



European network of legal experts in gender equality and non-discrimination

FLASH REPORT

Country:	Bulgaria
Title:	CSOs bring court proceedings against EC over funding of institutions for people with disabilities in Bulgaria
Date:	20 December 2019
Expert:	Margarita S. Ilieva
<u>Context</u>	
Issue at stake:	Institutionalisation, Segregation
Grounds of discrimination:	Disability
Field of application:	Housing
Source:	CJEU, Policy development
Applicable law:	CRPD, EU Charter

Content

Legal action brought: Three disability rights organisations have initiated court proceedings against the European Commission (EC) for not halting EU infrastructure funding being used by Bulgaria to build institutions for persons with disabilities. Case T-613/19, pending before the CJEU, challenges the decision of the European Commission not to suspend EU funding to Bulgaria.

In 2019, the European Network on Independent Living ('ENIL'), the Validity Foundation ('Validity') and the Centre for Independent Living ('CIL') called on the Bulgarian Government to suspend a programme channelling European Structural and Investment Funds ('ESI Funds') into the building of a large number of institutions for people with disabilities and older people. Despite Bulgaria's stated commitment to deinstitutionalisation, the organisations alleged that this investment would see large institutions replaced with smaller ones, without addressing the deeply ingrained discrimination, social exclusion and segregation of their inmates. Having failed to achieve suspension by the Managing Authorities, the applicants proceeded to unsuccessfully request the EC to suspend EU funding to Bulgaria, invoking the EU and Bulgaria's joint obligations under the UN Convention on the Rights of Persons with Disabilities (CRPD).

The case seeks annulment of the EC's decline to interrupt payment deadlines or suspend payments associated with the Call for Proposals 'Support for the deinstitutionalisation of services for elderly people and people with disabilities' under Priority Axis 5, 'Regional social infrastructure' of the 'Regions in Growth' Operational Programme.

The litigants claim that the regulations on the use of ESI Funds, combined with the Charter of Fundamental Rights and the CRPD, provide the Commission with a legal basis to intervene when EU Funds are used to discriminate against persons with disabilities. In their view, the Commission should not allow Member States to use EU funds in ways contrary to the CRPD.

Claiming that institutions funded by the EU in Bulgaria are not in line with the CRPD, the litigants invoke the position taken by the Committee on the Rights of Persons with Disabilities. The Committee held, in October 2018: 'It is also deeply concerned that the [Bulgarian deinstitutionalization] strategy envisages the transfer of residents from large institutions to small group homes, contrary to the provisions of Article 19, as laid out in general comment No. 5 on living independently and being included in the community.'¹ The Committee recommended that Bulgaria 'accelerate the transition process to ensure that all persons with disabilities living in any form of institution, such as [...] small community-based group homes, have the right to live independently within the community with choices equal to those of other persons [...]'.² The organisations allege that the smaller institutions in question still involve the loss of personal choice and autonomy due to the imposition of living arrangements, in contravention of Article 19. In their view, the new institutions still amount to segregation of people with disabilities.

Funding under the relevant call for proposals, which amounts to nearly EUR 18 million, is to be used to build, renovate, furnish and equip 6 day-care centres and 68 care homes for older people and people with disabilities, including people with mental health problems, intellectual disabilities and people with dementia. The funds are to be spent in 29 municipalities, each set to build up to nine new facilities. In the Dryanovo municipality, a large institution for 100 women with disabilities will be replaced by 7 new care homes, all of which within this small town of less than 8 000 inhabitants. Rather than being offered support to live in the community, those affected face continued institutionalisation, allege the litigants. Their case is the first of its kind.

Key points of analysis: The case is an important precedent, of relevance in a number of other EU jurisdictions as well.

Internet link source:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=221434&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=7706560>.

¹ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Bulgaria, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsk80ZBJx%2bmVEa%2bXQpyKbrX6eiw%2fONDuhjOleQ0WS4ZCou%2f8e0LnMpan4%2fdVYURMuW4m5XiBzJIDxfa0hBsK%2fFlxXq2LE6I3Y%2fwmkUJ%2fZAlza>.

² Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Bulgaria, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsk80ZBJx%2bmVEa%2bXQpyKbrX6eiw%2fONDuhjOleQ0WS4ZCou%2f8e0LnMpan4%2fdVYURMuW4m5XiBzJIDxfa0hBsK%2fFlxXq2LE6I3Y%2fwmkUJ%2fZAlza>.