Member States’ action to combat discrimination through the ordinary legislative procedure.

Neither the above mentioned proposal for an equal treatment Directive nor any other EU measures provide for a definition of disability. Prior to the adoption of the CRPD, in a judgment in July 2006, the Court of Justice of the European Union (CJEU) defined disability in the same sense as the CRPD within the context of employment policy as “a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life”. Recently, the CJEU has further developed this concept stating that disability results from barriers hindering the full and effective participation of the person concerned in professional life on an equal basis with other workers and calling on the employer to take reasonable accommodation measures.

EU action is also possible when linked to other policy areas of EU competence. Several issues related to the rights of the child with disabilities are linked to EU policies such as social policy, economic, social and territorial cohesion, transport, freedom, security and justice all of which are shared competence. In addition, the EU has the option to take action to support Member States policies in a number of areas affecting children with disabilities such as education, sports, youth or health.

B. 2 Existing relevant EU secondary legislation

The best interests of the child as primary consideration in actions relating to children is a fundamental requirement recognised in EU legislation. Article 7 of the Mediation Directive requires the mediator to take into account the best interests of the child when deciding whether the child can give evidence in judicial proceedings. The Family Reunification Directive requires Member States’ authorities to consider the best interests of children when examining an application for family reunification (Article 5). The protection of the best interests of the child is explicitly mentioned in Council Directive on victims of trafficking in human beings.

Non-discrimination at the EU level is currently addressed by four EU Directives to combat discrimination.

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246 Judgment C-13/05 of the Court (Grand Chamber) of 11 July 2006, Sonia Chacón Navas v Eurest Colectividades, pt 43.

247 Judgment of the Court, Joint cases C-335/11 and C-337/11 of 11 April 2013, HK Danmark, acting on behalf of Jette Ring v Dansk almennytigt Boligelsesklab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening acting on behalf of Pro Display A/S (C-337/11), pt 47.


251 Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who has been the subject of an action to facilitate illegal immigration.
discrimination on the basis of protected grounds such as gender, racial or ethnic origin, religion or belief, age and sexual orientation, most of them restricted to the area of employment. They lay down rules “for combating discrimination (…) with a view to putting into effect in the Member States the principle of equal treatment”. Disability is recognised as grounds for discrimination under Directive 2000/78/EC and, furthermore, protection of equality between men and women in matters of employment and occupation under Directive 2006/54/EC applies to persons with disabilities. Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin does not include disability as a protected ground. Directive 2004/113/EC on equal treatment between women and men in access to supply of goods and services refers to discrimination on grounds of gender but not on age or disability.

The European Commission has acknowledged the differences of protection provided across the various grounds and published a proposal for a Directive in 2008 aiming at completing the legal framework on anti-discrimination law and providing for a more equal level of protection across the grounds.

Other measures in policy areas such as the internal market or transport have an impact on children with disabilities’ access to services with no-discrimination. For example, Directive 2001/85/EC on the carriage of passengers, requires accessibility features for persons with reduced mobility and visually impaired persons. Other instruments cover rights of persons with disabilities when travelling by air, accessibility to lifts, in carrying out public procurement or in measures for telecommunication.

Within the remit of its competences, the EU’s action to combat discrimination is complemented with activities by the EU Institutions to improve knowledge about discrimination (e.g. by raising awareness), support intermediary actors (e.g. NGOs, social partners and equality bodies) to improve their capacity to combat discrimination and to encourage the exchange of national good practices.

The consideration of children’s evolving capacities is recognised in the Brussels IIbis Regulation 2201/2003 which requires courts to hear the view of the child according to his/her age or degree of maturity. The same formulation is found in EU legislation concerning immigration and asylum in relation to unaccompanied minors.

Children’s right to participation is recognised in some Commission strategic documents including the 2005 "European Policies Concerning Youth", the 2006 “EU Strategy on the Rights of the Child", the Youth in Action Programme and the EU Agenda for the Rights of the Child of 2011. EU legislation on immigration and asylum recognise the right of the child to be heard during proceedings under the Brussels IIbis Regulation 2201/2003.

252 Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast directive); Directive 2004/113/EC on the principle of equal treatment between women and men in the access to and supply of goods and services; Directive 2000/43/EC on the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

253 Article 1 Directive 2000/43/EC.

254 Proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426). It is currently blocked in the Council.

The EU has adopted a number of measures on the protection of children from violence256 relating to child trafficking, to the sexual exploitation of children and to the protection of victims including several Directives257 that have been adopted to replace some of these instruments. For example, the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, focus on the protection of children which are more vulnerable than adults and establishes more severe penalties when the offence is committed against vulnerable persons such as children and persons with disabilities.

The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of the victims of crime recognises that a victim of crime should be treated without discrimination based on any ground including age and disability. Lastly, Directive 2011/92/EU on combating sexual abuse, the sexual exploitation of children and child pornography258 provides the need for specific protection of children with disabilities.

The right to family life and the maintenance of the child in family context is at the heart of Council Regulation 2201/2003 Brussels IIbis (EC)259. In the field of immigration policies, the right of the child to family life is ensured by the rules on family reunification260 and the provisions of the Directives on asylum261 regarding unaccompanied minors and the respect for the family unit.

The principle of maximum inclusion in society of children with disabilities is reflected in strategy documents such as the Disability Strategy 2010-2020262 and the EU 2020 Programme in relation to education and training263. The 2003 Council Resolution on equal opportunities for Pupils and Students with Disabilities264 addressed the problem of access to education by children with disabilities. In 2010, the Resolution of the European Parliament


258 Article 1 Directive 2011/92/EU.


264 Council Resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training, 2003/C 134/04.
on mobility and inclusion of children with disabilities\textsuperscript{265} stressed the need to ensure full respect for the rights of the child, including the right to education and the right to participate in community life of children with disabilities. The EU Institutions also support the European Agency for Development in Special Needs Education, the independent organisation acting as a platform for collaboration on special educational needs and the promotion of full participation within mainstream education and training\textsuperscript{266}.

\section*{C. Recommendations for EU action}

When evaluating the need for specific recommendations aimed at improving the situation of children with disabilities, it is important to highlight that children with disabilities are first and foremost children with the same needs as any other children and who should be beneficiaries of all rights recognised by the CRC. Their intrinsic difference with their peers needs to be recognised for designing appropriate legislative and policy measures.

\textbf{Horizontal issues}

- As a first and general recommendation, all EU Member States which have not already done so should ratify the two conventions referred to in this study and implement their provisions by adopting national legislation and ensuring its practice.
- The European Commission, liaising with the UN Secretariat for the CRPD and the UN Secretariat for the CRC, should ensure the Member States understanding and implementation of several definitions of the Conventions that are cornerstones for the implementation of the rights of children with disabilities, namely the definition of "disability", the “best interests of the child” and the "evolving capacities of the child". They should lead the development of initiatives to ensure that the specificities of children with disabilities are taken into account. To that end, it is recommended that the Commission takes the initiative to provide clarification at the EU level of the CRDP definition of “disability” as it is considered to be too broad in practice and its implementation at the national level is therefore difficult. The development of guidance documents, exchange of best practices and promotion of existing manuals are recommended.
- The European Commission should take action to promote that children with disabilities are considered in existing mainstreaming initiatives for non-discrimination and equal treatment.
- The EP, the Council and the Commission should promote the development of national information tools to assist families with children with disabilities to understand the legal frameworks applicable to them, including access to assistance measures, competent authorities, procedures and compliance mechanisms. Specific tools addressed to these families could include an EU web portal which could be linked, where possible, to national portals providing full information on rights, requirements, criteria for implementation, competent authorities, and coordination systems. This initiative could bring citizens closer to the EU.
- The EU Institutions should take a leading role in promoting awareness-raising on issues concerning the rights of children with disabilities, their interests and specific needs in order to promote the full implementation of the principle of best interests of children with disabilities. The EP and the Council could also use their budgetary powers to

\textsuperscript{265} European Parliament Resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020 (2010/2272(INI)).
\textsuperscript{266} European Agency for Development in Special Needs Education website available at http://www.europeanagency.org/about-us.
provide for financing of awareness-raising campaigns.

**Best interests of the child**

- While most countries have legislation recognising the principle of best interests of the child, only a few Member States contain in their legislation a general requirement for its systematic consideration in all decisions affecting children. Some Member States (such as Sweden and the UK) have introduced child impact assessments of proposed legislation. It is recommended that the European Commission promotes the exchange of these initiatives and develops a guide on methodologies for carrying out these child impact assessments implementing the best interests of the child principle.

**Right to non-discrimination**

- The concept of reasonable accommodation in relation to the specific situation of children with disabilities needs clarification and further development to define the boundaries for the use of disproportionate burden. The EU, through the Commission, could support this through exchange of best practices at the national level on the implementation of reasonable accommodation covering different situations. This would help in defining the baselines from which the respect of the right requires the public authorities' action and prevents it from being subject to arguments of disproportionate costs.
- The 2008 Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, if adopted, has the potential of addressing the situation of children with disabilities. Amendment 37 introduced by the European Parliament refers to multiple discrimination. Within this context, clarification could be introduced in the recitals of the proposed Directive in order to ensure that the situation of children with disabilities is considered as a part of its scope.
- The European Commission's draft for an upcoming European Accessibility Act should explicitly cover children with disabilities' access to goods and services, at least with a reference to multiple discrimination cases.

**Evolving capacities of children with disabilities**

- The EP should consider ways to raise awareness and promote taking into account the evolving capacities of children, including children with disabilities, with the aim to have the principle applied in all decision making processes affecting them.
- Any new legislation on child-friendly justice should include consideration of the ability of the child with disabilities to be heard in judicial proceedings affecting them. The Commission should ensure that these provisions are included in the anticipated EU law on special safeguards for suspected or accused persons who are vulnerable, including children, or the anticipated EU law for the recognition and enforcement of decisions on parental responsibility.

Furthermore, it is recommended that the European Commission, the Council and the EP promote the use of the Council of Europe Guidelines on child-friendly justice and support training for the relevant professionals at all levels.

**Right of participation of children with disabilities**

- The anticipated European Accessibility Act could provide for the development of tools to ensure the participation of children with disabilities in the consultation processes of the legislative and policy initiatives affecting them.
- The EP should explore ways to raise awareness on the requirements needed to ensure
the right of participation of children with disabilities through concrete measures such as simulation of plenary meetings in the EP involving children with disabilities, guaranteeing physical access to the EP buildings or designing tools to ensure nonphysical participation.

**Right to be heard of children with disabilities**

- In order to enable effective implementation of the right to be heard by children with disabilities, changes in the attitudes of judicial, administrative and enforcement officers are needed. To that end, the EP, the Council and the Commission should encourage Member States to develop awareness-raising actions and training addressed at public authorities.
- The Commission, in preparing legislation on child-friendly justice, should ensure that adequate steps are taken to identify the ability of the child to express his/her views in judicial proceedings affecting them, enabling a climate of trust between the child and the judicial and enforcement officers and providing reasonable accommodation to ensure the effective right to be heard of children with disabilities.

**Freedom from violence**

- It is recommended that the EP, the Council and the Commission promote the development of statistical information on the situation of violence affecting children, and, in particular, children with disabilities. Furthermore, they should promote the development of indicators (such as disability, children, girls, family environment) to be mainstreamed in other policy or general surveys so as to provide systematic data on the situation of children with disabilities.
- The European Commission and the EP should promote the FRA to examine the situation of violence against children, particularly in institutions, including children with disabilities as they are particularly vulnerable. The necessary funding should be proposed to the budgetary authority.
- The European Commission should consider in particular the need for measures at the EU level aimed at reducing the number of cases of violence against children, especially children with disabilities, in Member States (both in a domestic context and in public institutions). The Commission could start preparatory work by organising working groups with Member States experts to consider:
  - proposals for ensuring that Member States set up preventive measures and proper monitoring systems to detect cases of violence and abuse against children
  - the set up of control mechanisms and regular inspections
  - peer reviews or the Open Method of Coordination for implementation of proposals
  - access to information and communication services targeted at improving the system of complaints concerning children’s right to freedom from violence.
- The Commission could promote the organisation of specialised EU-wide training and workshops amongst professionals to share knowledge on complaint procedures, reporting measures and accessibility of communication services for children with disabilities, especially for children with severe disabilities or intellectual impairments. The budgetary authority should provide adequate funding for these activities.

**Right to family life of children with disabilities**

- The Commission, the Council and the EP should encourage Member States to set up appropriate support structures for families with children with disabilities in order to
reduce the risks of the child losing family life while safeguarding the best interests of children with disabilities.

- Within the Open Method of Coordination, the Commission should develop Guidelines on minimum requirements of residential institutions with regards to children with disabilities. The Guidelines would aim at ensuring that residential care centres have a small number of users and the capacity to host children with autism or with intellectual disabilities.
- The Commission should propose to the budgetary authority the use of EU funds for the protection of children's right to family life, prioritising funds for families while ensuring that the good quality of the institutions is maintained.

**Access to assistance**

- A special single national body (with regional offices) responsible for the management of services, budget and assistance of children and their families should be established in order to ensure consistency, coordination, effectiveness, increase accessibility and better guidance for families on the funding support available.
- The EP should continue to lead actions on children with disabilities to inform Member States on the negative impacts of budget cuts on implementation of their rights, especially in the field of education, social protection and health care.
- Within the European Semester process, the Commission should provide appropriate recommendations to Member States on how to use existing resources effectively instead of just cutting the necessary assistance for children with disabilities who belong to the most vulnerable citizens.

**Access to inclusive education**

- The Commission should develop actions to support Member States in improving education systems for children with disabilities through the Open Method of Coordination or peer review while respecting their general competence for matters related to education. Action at EU level could include:
  - Development of best practice guides and recommendations on the minimum type of resources needed in mainstreaming schools, and on the role of parents and children with disabilities in decision-making processes affecting children with disabilities or the development of education objectives.
  - Promotion of training for teachers on better understanding children with disabilities' needs and evolving capacities, teaching methodologies and handling of children with specific disabilities in a class together with their able-peers.
  - Promotion of teaching tools that help the inclusion of children with disabilities in schools and outside of schools such as the Council of Europe's COMPASS manual.
  - Promotion of anti-bullying and anti-stigmatisation initiatives, including awareness raising campaigns promoting the inclusion of children with disabilities.
  - Development of quality objectives for education offered to children with disabilities and the promotion of initiatives to maintain the support for higher education.
**EU Funding**

- The EP, the Council and the Commission should promote among Member States the use of the Structural Funds to foster the development of quality social services provided for children with disabilities, while facilitating the implementation of the Voluntary European Quality Framework for Social Services.

- The EP, the Council and the Commission should promote the development of family and community-based alternatives with the purpose of deinstitutionalisation.

- The EP, the Council and the Commission should encourage the use of structural funds for improving accessibility and inclusive education.
## ANNEX 4 - OVERVIEW OF RELATED STUDIES

<table>
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<th>Name of the Study</th>
<th>PE number</th>
<th>ISBN number</th>
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<tr>
<td>Study on Member States' Policies for Children with Disabilities</td>
<td>PE 474.416</td>
<td>978-92-823-4548-1</td>
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POLICY DEPARTMENT
CITIZENS’ RIGHTS AND CONSTITUTIONAL AFFAIRS

Role
Policy departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

Policy Areas
- Constitutional Affairs
- Justice, Freedom and Security
- Gender Equality
- Legal and Parliamentary Affairs
- Petitions

Documents