



OMBUDSMAN OF THE REPUBLIC OF BULGARIA

CRC SIMPLIFIED REPORTING PROCEDURE

REPORT OF THE OMBUDSMAN OF THE REPUBLIC OF BULGARIA AS A NATIONAL HUMAN RIGHTS INSTITUTION ON THE SITUATION OF THE RIGHTS OF THE CHILD TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD, IN ADVANCE OF THE FIFTH PERIODIC REPORT OF THE REPUBLIC OF BULGARIA

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INTRODUCTION

This document presents the first report of the Ombudsman of the Republic of Bulgaria to the United Nations Committee on the Rights of the Child regarding the implementation of the United Nations Convention on the Rights of the Child (CRC) as part of the fifth periodic report of Bulgaria.

This report indicates the current challenges in implementation as based primarily on information gathered from complaints that have been referred to the Ombudsman by parents, organizations/associations, professionals working with children, and children themselves. Further to that, the report has consulted the main findings and observations of the Ombudsman's activity in relation to monitoring visits paid to child institutions, official statements issued on existing national legislation or defined obstacles to its implementation, and questions/recommendations addressed at governmental level. The Ombudsman takes into consideration the fact that this report is not based on direct consultations with children, but plans to undertake such consultations for the next phase of reporting.

The Ombudsman of the Republic of Bulgaria is a supreme independent constitutional body that is elected by the National Assembly under conditions of publicity and transparency for a period of five years. The Ombudsman protects the rights and freedoms of citizens by having the capacity to accept and consider complaints and signals for violations of rights and freedoms; carries out inspections regarding the received complains and signals; extends proposals and recommendations for restoration of violated rights and freedoms; intercedes between the administrative bodies and the affected persons. In 2012, the Ombudsman was granted a new mandate, undertaking the role of a National Preventative Mechanism in compliance with the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The amendment of the Ombudsman Act from 2018 provided the institution with the legal capacity to accept and consider complaints for violations of rights and freedoms by private legal subjects. As of 2019, the institution received the highest UN status "A" as a national institution for the protection of human rights in accordance to the UN Paris Principles.

A legislative amendment from 2012 granted the Ombudsman the duty to protect the rights of the child through the means provided for in the Ombudsman Act. In 2017, the Rights of the Child Directorate was established within the institution of the Ombudsman to better safeguard children's rights by monitoring the functionality and effectiveness of the national child protection system as well as ensuring the implementation of the CRC on national level. The institution sends questionnaires to the national executive authorities in order to observe their compliance with the international standards stipulated by the CRC, the results of which it publishes in its annual reports.

In the period 2017-2020, the Ombudsman has received approximately 1, 750 complaints and signals in relation to the rights of the child, the majority of which concerned violations of the civil rights and freedoms of children, the right to a family environment (including freedom from domestic and sexual violence), and the rights of children with disabilities (including children with special education needs - SEN).

The Ombudsman perceives reporting to the UN Committee on the Right of the Child as a pivotal duty requiring timely and efficient coordination and cooperation on all levels of the child protection system. Accordingly, the Ombudsman has systematically urged the implementation of regular child rights impact assessments of all newly formulated national laws and policies. Most recently, the Ombudsman issued a detailed statement to the Council of Ministers of the Republic of Bulgaria in support of the urgent necessity to finalize and adopt a guidance on the implementation of ex-post impact assessment with a heightened attention on children's rights.

In spite of amendments to the normative framework, serious flaws in national legislation persist – being a result of a missing encompassing conceptualization of the rights and the best interest of the child. Alarming levels of discrimination and abuse in institutions and within family point towards the need to elaborate on existing methods for prevention and protection, and introduce innovative programs and initiatives directed at strengthening capacity building and training for professionals, improving the method of financing of the national education system, and developing adequate and easily accessible social services for families in need.

In 2020, the COVID-19 pandemic posed an unprecedented challenge to safeguarding and advancing the progress already achieved in children's rights protection worldwide. The crisis immensely deepened pre-existing social and economic inequalities – thus, exposing the gaps in protection, and further identified new forms of vulnerability for children, especially for those living in or at high risk of poverty. In Bulgaria, the pandemic severely affected crucial aspects of children's well-being and development. Children as a social group were defined as less affected by the risks that the virus carried for the long-term health of those infected, but as more risky for the transmission of the virus in various societal settings. As a result, children appeared largely as an object of the emergency restrictions that the state had imposed, which in turn critically questioned the adequate and effective realization of their rights as stipulated by the CRC. Poor consideration of the feelings and opinions of children during the pandemic hampered the preservation of and reliance on the guiding principles of the Convention.

Based on the abovementioned statements and the Committee's recommendations from 2016, the report identifies four key issue areas of child protection:

- Family environment and measures for protection
- Violence against children
- Adequate protection and support for children with disabilities

- Juvenile justice

The findings in this report reflect that delayed reforms and the absence of a long-term national strategy for the child that aims at uniting the nation in support of the rights of the child as a value of contemporary societies present the most crucial challenges to the provision of adequate protection to children in Bulgaria, particularly to the most vulnerable groups. Almost 30% of children in Bulgaria live in poverty ¹ – predominantly Roma children, children with disabilities, as well as children living with a single parent or in large families.

The number of complaints filed by children remains low. Nonetheless, the cooperation between the institution of the Ombudsman and UNICEF Bulgaria on the introduction of a mechanism providing access for children to file complaints should be noted as important progress.

The report now turns to examining in-depth the positive developments and existing gaps in the protection of children in the key issue areas identified above. Each section also provides recommendations or questions to be sent to the government. The final section analyzes the impact of the COVID-19 pandemic and the emergency measures on the protection of the rights of children, with attention on the most vulnerable groups.

FAMILY ENVIRONMENT AND MEASURES FOR PROTECTION

The Ombudsman supports the efforts of the government in developing policies for the protection of children and their right to a family environment, yet finds that there exist a number of challenges, demanding special attention and adequate measures.

Taking into consideration the variety of complaints received and the monitoring of the public and institutional environment where the child develops in, the Ombudsman has persistently highlighted:

- The need for the adoption of a national holistic, integrated and long-term strategy for the development of the child and the implementation of policies for support of children and their families.
- The need for the adoption of policies for the improvement of children's well-being, which should assist families by focusing on their empowerment, participation and capacity strengthening.

¹ According to statistics by the National Statistical Institute: <https://www.nsi.bg/en/content/8294/poverty-and-social-inclusion-indicators-national-level>

- The necessity to develop a network of universal, low-threshold services to support parents in the prevention of the risk of separation of children from their families.

Despite the government's aspirations to modernize national regulations governing the rights of the child, there are still reforms that are seriously delayed, including of legislation.

Parental conflicts and the best interest of the child

The Ombudsman considers the Family Code regulations on the personal relations of the child with his/her parents corresponding to the best interest of the child. However, the finding of solutions to such questions often leads to prolonged parental conflicts in practice. Court intervention is not always effective. In spite of some good practices, the right of the child separated from one or both parents to maintaining personal relations and direct contact with both of them is not adequately protected. The large amount of complaints that the Ombudsman receives regarding violations of this right demonstrate the abovementioned statement.

The Ombudsman is concerned that parental conflicts become more visible and long-standing – thus, children grow up in such troublesome environment. Particularly disturbing is the trend in the inability of the child protection system and judicial authorities to effectively protect the right of the child to maintaining personal relations to both parents. As a result, parents often feel distrustful of the capabilities of social workers and seek support from numerous other institutions. As conflict deepens, parents adopt all means to win support, including the coverage of their cases in the media and use of the mechanisms of the Protection from Domestic Violence Act as an additional means of resolving the dispute.

A significant omission that the Ombudsman has found in the work of the child protection bodies is the lack of risk assessment and assessment of the best interest of the child involved in the parental conflict. Despite indisputable data that a conflict exists between the parents, the social workers do not take the conflict into account and do not evaluate it as a risk factor for the child's development. Furthermore, despite established methodological guidelines, no case is initiated. Work with parents is most often limited to counseling and guidance. Increasingly, parents complain of severe symptoms of alienation in children.

Case: Following a court decision, the parental rights over a child are granted to the father, and the mother is assigned a regime of personal contacts. The father has refused to comply with it for a long time and as a result of missing communication with him, the mother has sought the support of the protection bodies. In a conversation with the child, the social workers "established" that he/she did not want to meet with his mother without stating a concrete reason. Despite the parents' referral to social services, a year later the child's attitude towards the mother is the same. The Ombudsman recommended that work be opened on the case in order to carry out an in-depth assessment and undertake protection measures towards the child.

The Ombudsman draws attention to the urgent need to reform the pattern of resolving parental conflicts in order to protect the best interests of the child, and invites the Committee to make the following recommendations to the government:

- **The mandatory implementation of a multidisciplinary approach in the work of the child protection bodies in cases of parental conflicts.**
- **The introduction of mediation as a compulsory and extrajudicial method for solution-finding in parental conflicts.**
- **The amendment of the Family Code, which would provide a specific regulation of parental responsibility after the separation of parents.**

Deinstitutionalization and alternative care

The Ombudsman considers the deinstitutionalization of childcare as a temporary solution to the social problems accompanying the development of children, especially for the most vulnerable groups - those placed in institutions and residential services, those growing up in poverty, children with disabilities and Roma children. This is not a process targeting the closure of large traditional institutions, but one that aims at bringing about a societal change in approaches to supporting the child in the family and to providing access to universal programs for early childhood development of children from all communities. There is a need to develop policies and measures that assess the individual needs of children and families and that are effective in tackling child poverty and social exclusion.

It is precisely due to these factors that the institution of the public defender strongly supports the processes of social change, yet emphasizing that the focus of every action of the authorities should be on protecting the rights and interests of children.

The Ombudsman emphasizes that the state has undoubtedly achieved significant results in the first stage of deinstitutionalization with the National Strategy "Vision for the Deinstitutionalization of Children in the Republic of Bulgaria" (2010), closing all homes for children with mental disabilities, building a network of small group care homes, implementing a moratorium on the placement of children under the age of three in homes for medico-social care, developing campaigns to increase societal sensitivity to children deprived of family care.

The Ombudsman finds that the number of children in formal care remains high – as of the end of 2020, 4, 452 children are placed with relatives; 1, 887 children are placed with foster families; 2, 743 children are placed in small group care centers.

The inspections conducted in 2020 reveal an alarming trend in the increased removal of children from homes for medico-social care without ensuring that the new social services had been built – all this occurring in the midst of a pandemic. During the emergency removal, the principles and approaches derived in the process of deinstitutionalization of care, such as the

careful preparation of the removal, the relocation of children from one service to another, and the transfer of care, were not preserved.

Furthermore, the Ombudsman notes the inefficient approach to provision of sustainable support to young people leaving care.

In this regard, the Ombudsman recommends:

- **Maintaining constant political attention on the progress of deinstitutionalization processes and introducing measures to reduce the consistent high number of children in formal care;**
- **Investing in the prevention of the abandonment of children, in the provision of support for families with children with disabilities and for those with increased vulnerability;**
- **Implementing an individual approach to care by social workers in accordance to the particular needs of the child;**
- **Targeted investing in the child protection system and in human resources of social services; providing training to social workers and improving the conditions of their work and remuneration;**
- **Changing the pattern of financing of residential services so it can account for the individual needs of children and developing foster care and adoption;**
- **Encouraging the development of coordinated mechanisms to support young people leaving care.**

Adoption

Despite positive developments in the area of adoption, such as amending the regulation on the right to maternity leave to be used by the adoptive parents of older children, the social support that the adopted children receive under various regulations, as well as the upgraded training program for prospective adoptive parents, a number of pressing issues remain.

It is important to note that although normative amendments to the Family Code in regards to adoption had been prepared in 2016, they were not adopted.

The Ombudsman has often received complaints filed by adopted persons who seek help for receiving information on their biological origins. In Bulgaria, the secret of adoption is still the norm as the adopted person may only receive information on their origin under exceptional circumstances and by a court decision. This results in the diverging practice of courts. There is also no obligation to collect and store information on the child's biological parents, siblings, as well as no legal regulation on access to the history of origin and biological relationships. A positive change in this direction is a decision of the Supreme Court of Cassation from the beginning of 2021, anticipated to simplify the practice of the courts regarding access to information on biological origins.

The list of challenges includes:

- The lack of targeted campaigns supporting adoption;
- The insufficient support provided to prospective adoptive parents during the process of adoption;
- No collection and analysis of detailed statistical data regarding the process of adoption, the adaptation of adopted children to the new family environment, the impact of the adoption process on children;
- The absence of a national registry for adoptive parents and national electronic system for children who cannot be adopted;
- The ineffective support to families after the adoption period has ended and the lack of social services aiding the relationship between the adoptive parents and the adopted children.

The Ombudsman alerts that the number of adopted children with disabilities and of those at older age remains significantly low, which leads to their prolonged presence in the registry for adoption.

The Ombudsman finds that there has been an increase in cases of termination of adoption, which primarily indicates deficits in the preparation of prospective adoptive parents and the assessment of their capacity for adoption. The Ombudsman criticizes the legal norm that the prosecutor may lay claim in defense of the public interest to terminate the adoption until the adopted child reaches adulthood.

The termination of adoption often results from purely formal reasons, such as property or other disputes. The consequences of terminating an adoption are extremely severe for the adopted child, especially when this occurs before the child reaches adulthood.

Case: During an inspection of a Socio-pedagogical Boarding School for girls, the Ombudsman found that one of the girls had her adoption terminated several months before reaching adulthood. The girl is a subject to educational measures due to frequent escapes from home, school and vagrancy. She has been repeatedly placed under police protection due to violence exercised on her by her adoptive mother, who is a single parent. After the court permits the termination of her adoption upon the request of her adoptive mother, the girl suffers severe mental trauma and undergoes various administrative challenges.

Such instances lead the Ombudsman to inviting the Committee to raise the following questions:

- *What measures will be undertaken within the framework of the state policy of adoption and for the formation of tolerant attitudes towards adoption?*
- *What amendments to the Family Code will be carried out as concerning adoption, termination of adoption and termination of the secret of adoption?*

- *What new mechanisms are envisaged for strengthening the provision of effective support to prospective adoptive parents, adoptive parents and adopted children?*

The child protection system

There exists a process of a constantly developing conception of what the national child protection system consists of and what its priorities entail. The main focus of the current child protection policy is still the provision of social assistance and the work with children at risk or disadvantaged children. Thus, in practice, a large part of the target group remains out of the focus of the overall child protection policy.

During the period that this report covers, the Ombudsman continues receiving a large number of complaints filed by parents or organizations regarding the ineffectiveness of the child protection bodies. Most often, parents disagree with the measures taken by the competent protection bodies with regard to their children and therefore, they refuse to cooperate. They claim that the system does not provide adequate, timely and effective protection for children at risk. They also complain about prolonged deadlines for work on cases involving children at risk where no significant change is achieved.

Analyses of the functioning of the child protection system in Bulgaria still indicate its focus being on the intervention rather than on the risk prevention. There is a lack of systematic social work to alter the negative social norms among vulnerable and marginalized groups.

Non-governmental organizations emphasize their concern about the state of human resources in the child protection system, which is characterized by turnover, low motivation for work, and often poor working conditions for social workers. There are neither standards for the number of cases assigned to each social worker, nor professional standards for social work, which overloads the system and nourishes distrust and sharp criticism against it. The heavy bureaucratic-administrative burden on the system as well as the severely limited time assigned for the conduct of practical and field work are also worth mentioning.

These problems are most clearly visible in specific cases. The Ombudsman's work indicates that such cases had been in the system's attention for some significant time. The reasons lie in the ineffective coordination between the child protection departments, the social service providers and/or other competent bodies. There is a transfer of responsibilities between all of them, which negatively reflects not only on the quality of the work done, but also on the protection of the rights and interests of the child as he/she becomes involved in a number of administrative and judicial proceedings.

Case: A 15-year old girl, experiencing great uncertainty in life as a result of difficult social circumstances and accompanying trauma, refers to the Ombudsman. She has been adopted,

but her adoption has been terminated at the age of 5. At the moment she is adopted again and has a difficult relationship with her adoptive mother. There are a number of escapes from home and allegations of domestic violence exercised against her. The child protection system has been working on her case for seven years, but there are no positive results. No one wants to hear the girl and she struggles with feelings of anger, rejection and depression. The girl did not trust anyone and was soon placed in a crisis center for children victims of violence, but at the request of the mother, a decision was made to relocate her to another city and another service, which again led to escapes.

The Ombudsman regularly organizes meetings and initiatives involving a wide range of representatives of state institutions, civil society organizations and parents to discuss the problems and challenges facing the child protection system and issue recommendations for improving the ability of the system to provide effective protection and support to children in compliance with international standards.

In the context of the highlighted challenges, the Ombudsman invites the Committee to draw the government's attention to the following questions:

- *Will the government adopt a family-oriented policy in support of children and their families?*
- *What actions will be undertaken for strengthening the capacity of the child protection system?*
- *What resources will the government invest in the system in order to respond to the dynamics of social relations and emerging social problems?*
- *Will the social assistance be linked to compulsory social evaluation and social work?*

VIOLENCE AGAINST CHILDREN

Violence at schools and kindergartens

Despite the concrete measures for the prevention of cases of violence against children adopted in most of the Bulgarian schools and kindergartens, the school environment sadly remains the public space where most of the cases of violence occur. Most of the complaints are filed by parents, reporting physical violence against children perpetrated by school staff; mental abuse – e.g., shouting, insults, unacceptable attitudes violating the dignity of the child; non-compliance of staff with school regulations; lack of resources and individual approach towards the integration of children with disabilities; lack of care for children with chronic illnesses in kindergartens. Another frequently stated complaint concern the lack of adherence to the normative framework for reporting of incidents of violence, which stresses

deficits in cooperation between the school institutions and the respective child protection bodies.

In the course of the inspections conducted in response to the complaints received, it has been ascertained that often parents lack regular constructive communication with the school bodies or staff; lack of specialized trainings of staff for recognizing and tackling the different types of violence; lack of an integrated approach towards the effective management of violence on the part of both the educational institution and the child protection bodies.

The Ombudsman persistently reiterates the lack of a holistic approach to peer aggression and bullying as an issue of concern. Solutions to the problem are usually sought in the formal application of the normative framework rather than in the effective adaptation of school policies to prevention of violence in practice.

The Ombudsman has on numerous occasions identified the deficit in the number of pedagogical advisers in schools; the lack of resources and integrated approaches to the work with children exhibiting behavioral problems; the inefficient cooperation between parents as well as between parents and teachers; the absence of capacity building programs for staff that encourage positive alternative educational methods and has advocated for adoption of mitigation measures. Furthermore, the Ombudsman has expressed deep concerns over the inability of children to identify the different forms of violence, and the lack of interactive approaches to building the capacities necessary to tackle them. The role of school ombudspersons and parliaments as a method for coping with aggression and bullying is also diminished in importance. Overall, the use of disciplinary measures takes precedence over the use of restorative approaches towards children.

Therefore, the Ombudsman invites the Committee on the Rights of the Child to issue the following recommendations to the Bulgarian government, on which to act upon:

- 1. The replacement of the use of disciplinary with restorative approach towards children in school.**
- 2. The encouragement of positive alternative interactive educational methods in schools.**
- 3. The continuation of trainings for teachers on the identification of the different types of violence and the implementation of measures to aid children's recovery.**

Corporal punishment

The majority of complaints that the Ombudsman receives concern the exercise of different forms of corporal punishment both from parents and professionals working with children. The current situation is a direct outcome of the absence of an explicit normative prohibition on the use of corporal punishment in the national legislation. There is a lack of awareness raising and training of parents to understand the harmful effects of corporal punishment on

children's development and to apply alternative methods of positive parenting. The Ombudsman reported numerous statements from teachers or educators that they "have slapped the child as they considered this the only way to counteract the child's aggressive behavior" – indicating the widely accepted use of corporal punishment as an educational measure.

Difficulties in the availability of reporting mechanisms for children remain. The lack of sensitivity in society to the detrimental effects of corporal punishment on children further strengthens the tendency of keeping it a matter within the family – where the institutions are rarely involved in regulating. Consequently, most of the existing research and statistics on the use of corporal punishment and its effects on the life of the child has been conducted and presented by non-governmental organizations, rather than by the national child protection bodies. Therefore, the Ombudsman notes that the actions undertaken by the relevant institutions are not being timely and tailored according to the best interest of the child.

In response to the numerous cases of violence against children and the scarcity of both flexible approaches and effective coordination between the relevant bodies, in 2017, the Ombudsman initiated the establishment of a National coalition against the use of violence and corporal punishment of children. In this context, the Ombudsman urges for:

- **Strengthening the institutions' political willingness to undertake legislative reforms for the elimination of corporal punishment;**
- **Preventing violence through support for families and professional work with children;**
- **Encouraging the development of positive parenting methods;**
- **Increasing societal sensitivity to the harmful effects of corporal punishment and fostering the cooperation and coordination between the relevant child protection bodies.**

Domestic violence

In the area of domestic violence, the Ombudsman has been most commonly referred to as regarding cases of violence against children in the context of parental conflicts. Tackling the problem requires the elaboration and implementation of a holistic approach, especially needed in periods of crises. The prevention of incidents of domestic violence demands early childhood education and refrain from rendering children witnesses of intraparental violence for disruption of the pattern for normalization of violence as a publicly accepted attitude – both in society and in family.

The Ombudsman demands that information on the access to support services for victims of domestic violence be freely available, which would encourage increased levels of reporting from a variety of sources. Additionally, specialized training for professionals working with

children on adequately recognizing domestic violence and addressing its roots and consequences for victims must retain priority in national policies.

Case: An 11-year-old girl has been a victim of sexual abuse by her step father for more than a year before she decides to report the violence in anticipation of protection. The girl has been placed in the care of relatives. Despite continuous interrogations at different institutions and presentation of her case in court, she has not received justice up to date. Consequently, she starts a therapy and precludes further cooperation.

The Ombudsman urgently calls for the introduction of widely accessible platforms for children to report and learn about the characteristics of domestic violence for the formation of attitudes towards recognizing its harmful effects and receiving adequate protection – this would certainly limit the use of aggression and bullying to which a significant amount of pupils is being subjected. The Ombudsman further emphasizes on the need for additional steps to be taken by the government towards guaranteeing equal protection against violence for the most vulnerable groups of children – i.e., Roma children, children with disabilities, which must provide for the implementation of regular individual assessments of their circumstances and needs for achieving better results.

In this regard, the Ombudsman recommends the adoption of special measures for protection of Roma girls in relation to their dropping out of the education system due to early arranged marriages, which limits their future opportunities for development and social inclusion.

Case: A young Roma girl has been promised as a wife at the age of 15 to a man quite older than her. She has been forced to drop out of school and has been regularly beaten and abused. Despite evidence of violence perpetrated against her and despite the care she has provided for her child, by instruction of the Roma traditions, the child started living with the father at the age of 9 after parents' separation.

The National Assembly has adopted amendments to the Criminal Code aimed to improve the definition of domestic violence and to increase the penalties for such violence. Despite partial improvements in the work of the Coordination mechanism in cases concerning children, victims or at risk of violence and in crisis intervention, gaps in protection are still present. The lack of an integrated database for children who are victims of domestic violence and the uneven geographic distribution of specialized services that offer therapy sessions for victims are evidence of the above. The negative impact on children has been further exacerbated by the COVID-19 pandemic. Therefore, the Ombudsman fervently encourages the Committee on the Rights of the Child to recommend the creation of an effectively functioning integrated database for children victims of domestic violence and the establishment of adequately distributed and resource-supported regional crisis accommodation centers for placement of victims of domestic abuse.

Violence against children placed in alternative care

Although the Ombudsman has explicitly denounced the perpetration of inhuman or degrading treatment, including physical, psychological and sexual abuse, between and against children in institutional care, cases of violence have been frequently reported. The Ombudsman's regular inspections of residential care homes reveal that systematic violence between children, against children by staff or against staff by children exists combined with inefficient educational practice, insufficient food supply, clothing and student materials. Rise in evidence gathered on acts of fornication, sexual abuse or exploitation of children for prostitution further demonstrates the inadequacy of protection that children often receive in formal care. This only indicates the need for introducing improved strategies for strengthening the provision of financial and human resources and of capacity building for staff.

Regardless of the high number of cases of violence against children in residential care that have become publicly known, most of the services simply decided to deal with those issues "behind closed doors". In most of the cases of violence against children in residential care, the prosecutor's office has been notified, which can be perceived as a necessary prerequisite for reaching a valuable outcome – nonetheless, refusals of initiating pre-trial proceedings are common.

Children with disabilities or severe chronic illnesses are often being placed in care facilities without proper consideration of their special needs and social integration, which violates their human integrity. Shortages in the provision of adequate installations and appliances greatly exacerbates the challenges that children with disabilities face. The Ombudsman has long reiterated the need to strengthen the preparation of specialists working with children with disabilities in formal care and introduce a better adapted infrastructure and recreational facilities.

Case: A complaint concerning the violation of the right to life, physical and mental integrity, equality and non-discrimination of children with disabilities living in a small group care home has been filed by a group of human rights lawyers, alleging a misconduct by state and municipal bodies as well as by the staff. The investigation is partial and inconsistent, and the regional prosecutor's office terminates the criminal proceeding. The Ombudsman has been the first to carry out an inspection of the home and to send recommendations to a variety of institutions.

Despite the Ombudsman's long-standing expression of concern over the persisting levels of disproportionate punishment in Sociopedagogical Boarding Schools and Correctional Boarding Schools, cases of such still prevail. The Ombudsman's inspections indicate that court decisions for placing children in boarding schools are often motivated by social circumstances rather than by anti-social behavior. After plenty of signals of violence against and sexual abuse of children, the Ombudsman has recommended a detailed implementation plan for the closure of the Sociopedagogical Boarding School in Dragodanovo indicating

concrete deadlines, responsibilities of relevant institutions as well as for conducting of individual assessments for all children placed there.

The process of closing down of that school demonstrated that the use of all public resources remained inefficient as most of the children had been returned to their families in the absence of continuous work of institutions for improving of their living conditions upon return. This case demonstrates the insufficient institutional capacity to implement an integrated and sustainable approach towards effective child protection. The Ombudsman has been addressed by children themselves expressing disagreement with decisions for reintegration into their families as a measure for protection. Furthermore, it can be concluded that there is a disturbing lack of adequate alternative services where children in conflict with the law can be placed.

Violence against children in detention

A growing number of complaints reveal perpetration of violence against children in detention facilities or police custody. Parents signal that they have not been notified of the arrest of their child and incidents of violence are recurring.

The context of the COVID-19 pandemic and the accompanying emergency measures has added new challenges. An incident at the center of the capital has been reported where a 15-year-old boy has been a victim of violence while in police custody in front of the eyes of pedestrians.

Summary of crucial gaps:

- The persistent lack of an adequately functioning integrated database for children victims of violence;
- The irregular and burdensome access of children victims of violence to therapy sessions tailored according to their individual needs;
- The absence of institutional and societal sensitivity to the harmful effects of corporal punishment;
- Unresolved difficulties in ensuring adequate access of victims to reporting violence perpetrated against them;
- The delayed adoption of a holistic family policy, including assistance to parents and promotion of methods of positive parenting.

ADEQUATE PROTECTION AND SUPPORT FOR CHILDREN WITH DISABILITIES

After the incorporation of the provisions of the UN Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities (CRPD) into the national legislation and practice, crucial steps towards the inclusion of children with disabilities in the Bulgarian society have been taken during the past years.

Significant changes in the care of children with disabilities occurred during the first stage of the deinstitutionalization of care when all 24 homes for children with intellectual disabilities and half of the homes for medico-social care closed down. A small part of the institutionalized children with disabilities were reintegrated with their biological parents, some of them were adopted, but the majority of them were relocated to the newly established family-type residential services.

In the period of 2017-2020, the national legislation regarding people with disabilities has altered mostly due to the pressured exerted by the protests of the mothers of children with disabilities who were also supported by the Ombudsman. This very period was also marked by heated public debates, a variety of protests and essential legislative reforms, which paved the way towards the sustainable upgrading of policies related to the protection of the rights of children and persons with disabilities.

Amendments to the People with Disabilities Act provided for the regulation of important issues concerning the children with disabilities:

- The introduction of measures for the development of the conduct of an individual assessment for children with disabilities;
- The introduction of a new mechanism for financing and the provision of aids and medical devices to children with disabilities;
- The adoption of a national program for improving the accessibility of housing and personal mobility of children with disabilities;
- The facilitation of the access to rehabilitation services and the establishment of a monitoring body under art. 33 of CRPD whose presidency on a rotating basis was undertaken by the Ombudsman and the Commission for Protection against Discrimination.

The adoption of the Personal Assistance Act created conditions for achieving sustainability of the financing of the social service in question; provided support to children with disabilities only on the basis of an individual assessment of their needs; introduced uniform criteria for inclusion in the mechanism for personal assistance provision; guaranteed flexibility of services and clearly defined tools for service quality control.

The Ombudsman insisted on the introduction of a fair mechanism for delivery of monthly assistance under the Family Allowances for Children Act, as well as of regulatory guarantees that children with disabilities will receive adequate financial support, especially those with a high degree of disability.

The adoption of the Pre-school and School Education Act created better conditions for inclusion of children with disabilities in the general education system – the number of children with disabilities and children with special needs who attend schools and kindergartens increases each year. However, approximately 10,000 children with disabilities and special needs in Bulgaria are out of school.² The issues concerning the quality of inclusive education, the access of children to specialized resource support, the segregation of children in the centers for special educational assistance, and the lack of school programs and books adapted to children's special needs.

Despite Bulgaria's efforts to ensure the more effective safeguarding of the rights of children with disabilities, they continue being among the most excluded and invisible groups in society. Children with disabilities constitute a major part of the children placed in institutional care. Additionally, in spite of the special conditions introduced for their adoption, the number of adopted children with disabilities remains too low. The number of children with disabilities placed in foster care remains low, too. Although there is no official data, it has been estimated that a larger part of the young persons with disabilities aged 15-24, particularly those with intellectual disabilities, are not employed or engaged in studies or professional trainings.³

In the opinion of the Ombudsman, the issue of discrimination against children with disabilities is largely intensified by the way the competent authorities approach them – predominantly from a medical, rather than from a social, rights-based perspective. A number of practices perceive children with disabilities only as sick or suffering and therefore in need of medical care.

The People with Disabilities Act guarantees their right to accessible living and architectural environment. This relates to public buildings such as kindergartens, schools, day care centers, administrative services, etc. However, most of the complaints that the Ombudsman and the Commission for Protection against Discrimination receive concern the lack of accessible environment, especially in school premises.

Case: A girl with severe disabilities, using a wheelchair, has been carried on hands on a daily basis by her father across the hallways of a general education school due to a lack of adequate facilities or equipment. She considers her dignity and self-esteem being undermined as her peers and teachers do not treat her as an equal. Her family faces difficulties in ensuring

² According to statistics of UNICEF Bulgaria

³ <https://www.unicef.org/bulgaria/en/data-children-disabilities-bulgaria-and-around-world>

that she has access to adequate aids and medical devices. Despite this, the girl, demonstrating great strength and spirit, has become one of the child ombudspersons on a country level.

Reliable statistics are still lacking, which has an impact on the development of policies concerning children with disabilities. Further efforts are needed to ensure the right to participation of children with disabilities, especially children with intellectual disabilities.

In order to create better opportunities for early diagnosis and timely support for the development of children with disabilities, the Bulgarian authorities need to adopt a Strategy for Early Childhood Development. The capacity of parents and caregivers of young children with disabilities is directly dependent on the policies, programs and services for quality care provision, particularly during the first three years of the life of a child. Parents/caregivers of children with disabilities need assistance for early intervention, including the development of universal low-threshold services. The Ombudsman considers indispensable the introduction of a practice of provision of care consisting of home visits to families with children with disabilities.

Based on the abovementioned findings and in accordance with its functions of a national human rights institution for the protection of the rights of the child, holding an “A” status under the Paris Principles, the Ombudsman invites the Committee for sending the following recommendations to Bulgaria:

- **Make every effort to provide accessible physical environment for children with disabilities;**
- **Undertake targeted investments in inclusive education, the professional development of teachers, and the increased parental sensitivity to children with disabilities;**
- **Provide adequate opportunities for sport, outdoor games and leisure for children with disabilities;**
- **Expand access to integrated health and social services for children with disabilities;**
- **Remove the barriers to the active participation of children with disabilities and their families in all spheres of public life;**
- **Introduce an integrated process for the collection of data on children with disabilities.**

JUVENILE JUSTICE

The state of juvenile justice in Bulgaria has been characterized by the lack of proactive and timely institutional reforms, which negatively impacts the preservation and realization of the

principle of the best interest of the child. Although Bulgaria has adopted the leading principles and standards stipulated by international and European instruments, the Bulgarian jurisdiction cannot be claimed to be pursuant to the best interests of children and young people. The Ombudsman finds evidence in the numerous complaints by citizens received, meetings with children and parents held, inspections of institutions conducted. Children are often distrustful of the justice system, they feel fearful and anxious from coming into contact with it – defining the environment as depressing, the language as incomprehensible, and the information on processes as uncommunicated and obscure.

In Bulgaria, the reform of juvenile justice is not yet realized in compliance with human rights standards established by international instruments and essential progress in this direction is not observed.

The proceedings involving children are prolonged and complicated. Therefore, the challenges that children face when participating in diverse legal procedures are:

- The insufficient coordination between the child protection system, on the one hand, and the police, the prosecutor's office and the court, on the other hand;
- The limited access to professional legal aid for children;
- The lack of an adequate number of professionals trained in working with children.

Children in conflict with the law

Although the country has adopted in 2011 a Concept paper for public policy on justice for children, in 2011, and a road map for its implementation, up to date, there exists no contemporary, updated legislation on the protection of the rights of children in conflict with the law in compliance with international and European standards for protection of the rights of the child. As a result of the current yet outdated laws, the acts of children aged 8-14, such as vagrancy, skipping school activities, running away from home, non-compliance with the rules in residential services, or prostitution are being criminalized and educational measures are being imposed on children, which in practice exhibit a criminal nature – the placement of children in Sociopedagogical Boarding Schools or Correctional Boarding Schools.

Such acts are perceived as anti-social, in spite of the lack of a legal definition of the concept of “anti-social behavior” – thus, rendering the latter a subject of the assessment of the court or the local Commission for combatting anti-social behaviour of minors and adolescents.

In Bulgaria, two Correctional Boarding Schools (one for boys and one for girls) and one Sociopedagogical Boarding School for girls remain in function as currently they place 117 children in total.

Overall, the most crucial issue still is the existence of two uncoordinated systems – the Law for combatting anti-social behavior of minors and the child protection system, that leave children stuck in the middle and in need of adequate protection. The child protection system

does not recognize children in conflict with the law as children at risk, resulting in the neglect of the CRC founding principles.

Nonetheless, during the past several years, positive steps towards reforming the juvenile justice system have taken place- such as the establishment of specialized premises for child-friendly hearings and interrogations of children in conflict with the law. As of 2020, the so-called “blue rooms” amount to about 23. However, statistics show that the number of hearings is disturbingly low, which can imply that overall the rooms have not been operationalized actively by the judicial system.⁴ There exist no centralized standards for conduct of the hearings, no system for data gathering, and no adequate capacity building for professionals. Consequently, the Ombudsman has systematically issued written statements and recommendations for improving the conduct of the hearings and interrogations for more effective safeguarding of the right of the child to be heard in “a manner consistent with the procedural rules of national law” (art. 12b CRC).

Since 2015, a thoroughly new law in the area of juvenile justice has been in the making. However, up to date, it has not materialized.

Children victims and/or witnesses of crime

The transposition of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime has experienced severe delays resulting in its inadequate application in practice. Interrogation of children starts directly in police facilities, while a legal representative is to be appointed in the course of pre-trial and court proceedings in the best of circumstances. Thus, the right of the child to support from a specialized service continues to be subject of discretion of the relevant investigative body, largely excluding the participation of the department of Child Protection and violating the right of the child to be heard (art. 12b CRC). Furthermore, the requirement for an individual assessment of each case is not formulated clearly enough and is not compulsory under the Criminal Procedure Code, leaving the decision on conducting the assessment to the relevant body as well. The formation of specialized trial chambers across the country to judge on cases involving children could be registered as a positive development. The formation of a working group inside the Ministry of Justice with the aim to strengthen the transposition of Directive 2012/29/EU is another step forward – however, the working group has yet to present concrete recommendations to the National Assembly.

There still exist lengthy, delayed procedures for deciding on cases involving the rights of the child – partly due to the insufficient coordination and cooperation between the child protection system, on the one hand, and the police, the prosecutor’s office and the court, on

⁴ Ombudsman’s annual report 2018: [https://www.ombudsman.bg/pictures/REPORT-BG%20mart_2019\(1\).pdf](https://www.ombudsman.bg/pictures/REPORT-BG%20mart_2019(1).pdf), p.280

the other hand. The restricted access to professional legal support as well as the inadequate number of professionals trained to work with children further increase in magnitude and intensity the challenges that children face. Thus, the negative impact on the emotional and mental health of children continues to be severely exacerbated.

Cases:

1. A 12-year-old boy exhibiting anti-social behavior (most commonly theft) has been left to the care of his grandmother. The boy often wanders the streets, looking for a shelter and place to stay. Since 2012, a number of complaints have been issued by his teachers, public educators and the school headmaster. Measures for protection have been initiated just in the course of the opening of his case at the court in 2018 upon the request of the court and referral by the Ombudsman and SACP.
2. A 12-year-old child, a victim of systematic, continuous physical violence exercised by his father, faces the practical challenges of the child protection system by having been denied reception at local crisis centers due to reasons such as: unavailability of places, the COVID-19 pandemic, or no reasons at all. This leads to the request of the relevant national bodies to restrict/terminate the parental rights of the father in order to secure the respective measures for protection.
3. A 16-year-old adolescent, accused of threatening his mother with death. The mother has continuously attempted to seek professional support but is challenged by the unavailability of adequate services. In her efforts to find support for her son, he got detained.

The Ombudsman recommends that the government:

- **Abolishes the concept of “anti-social behavior” and designates children up to 14 years of age who exhibit difficult behavior to be under the care and responsibility of the child protection system, the healthcare system, the education system and the social services.**
- **Introduces adequate standards for assessing and defining the best interest of the child, including after his/her hearing.**
- **Improves the child protection system, the healthcare system, the education system, and social services so that they can be inclusive for all children under the age of criminal responsibility; encourages the development of services corresponding to the special needs of children with difficult behavior, on the basis of the Social Services Act.**
- **Establishes a new system, integrated with the child protection system, for children in conflict with the law, based on the professionalization of all the staff (judges, prosecutors, the police, social workers, etc.) and on their systematic training.**

- **Establishes a child-friendly justice system to support all children who come into contact with it as witnesses or victims.**
- **Incorporates the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.**

COVID-19 PANDEMIC AND THE IMPACT ON THE RIGHTS OF THE CHILD

The COVID-19 pandemic has posed unprecedented challenges to human rights protection on both a global and a country level due to the exceptional context in which its consequences altered the functioning of key spheres of public and private life. State bodies faced a combination of intrinsically linked economic, political and social factors, which had impacted to a different extent on individuals and businesses, while the emergency measures had to ensure as best as possible the protection of the rights of the individuals affected. The institution of the Ombudsman highlights with concern the tendency of global crises to exacerbate existing socioeconomic divides in societies and thus, most of its recommendations focus on the provision of adequate support to the most vulnerable groups.

The Ombudsman observes that children as a social group have been among those most disproportionately affected by the measures. Their wellbeing is directly linked to the wellbeing of their families. The economic stability of families severely deteriorated as the drastic decrease in income due to the termination or restructuring of the functioning of a crucial number of economic activities affected most heavily families already experiencing socioeconomic vulnerabilities – e.g., large families, families with a single parent, families living in distant or small populated places across the country. Changes in the functioning and capacity of social assistance services led many families to experience economic difficulties, which negatively impacted their mental and social wellbeing as well.

On the other hand, the suspension of personal meetings with social workers as well as the obstacles to the adaptation and provision of services online had most severe repercussions for families with young children or children with disabilities; Roma families; victims of domestic violence.

Changes in the organization and work of schools and kindergartens gave rise to many challenges, too. The Ombudsman expresses deep concern that the number of chores and educational responsibilities significantly increased for parents, while many children lost access to education due to deficits in technical equipment or internet connection for studying digitally. On the other hand, spending extra time online heightened their vulnerability to cyberbullying, while social isolation intensified feelings of anxiety and mental disorders. Children living in poverty, children with disabilities, children from a minority background, children placed in alternative care and children deprived from liberty experienced these in greatest severity due to their special needs, lack of resources and limited access to assistance.

The emergency measures had a major impact also on the access to nutrition programs, planned healthcare, the number of cases of different types of violence, child labor, and the termination or delay of court proceedings involving children. This only demonstrated the systematic problems of the child protection system in Bulgaria.

Overall, the Ombudsman notes that the institutions did not adequately assess the impact of the measures implemented for determining the best interest of the child as balanced against the interest of adults. Children were largely not consulted and remained neglected in the process of decision making.

Nonetheless, a positive development was the preparation and online distribution of child-friendly information materials regarding both the safety measures adopted and the rights children hold in the context of the pandemic. A number of consultative and educational materials for parents were also published – they aimed at equipping them with knowledge of how to communicate the crisis situation to their children, from virus transmission to mental well-being and online privacy protection.

The Ombudsman welcomes the fact that the State Agency for Child Protection established a special section on its website offering opportunities to children and caregivers to ask questions about the pandemic. However, the Ombudsman remains alarmed that almost none of the institutions established sections on their websites offering information on the restructured functioning of the institutions in light of the emergency measures. Further to that, during the first period of emergency measures (March-May 2020), the child protection bodies did not publish a single analysis of the main issues and practical results from the measures. Instead, non-governmental organizations proved far more active in this regard, maintaining online sections to offer recommendations and support. The workload of the hotlines for consultation that some of them have operated prior to the pandemic increased, as well as the number of appeals received by the national helpline for children. Despite existing challenges, the systematic conduct of the information campaign on a national level may serve as a good example for future efforts in tackling global or nation-wide crises.

On its part, the institution of the Ombudsman prepared a special report on the impact of the pandemic on the rights and interests of children to be presented to the National Assembly. Furthermore, the annual report of the Ombudsman in its function of a National Preventive Mechanism assessed the implementation of the emergency measures in the institutions where persons are detained or accommodates as a result of an act or with the consent of a public authority, as well as of previously issued recommendations. The Ombudsman provided direct public access to the mobile numbers of the NPM experts in order to effectively protect the rights of all citizens residing in the respective institutions.

There is a high probability that the long-term consequences help developing a vicious circle where children living in poverty or at risk of poverty may end up being even more economically and socially deprived, which in turn may diminish their competitiveness on the labor market.

