



OMBUDSMAN OF THE REPUBLIC OF BULGARIA

MONITORING OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD IN BULGARIA

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THE CONVENTION

The Convention is a legal document with clear obligations on how rights are to be respected and fulfilled, and many of its articles refer to the conditions, resources, protection and freedoms that a child needs to achieve his or her full developmental potential. The Convention does not offer children more rights than other human beings, but recognises that additional safeguards may be needed to make sure that children have access to the human rights that everyone has. It stands out among other international agreements in that it contains the full spectrum of human rights: civil, political, social, economic and cultural rights.

The Convention is based on three categories of rights – participation, protection, and provision – and is guided by four core principles: non-discrimination, the best interests of the child, the right to life, survival and development, and respect for the views of the child. The implementation of the Convention and the Optional Protocols is monitored by the Committee on the Rights of the Child (CRC), and every five years Bulgaria reports to the monitoring body on its progress in implementing the rights of the child. The CRC then makes recommendations on how to improve the protection of children's rights and often highlights where the government has done well or failed to fully realise children's rights. These recommendations are an effective mechanism for the Ombudsman institution in conducting monitoring, as well as for advocacy and campaigning to raise public attitudes towards children's rights.

According to the UN Convention, children are real actors in the transformation of our communities, and each one of them, with their abilities and talents, their faith and capacity, is part of the change. Every child has a unique potential and it can be developed in the right conditions, in a safe and secure environment, if they are loved and supported by their parents and the adults who care for them. He or she must have secure access to quality education, health care and an adequate social sector. Children's well-being is influenced by a range of factors, including their actions and relationships, the networks and resources of those who care for them, and public policies and the national context. Children need to feel that they are listened to, that the state supports their parents, and that it allocates the necessary resources for a happier childhood. It is



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important how national strategies consider children in different social, educational, financial and natural contexts.

The National Human Rights Institution (NHRI) is mandated to promote and protect the rights of children. This has been highlighted by the UN Committee on the Rights of the Child, which notes the key role that the NHRI has to play in its establishment, organization and activities to promote respect for the views of children on all issues that affect them. The existence of an independent mechanism dedicated to the protection of children's rights sends an important message to children: that they have rights and that there are means within their means to ensure that these rights are respected.

The defined objectives of the ombudsman are focused on monitoring the situation and protection of children's rights in Bulgaria, working on complaints alleging rights violations, drafting special reports, organizing initiatives and other events related to the topic, which is carried out for the benefit of Bulgarian society. Emphasis is placed on defending the rights of the most vulnerable groups of children, as well as working with children themselves and protecting their right to participation. The work of the Ombudsman is based on the provisions of the UN Convention on the Rights of the Child (the Convention), the ratified Optional Protocols, the EU Charter of Fundamental Rights and all international and European documents governing children's rights. The Ombudsman monitors the implementation of the standards of the instruments by sending special questionnaires to the protection authorities. Monitoring the implementation and enforcement of international treaties is an obligation that derives from the UN Statute A, which the Ombudsman institution received as an independent human rights organisation that complies with the Paris Principles relating to the status of NHRIs adopted by the UN General Assembly. The minimum standards for the work of human rights institutions established by these Principles commit the Ombudsman not only to propose the ratification of international human rights instruments, but also to monitor and promote their effective implementation by the competent national authorities

UN CRC IMPLEMENTATION IN BULGARIA 2019

For the third consecutive year, the Ombudsman institution has prepared a monitoring report with respect to the UN Convention on the Rights of the Child ("the Convention") tracking the progress of the government institutions in their commitment to guarantee the rights of the child provided for in the international act.

In 2019, the Ombudsman was given an "A" status as a national human rights institution in line with the UN Paris Principles. One of the main requirements of this high status is for the Ombudsman to monitor the implementation of the international human rights acts to which our country is a party and, more specifically, to guarantee that the national legislation reflects them



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adequately. This is why this report examines the strengths and weaknesses in the policies regarding children, the regulatory framework for them, the challenges and resource and it discusses the measures recommended by the Ombudsman in the context of the Convention.

During the past year, the world marked an important anniversary – 30 years from the adoption of the Convention; each country made a review of the promise it has given to children with its adoption – to do everything to protect and strengthen the rights of the child – to live and grow up in a family environment, in an atmosphere of love, happiness and understanding, to study, to have their voice heard and to reach their full potential. Bulgaria took an active part in the anniversary initiatives but in terms of characteristics, the year was different from others. There were dozens of protests of citizens who expressed their dissatisfaction with strategic documents, statutory documents and/or social practices which had been adopted or being discussed. This is why the Ombudsman notes that these protests show that the idea of the independent rights of the child enshrined in the Convention are not deeply rooted in the Bulgarian society and more efforts and resources are needed to change these attitudes. They also show that Bulgarian parents are not comfortable with and informed about parenthood, do not trust the institutions and do not know the mechanisms and measures for child protection.

2018 recommendations of the Ombudsman – a review of achievements

In its 2018 monitoring report, the Ombudsman made a number of recommendations to the competent authorities in the area of child policies. The review of their implementation can lead to the conclusion that the majority were not implemented and/or no sufficiently convincing actions were taken to implement them in order to yield positive results for children and their families. The sectors in which the Ombudsman targeted the recommendations reflect in their majority the 2016 comments of the CRC to Bulgaria.

Benchmarks for monitoring the Convention

To achieve sustainability of the monitoring of the Ombudsman and to ensure more effective measurement of the implementation of the Convention, qualitative and quantitative benchmarks are proposed in 2019. The measurement of the progress of the State on the basis of these benchmarks will be introduced gradually; in 2019, information from the competent authorities was gathered in some of them only. The data for the different benchmarks will be gathered both via annual questionnaires and the official sources of information in Bulgaria. The benchmarks will be complemented systemically in order to cover all rights provided for in the Convention.

General measures to implement the Convention

In this part of the report, the Ombudsman reviews the implementation of the general measures for the application of the Convention and the CRC recommendations, examining actions taken in the areas of:

- Legislation;



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- Raising the capacity of judicial authorities in the area of the rights of the child;
- Policies and strategies;
- Coordination.

With respect to the actions of the institutions taken in response to the general measures under the Convention, **the Ombudsman recommends:**

- Speed up the process of public discussion and adoption of the legislation for juvenile justice – Bill on Correctional Measures with respect to persons who committed an administrative violation as minors and the Bill to Amend the Family Code.
- Ensure ongoing capacity building in the area of international human rights law for judges, prosecutors and lawyers.
- Analyse the process of withdrawal of strategic documents in the area of the rights of the child and plan specific measures to overcome the situation.
- Prepare a Communication Strategy to involve all social groups in the discussion of strategic documents, ensure transparency of the processes, develop a procedure to clarify key and problem topics and concepts via different channels, not just media, including social, but also the websites of the institutions, at events, using different means: text, visual materials, discussions, etc. In brief – the institutions and civil society need to change their communication policy.
- As regards the coordination of child policies, the powers of the State Child Protection Agency for coordination at the “intersectoral, national regional and local levels” should be strengthened and the presidency of the National Council for Child Protection should be assigned to a Deputy Prime Minister responsible for policies for children and families.
- Provide resources for the implementation of the powers and obligations of municipalities with respect to the matters of prevention of child abandonment and juvenile offenders, participation in education, protection system, etc.

Family environment and alternative care (Articles 5, 9-11, 18 (1) and (2), 20, 21, 25 and 27 (4) of the Convention)

The CRC recommendations cover the areas of:

- Exercise of parental rights and obligations;
- Measures to support families in raising children;



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- Protection measure of “accommodation outside the family”;
- Alternative care and de-institutionalisation;
- Adoption.

The Ombudsman recommends:

Amendments to the Family Code:

- Set out specific provisions for the joint exercise of parental rights and obligations after the separation of the parents unless this is not in the child’s interest;
- Introduce a legislative requirement and include it as a part of the marriage termination proceedings or in the event of separation that parents will present a plan for the exercise of parental rights and obligations in the new situation;
- The court should consider the systemic failure to observe the guidance of child protection authorities and judgments to be grounds to amend the exercise of parental rights and to restrict parental rights;
- Mediation should be provided for as a type of social service which will allow the social workers to refer parents for resolution of their disputes;
- Amend the CPC provisions for the handover of a child by laying down fines and the consequences of the failure to take into account the recommendations of the enforcement agent.

Organisational and management changes:

- Adopt measures of coordination and cooperation between state and private enforcement agents with the support of the Minister of Justice to ensure effective forced enforcement of judgments concerning personal relations.
- Special support and training for child protection authorities on working on cases of parental alienation and conflicts, especially if a parent refuses to cooperate, always taking into account the principle of protection of the best interest of the child;
- Invest more resources in provision practical help to children whose parents are in conflict, for example by ensuring neutral places for meetings or monitoring the access (Article 59, para 8 of the Family Code).
- Introduce the requirement for specialisation of lawyers and judges (family court) taking part in judicial disputes concerning interest.

Alternative care and de-institutionalisation:

- Strengthen the support for children and young people leaving public care, including those with disabilities, helping them to be reintegrated in the society by ensuring



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access to an appropriate home, legal, health and social services as well as possibilities for theoretical and practical education.

- Boost the public awareness in order to combat stigmatisation and discrimination against children raised in alternative care.
- Plan the funding of the protection system and social services, including integrated ones, in the conditions of diminishing funding from the European Social Fund.
- Introduce a work standard based on the number of cases and a competence standard for social workers and specialists at the Child Protection Department.
- Selection of the specialists appointed at services providing child care and systemic and periodic improvement of their qualification and the qualification of the specialists at the Child Protection Department.
- Update the Methodology to manage child protection cases, including tying social assistance to social work.
- Special efforts to increase the capacity of Social Assistance Directorates and municipalise, the Ministry of Health, the Ministry of Education and Science and the Ministry of Labour and Social Policy for coordinated actions to prevent abandonment and reintegrate children in families.
- The legislation should set clear guidance for the development of parenting skills and pursuing a family-oriented approach and policies targeted at the age when this is most appropriate and necessary – early childhood.
- The measures for social assistance and child protection should be individualised and tied to the child's age.

Adoption

- Guarantee non-discrimination against children with disabilities and Roma children in the event of adoption and introduce programs to reduce the wrong perceptions related to the adoption of children with lasting disabilities and Roma children.
- Amend the Family Code in a way that will guarantee that children under the age of 14 are consulted on all decisions related to their life, including adoption.
- Ensure improved cooperation among the competent agencies and sufficient staff training to guarantee an appropriate long-term support for an adopted child and the adopting parents.
- Introduce legislation which will guarantee the right of children to know about their origin in line with Recommendation 80.79 of the Universal Periodic Review 2011 (A/HRC/16/9).



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- Ensure information resources for the adoption policies – an analysis of the reasons for a decline in adoptions, a comparison of the national and international adoptions in terms of number and peculiarities of the children, an analysis of the trends in adoption.

Health and healthcare

According to information from the Ministry of Health, the costs under the budget program “Medical and social care for children at a disadvantage, mother and child healthcare” in 2019 stood at BGN 51,772,731 and these funds do not include expenses incurred by the National Health Insurance Fund.

The Ministry of Health reports an increase in the share of immunizations in 2019 in comparison to 2018 and the immunization scope achieved is completely comparable to that in EU Member States.

To support Roma communities and their access to healthcare, the following measures were taken in 2019, including through health mediator: to support the pursuit of policies in the area of health prophylaxis among vulnerable groups, municipalities are supported by health mediators and their number increases by 20 annually.

There is still a serious issue with the provisions for medical offices at kindergartens and schools; the Ministry of Health claims that there is a Bill to Amend the Health Act which envisages changes in the provision for medical offices.

The Ombudsman recommends:

- Speed up the adoption of an ordinance on the requirements for the work of health mediators to increase the possibility for a more effective prevention among vulnerable population groups, especially children.
- Take urgent measures to update the Information System for births which contains information in real time about the scope of pregnant women and children with prophylactic examinations and information about premature births. The system has not been functional since the beginning of 2019 and no adequate actions have been taken yet to eliminate the problem.
- Take adequate measures to update the obsolete regulatory framework for the work of medical offices at kindergartens and schools.
- Urgently develop and adopt a standard of obstetrics and gynaecology; one has not been adopted since 2017.

Education

The Ministry of Education and Science (MES) reports as a significant achievement in 2019 the successful implementation of the Mechanism for joint work of the institutions on encompassing



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and including children and students at the obligatory pre-school and school age in the educational system (“Mechanism”) set up by virtue of Decision No. 373 of the Council of Ministers.

The Ombudsman notes the efforts of the MES aimed at ensuring the rights of children with special educational needs (SEN) but finds that it is necessary to review the resources to ensure access to the children and students to more classes with model teachers in order to work towards developing the basic skills of students with SEN. These recommendations are based as priorities on the UN CRC report to Bulgaria expressing concern for the effective inclusion of children with mental and psycho-social disabilities in the educational environment which remains insufficient due to the lack of trained specialists.

The Ombudsman recommends:

- Build a shared national vision for the goals of inclusive education which will lead to a uniform understanding of its philosophy and application. Such a vision needs to be accompanied by a “road map” with deadlines, resources and responsible institutions which is developed in a transparent process of communication with all stakeholders, thus allowing them to find their place in the principles of inclusive education and implement them in their work.
- In view of the conditions of limited financial resources and educational reform which introduces support as a new component in the educational institutions, it is of key importance to the success of this new practice to ensure that the funding for the general and additional support will be as clearly and transparently provided for as possible. Such provisions are necessary not only for the children with SEN but also for children at risk, children with chronic illnesses and gifted children. The activities under the general support should ensure the availability of specialists, including speech therapists and psychologists.
- The MES should provide schools with the set of tools, methodologies and aids they need for general support as regards prevention of educational difficulties.
- Create guidance which defines clearly the role, place, work and responsibilities of the following specialists – psychologist and pedagogical counsellor.
- Plan and implement campaigns targeted at the public and parents for the purposes and role of inclusive education.
- Eliminate gradually the fees for kindergartens, especially for children at the mandatory pre-school age, which will reduce sharply the number of children remaining outside pre-school education.

Children – foreigners and migrants

The Convention and the European Convention on Human Rights guarantee the rights of all children who are within the jurisdiction of the State, regardless of whether they are its citizens.



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The different treatment of children on the basis of citizenship may be deemed to be discrimination (for example, when they are accommodated at care centres of the State Agency for Refugees and not under the terms of the Child Protection Act, access of refugee children to education and others).

The social work with unaccompanied children needs to cover all areas related to their well-being and interests – ensuring representation; access to healthcare, education, legal aid and translation in a language the child understands; inclusion in educational and cultural activities in view of their age and cultural characteristics.

The Ombudsman recommends:

- Conduct regular public educational campaigns to eliminate the negative social attitude to refugee children and children seeking asylum.
- Ensure access of unaccompanied refugee children to possibilities for accommodation at care provided to children who are Bulgarian nationals (specialised foster care and residential services).

Hearing and taking into account the child's views

Pursuant to Article 12 of the Convention on the Rights of the Child, a prerequisite for hearing the child is the child's ability for form own views and they are to be accorded importance in line with the child's age and maturity. The interpretation is that every child may be heard following an assessment of their abilities.

Important aspects of this right:

- Participation of children in the decision taken about them in the family. It is recommended that public campaigns and training for parents on positive practices be used to impact on the traditional attitude to children.
- Guarantee the possibility of children, as provided for in law, to turn independently or through a representative to a court or other authorities for the protection of rights breached. Pursuant to the Persons and Families Act and the Family Code, a minor child may exercise this right through a representative (parent or guardian) and an underage child – via guardian assistance – with the consent of a parent or guardian. The Child Protection Act and the Family Code also provide for a child to be able to turn to the court independently in certain cases (disagreement with parents, via the Child Protection Department, when challenging and establishing origin).



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Promoting the Convention and impact of children on public policies

The Ombudsman recommends:

- Discuss the ratification of the Third Optional Protocol to the Convention on the Rights of the Child as regards the communication procedure
- Develop a methodology and protocols for hearing children in administrative proceedings for accommodation outside the family, at school, in certain disputes related to the exercise of parental rights, and others
- The specialists who work with children should attend systemic and period training on hearing children and taking their views into account
- Develop and announce publicly a procedure for complaints to be filed by children; it needs to be accessible, clear and understandable to them at every institution (especially Social Assistance Directorates – Child Protection Departments, school, Ministry of the Interior and others)
- The State Agency for Child Protection together with the MES should develop standards of practical implementation of the rights of the child to participation at school provided for in Article 171 of the Pre-School and School Education Act
- Hold public campaigns on the right of the child to participation and stimulate parents to listen to and take into account the views of the child
- Develop successful platforms for political participation of children (National Council for Children) and encourage such at the municipal level

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An overview of the political and legislative framework in the area of the rights of the child shows a slow-down in long-awaited reforms which is of special sensitivity in the case of justice for children. The Bill on Non-Application of Criminal Proceedings and Imposing Correctional Measures on Minors and Underage Children has not been put forward for discussion before the National Assembly yet and the reason is the lack of institutional consent on important topics in it. This delay impacts mostly on the children in conflict with the law because some of them are still accommodated at correctional schools – boarding houses in exceptionally poor conditions and given the lack of motivated staff to work with them, moreover on the basis of judicial acts imposing correctional measures whose justification is debatable from the point of view of the standards for protection of the rights of the child.



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Despite the good regulatory framework laid down in the Pre-School and School Education Act and the Ordinance on Inclusive Education, the experience still shows different results – the children with special educational needs are not fully integrated in the system of inclusive education and an indicator of this is the complaints submitted in this regard. Schools are having serious difficulties in the process of integrating children with special educational needs and Roma children. The examples are numerous – children against whom parents organise collections of signatures, formal training, curricula and textbooks which have not been adapted, harassment and violence at school, segregation and public stigma.

There is still a significant number of complaints concerning the rights of the child in the event of parental conflicts. Despite the efforts of the Ombudsman to find a working institutional approach to resolve the cases, the results are not commensurate with the scale of this social problem. The arguing parents and their families resort to different institutional and judicial proceedings against each other but, unfortunately, most of them do not observe the recommendations and acts of the institutions or the judicial decisions. Thus, many children grow up in an environment of long years of conflicts and their childhood turns into the hostage of arguing parents and inefficiency of the actions of the institutions.

In the complaints to the Ombudsman, the citizens outline a wide range of problems and matters some of which remain unresolved for years, others express civil and parental discontent following amendments to the legislation or statements of reforms. An example of great numbers of complaints in a certain area of the rights of the child include the collections of signatures against the Draft National Strategy for the Child 2019-2030, against the sexuality education of children and the application of international standards in Bulgaria. The citizens who have signed the petitions disagree with the standards of sexuality education of the World Health Organisation and UNESCO. They challenge international plans and strategies in the area of protection of the rights of the child against violence (against the introduction of the UN Strategy to End Violence against Children and the Global Partnership to End Violence against Children).

Areas of problems and impact

Based on the complaints and the social processes the Ombudsman monitors, in this report the institution highlights several main topics, outlines the problems and notes the challenges:

- Quality of care in deinstitutionalized social services for children – residential and in the community;
- Inclusive education and the rights of children with special educational needs – public stigma and lack of sufficient resources;
- Policies aimed at the family and support for children in the family;
- Rights of children involved in parental conflicts;



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- Rights of children with disabilities;
- Child protection system – state and challenges.

In addition to these main groups of problems in which there are many complaints and signals, the Ombudsman also notes a number of others where action needs to be taken:

- Healthcare for children – quality of the urgent help for children; a child with an insulin-dependent diabetes who is not a Bulgarian citizen but lives in Bulgaria permanently; medical practices in hospitals which are not children-friendly;
- Violence against children in different forms of raising or educating the child; violence in the family, in such cases most often it is the parent with whom the child does not live who submits the signal;
- Detention in custody of minors and underage persons at facilities for 24-hour detention at the Ministry of the Interior and maltreatment;
- Public and media environment for children – again problems with unsafe playgrounds and places for play; and the lack of such; traffic organisation, crossings which are not appropriate for children; media coverage of violence against children disclosing personal data about the child;
- Unlawful punishment, physical and social isolation; hostile atmosphere and aggression are just some of the problems raised by relatives of children accommodated at correctional schools – boarding houses or social and pedagogical boarding houses;
- Rights of the child in sports – this is a topic which has repeatedly been brought to the attention of the Ombudsman over the years and the claims are mostly about unlawful punishments and maltreatment on the part of coaches or peers.

Findings:

- The change in public attitudes to the rights of the child is a serious challenge which needs to be in the focus of attention of all responsible institutions and the structures of civil society. An in-depth analysis should be carried out of the effect of the main pieces of legislation in the areas of the child and the family: Child Protection Act and the Family Code, focusing on the results for children and families.
- Poverty and lack of funds for support or raising a child, lack of “parental capacity”, lack of parenting skills and knowledge and undeveloped feeling of responsibility to raise a child: these are still among the main reasons for the separation of children from families which makes it an urgent need to analyse the most frequent reasons and to review the existing resources. There is no targeted policy to support children in families.



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- The delay in the reform of juvenile justice has continued for many years; in this way, our country not only breaches international standards it has adopted but, most of all, it dooms whole generations of children to marginalization and punishment instead of social work and support.
- Overburdened and unmotivated child protection system. The state of the protection system is a factor which has a significant impact on the citizens' trust, and creates more discontent than results. Excessive administrative burden which demotivates the social system and those working in it at the expense of social field work.
- The lack of integration among the different sectors of the rights and of application of a systemic approach in the work frequently fails to result in change.

Main recommendations:

- Take action to build a prevention system with respect to the risks for children and families by defining clearly an overall primary prevention and specific responsibilities by sectors
- Set common competency frameworks for work with children and parents valid for different professionals and sectors
- Develop the care for children in residential services focusing on the quality of the care, on the basis of an approach based on the rights of the child and striving to ensure return of the child to the family
- Special measures in the area of juvenile justice taking into account a child's age, focusing on rehabilitation, reintegration and taking on a constructive role in society instead of repression and treating children as adults
- Discuss and adopt amendments to the Family Code providing for adoption, rights and obligation of parents, and recognition
- Reform in the protection system: develop a new methodology to evaluate the workload of social workers and a special strategy for requalification and motivation of the staff (including review, remuneration, working conditions, etc.)
- Achieve political consent for a gradual increase in the budget funds for key child protection sectors
- Introduce integration of the data related to children
- Introduce a complex approach for working with children who are victims of violence, ensuring rehabilitation services and programs to work with the perpetrators



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- Strict compliance with the ethical and professional norms in journalism when topics and problems related to children are covered
- Adopt a package of measures to support families as the most appropriate environment for a child's raising and development
- Improve the care and environment for children with disabilities which will allow for long-term integration applying a social model rather than a medical one
- Each change or reform needs to be accompanied by broad public discussions, information campaigns involving both children and families as well as representatives of local authorities