The Bulgarian Center for Not-for-Profit Law (BCNL) was founded in July 2001 and is incorporated as a public-benefit foundation in the Central Register at the Ministry of Justice. BCNL’s mission is to provide support for the drafting and implementation of legislation and policies aiming to advance civil society, civil participation and good governance in Bulgaria.

CHALLENGING
THE LAW AND POLICY FRAMEWORK
FOR PEOPLE WITH INTELLECTUAL DISABILITIES AND MENTAL HEALTH PROBLEMS TO EXERCISE THEIR RIGHTS

WHAT, WHERE AND HOW

GUIDELINES FOR POLICY CHANGES

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The UN Convention on the Rights of Persons with Disabilities (CRPD), as has repeatedly been determined, is a vision of a world of equality – a new, paradigmatically different approach to respect the rights of people with disabilities and to assume that we are all equal. To be equal, is to recognize that everyone, whether disabled or not, has the possibility to make choices, and if experiencing certain difficulties - to be provided with adequate support so that these choices can be exercised, make a difference and ultimately - guarantee self-determination, quality of life and real social inclusion.

One of the biggest challenges of the Convention is not the rights regulated in it, because in the last 70 years these same rights have been repeatedly affirmed by various other international legal documents, but that it requires a new legal order for their exercise.

Bulgaria ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2012. From that moment on the domestic law has been in conflict with Article 12 of the CRPD, which has precedence provided by the Constitution. The Convention on the Rights of Persons with Disabilities was adopted by the UN on 13 December 2006. The Convention was ratified by the European Union and in the recent years the Union clearly has laid down the basic criteria of the Convention in its political and statutory acts. At present, of the 28 EU member states, 25 countries have ratified it, and the other three have signed it without ratifying (Republic of Ireland, the Kingdom of the Netherlands and Finland). Among the countries in Europe that have started the reform of legislation relating to restriction of legal capacity, full guardianship and partial guardianship, are the Czech Republic, Croatia, Ireland, Latvia, Slovakia, Spain. We can say that Bulgaria ranks among them, but only if the political will for change that has so far been demonstrated, leads to concrete legislative changes and does not remain a wishful thinking at conceptual level.

Therefore Article 12 of the CRPD is often described as the "heart" of the Convention and its new value standards. A change in both legal theory and its principles, and the creation of working and adequate "new legal institutes" to replace the existing ones (some of them operating for more than 2000 years) is needed. This means to change the value approach of the law in relation to people with disabilities - not as objects of care, but as active subjects, to adopt an approach based on rights rather than charity, from paternalism to empowerment1.

It is common practice in Bulgaria, people with disabilities, particularly those with mental health problems and intellectual disabilities, to be presumed to have no capacity to act, based only on their diagnosis. Also, these people often easily drop out of the education and healthcare systems, and the only supports they receive are short and sporadic forms of social care with unclear result. Because of the stigma and the lack of a supportive environment, the crisis of social exclusion is exacerbated to the extent that they remain without suitable places to live, their relatives deprive them of the possibility to make decision by restricting their legal capacity, and ultimately as the "best" solution they end up in the social institutions for adults with disabilities.

In this connection, the European Committee for the Prevention of Torture (CPT):

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explicitly highlights the fact that in social institutions, people with mental disabilities are subjected to degrading and inhumane conditions, as well as that institutionalization is de facto imprisonment and a conflict of interest between those under restriction of legal capacity and their guardians when the latter are the directors of institutions where people are placed.

The Grand Chamber of the European Court of Human Rights (ECHR), in the judgment on the case of Stanev v. Bulgaria:

* states that the guardianship impedes access to justice, makes impossible the seeking of compensation for the inhuman and degrading conditions in case of placement in a social institution, makes impossible the protection against placement in such institutions as well as
* explicitly stresses the "growing importance which the international instruments for protection of people with mental disorders are now attaching to granting them as much legal autonomy as possible".

Furthermore, extremely impressive is the fact that despite the clear evidence and findings on the status of specialised services for adults, there are long "waiting" lists for accommodation in them (e.g. 52 people are waiting for accommodation in the home for elderly people with dementia in the village of Ogen, municipality of Karnobat; 79 are the women waiting for the home for elderly people with mental disorders in the village of Radovtsi, municipality of Drianovo; 89 men are waiting for the home for elderly people with mental disorders in the village of Govezhda, municipality of Montana).

After the film about the home for disabled children in Mogilino, and after the whole world was outraged by what places for "care" may exist in Europe, the policy carried out by Bulgaria in recent years has been an example of the de-institutionalization of child care, understood as a comprehensive reform of sectoral policies for children. But what will be the response to adults with disabilities? This issue is addressed in several strategic documents of the government, which contain more or less guidelines for policy changes, but their common deficiency is the lack of concrete measures clearly divided into short, medium and long term aspect, with a specific measurable effect and commitments to reform.

The authors of this document present their position on the reform in sectoral policies so that the “Next Step” Programme which they have accomplished in recent years and the results achieved for specific people, included in it turn into opportunities for all persons with mental health problems or intellectual disabilities living in Bulgaria. The proposals in this text are based on the

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4 Judgement enacted on 17.01.2012 on application 36760/06 [http://www.justice.government.bg/47/233/].

5 Paragraphs 241-247 of Judgement of 17.01.2012 on application 36760/06.

6 Paragraphs 217-221 of Judgement of 17.01.2012 on application 36760/06.

7 Paragraph 244 of Judgement of 17.01.2012 on application 36760/06.

experience of the authors as part of the team of the Bulgarian Centre for Non-Profit Law (BCNL) dealing with advocacy in the last 13 years as well as part of the team of the “Next Step” Programme. The guidelines for policy changes are part of the research potential of the programme including a position on the change in the legal environment: “New “Formula” for the Capacity to Act - Opportunity for Everyone to Exercise Their Rights. Statement on the Paradigm Shift of Article 12 of CRPD”, Sofia 2014, Cost Benefit Analysis of the Supported Decision Making, Sofia 2014, Action research. The Pilot Projects on SDM – is it possible to learn, Sofia 2014, Guidelines to the exercise of rights, Sofia 2014.

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“NEXT STEP” PROGRAMME

The program consists of three interrelated projects implemented with the expert assistance of the Canadian NGO Institute for Research and Development on Inclusion and Society - IRIS:

- "Article 12 - the next step" a project carried out by BCNL. The project aims to coordinate the activities of the partners in the program and to assist the development of appropriate legal mechanisms and rules to ensure the possibility of people with mental health problems and people with intellectual disabilities to exercise their legal capacity to act. Project Period: October 2012 - May 2014.

- "Changing paradigms in the context of Article 12 of CRPD. Finding solutions for people with mental health problems" a pilot project, implemented by the Global Initiative on Psychiatry - Sofia (GIP - Sofia) in partnership with the National Organization of Mental Health Services Users (NOMHSU). The project aimed to test different approaches to supported decision-making of individuals with mental health problems was carried out in Sofia and Blagoevgrad and attempts to cover at least 20 persons. Project Period: October 2012 - September 2013.

- "To empower people with intellectual disabilities" pilot project, implemented by the Bulgarian Association of People with Intellectual Disabilities (BAPID). The project aimed to test approaches to supported decision-making of individuals with intellectual disabilities was accomplished in Sofia and Vidin and attempted to cover at least 20 persons. Project Period: October 2012 - September 2013.
The aim of the program is to assist the practical implementation of the models of supported decision making in the country, covering a minimum of 40 persons with intellectual disabilities and mental health problems. Also, the program aims to explore and draw conclusions about the conditions necessary to achieve and guarantee personal exercise of human rights for people with these types of problems in five spheres fundamental for achieving equality and full inclusion in social life: where and with whom to live, the right to work, property and finance management, creating personal relationships, selection and use of health care. The program included people who were excluded from the community as a result of intellectual disability and/or mental health problems - people who were considered (someone believes) unable to make decisions, to work, etc. their entire life or at certain times of it (e.g. a period of psychotic episode).

All the measures under the “Next Step” Programme were developed based on the following four premises:

* Every person, regardless of whether he/she has a disability and how serious it is, has desires, preferences and will;
* Desires, preferences and will should be always acknowledged and respected, regardless of existing medical diagnoses and/or problems in communication;
* Every person, regardless of whether he/she has a disability and how serious it is is capable of building trusty relationships with another person;
* Every person, regardless of whether he/she has a disability and how serious it is at some point needs support in making decisions and receives it from the people he/she trusts.

The implement measures for supported decision making (SDM) have been developed as a system of interventions directed towards the person so that he/she can grasp the information, assimilate it, make the decision and communicate it. Their aim is to support people who led by their will and preferences make decisions important for them. Social interventions, organized by SDM aimed at a specific result - making decisions that have legal consequences and lead to particular results for the person (spends his/her funds, disposes of property, enters into contracts, accepts proposals, etc.). These social interventions are:

- **Groups of equals**
  The groups of equals include only people who have a specific (similar) problem in small or larger groups who share their experiences, successes and challenges. The group supports the person with information, advice and encouragement.

- **Consultations with a trained specialist**
  These are professionals from various fields (lawyers, psychologists, financiers, etc.) who provide advice on specific issues. It is important that these professionals are specially prepared for SDM and for working with the specific group of people.

- **Social service**
  In some of the cases, the person needs specific social support to be able to recover some of his/her skills, to improve his/her functioning and communication, to develop a capacity, improve the quality of life, etc.

- **Mentor**
  These are specially trained professionals (employed in a social service), who aim to support the person to gain the information necessary to understand, evaluate the outcomes and make decisions.

- **Anti-crisis plan**
The anti-crisis plan is prepared by the person himself/herself with the support of a trained professional (facilitator). In the plan the person expresses his/her will; it is possible for him/her alone to limit his/her autonomy by giving this power to the trustees, selected by him/her, to make certain decisions at a particular critical time for the person.

The Plan contains of:

* Guidelines on and requirements for the process of decision-making;
* The range of issues for which the trustee is empowered to make decisions;
* What the person wants to happen if a "triggering" event occurs;
* How to identify this "triggering" event;
* The moment when the power is restored to the person.

**SDM through support networks**

This is a process in which support networks (consisting usually of two to four/five people) help adult people with intellectual disabilities or mental health problems in planning their future life in the community and making decisions about their personal life, health and finance/property. The supported person chooses himself/herself the people important to him and who will help him/her; to include in his/her network family members, friends and advocates whom he/she believes. An absolute prerequisite for the applicability of this measure is that the person should have at least one person whom to trust.

The key roles which different individuals play in the process of building support networks are:

* **The supported person**: this is the person who is at the centre of the process of supported decision making. The supported person is a person who is either in a situation or at a risk someone to make decisions for him/her, regardless of his/her legal capacity to act i.e. the capacity to make decisions and exercise rights.

* **Supporters**: These are the people whom the person (the supported person) trusts, and they in turn are committed to him/her and respect him/her. The supporters who make up the network are not professional supporters (and do not receive money for what they do). The network can be dynamic and at different moments different people participate in it.

The supporter should simultaneously:

- ✓ Have a proven trusty relationship with the person (it should be mutual, stable, without history of manipulation, abuse and violence);
- ✓ Be able to understand the forms of communication and reasonably, logically to interpret the will and preferences of the person and to use the interpretation in the specific situations of decision making;
- ✓ Have a commitment to the welfare of the person, is able to interpret his will and preferences, and support him in the decision making on the basis of this interpretation.

* **Facilitator**: this is a professional whose aim is to assist the person in preparing his/her personal profile and in building a network of supporters. The facilitator must be "socially intelligent" i.e. to have the capacity to negotiate (to mediate) effectively for the creation of complex social relationships and interactions. It should be borne in mind that the supported person chooses himself/herself
the people in the network and the role of the facilitator is only to assist in the process of its building. This means that the facilitator should not choose the supporters alone or build relations between them and the supported person but to assist that person to achieve these two things through professional support.

- **Crisis facilitation**

This procedure is the only exception to interference in decision making for personal exercise of rights of people with intellectual disabilities and mental health problems. It can be applied when the following 3 conditions are present:

- there is urgency;
- there is no established support network yet or if there is - it is not effective in this particular case;
- the person is in a condition which makes it difficult to communicate his/her own will and preferences in a way that can be "understood" by the outside world.

The purpose of crisis facilitation is to create an individual council which to make decisions about the person. This can begin only after all other measures for supported decision making have been exhausted, but there is no result and if at least one more of the following conditions exists:

- there is an objective risk of imminent serious loss of property or an imminent risk of serious or irreversible harm to the life and health of the person or a person close to him/her ("Serious adverse affects");
- when the person is expressing preferences at some point, but these preferences are very much at odds with a previous will (with preliminary measures for SDM).

In crisis facilitation the individual council may decide on a limited range of issues: where the person will live, disposal of movable or immovable property of a certain value, choice of emergency treatment. This limited competence arises naturally from the above mentioned conditions and the nature of the measure which allows interference in the process of decision making as an exception in a situation of emergency.

A key role in crisis facilitation has the facilitator. Unlike his/her participation in building a support networks, his/her main task in this case is to organize the activities of the individual council.

The individual council in turn should include:

- persons who have participated in previous measures for support of the person and/or
- persons specified in the anti-crisis plans or otherwise recognized as important to the supported person, as well as
- persons associated with institutions which could help solve the specific problems of the person with a view to the occurred situation and
- the person himself/herself - at the earliest possible stage.

The individual council makes decisions that are supportive (does not generate immediate legal consequences and are associated with providing the necessary support to the person) or restrictive (generate immediate legal consequences) or administrative (only in certain cases specified by the law where the goal is the immediate protection from direct harm of the life, health and property of the person)

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**SUPPORTED DECISION MAKING**
IMPORTANT PREREQUISITES

Or preliminary conditions

To develop the "Next Step" programme several important prerequisites were taken into account that underlie the positive effect of social interventions. These prerequisites will be essential in the "construction" of the legal framework and the adequate regulation of social relations in the context of the standards established by Article 12 of the Convention on the Rights of Persons with Disabilities.

Law-making

In Bulgaria in the past 24 years most laws *are made* before a particular group of public relations that need regulation have occurred. And this is understandable in view of the processes of development and adaptation to the best models and standards of the developed world. This in principle is a process of law-making contrary to the traditional method - first certain social relations occur, which subsequently need regulation and thus become the norm for all. The UN Convention, especially the standards it sets, predetermines a law-making which more often than not follows the first described model - it is a vision that, it can be said, has not existed fully and completely before its adoption. That is why, perhaps, it should not be difficult to create in Bulgaria a law that meets its standards because 1) we have been doing this for the last 20 years and 2) regarding the policies for people with disabilities we are considerably many years behind the best systems anyway, so we need to compensate. The excuse that we are not ready or that others have to do it first, are not suitable and justifiable. The challenge remains to figure it out in a way that is adequate for the Bulgarian context. This was the motivation for creating the “Next Step” Programme - to "experiment" in the local context, showing here and now, in Bulgaria in 2014 that results are possible.

Agents of change

As the Convention itself begins - values should change before changing the law. Because when we change them, the other change is easy - a matter of new rules. For this to happen in a meaningful way, all who are important have to be included (the people with disabilities, their friends and relatives, the social services providers, civic advocacy organizations, organizations for protection of human rights, the media, etc.), and this is well known. The question however is who to start with; who will be the agent of change. Often, people with intellectual disabilities and people with mental health problems are not directly represented (not only in Bulgaria but also globally). On the one hand, those who have a limited capacity to act cannot exercise their right of association, cannot participate and join in organizations and their representation in them is indirect. On the other hand, they are often in such a vulnerable position that the last thing they would do is looking for protection of their interests in organized patterns. In this sense the closest advocacy group for them are their relatives and friends. Their inclusion has the potential to provoke the sought social change. For people with intellectual disabilities the parents often perceive the SDM as a real opportunity for social inclusion and empowerment of their children as complete citizens and entities in the community. For people with mental health problems SDM is often the best defence against the "over-protection" and tackling with people in mental crisis.
The second large group of people engaged in the reforms are the lawyers, particularly two subgroups - defence lawyers of human rights and judges (in their capacity of "deciding" on human lives and the ability to judge people in the fairest manner).

- **Overcoming the deficits in the systems of education, health and social care**

The purpose of these sectoral policies is to provide minimum conditions and build skills for independent living for each person. With regard to people with intellectual disabilities and mental health problems these sectoral policies do not achieve this goal. This complicates further the implementation of the measures for SDM in the "Next Step" Programme, as the measures in the program are essentially upgrading rather than compensating those minimum required conditions. Therefore, one of the prerequisites to achieve the end result of SDM (personal exercise of rights according to the will and preferences of the people) is namely to overcome the deficiencies in the systems of care and ensuring support and access at the earliest stage to the health, social and educational systems of people with intellectual disabilities and mental health problems. This means firstly that these three systems must work holistically and complementary i.e. to provide opportunities for integrated delivery of health, social and educational services by the individual categories of providers. Secondly - to create conditions, including reasonable accommodations in the form not only of physical access but also of trained professionals in their respective fields to support access to the general education system, the public health and social care system while respecting the wishes and preferences of people with intellectual disabilities and mental health problems.

9 This has been confirmed by the findings in the “Next Step” programme.

- **De-institutionalization and SDM**

Providing the necessary support for the exercise of the rights by everyone, including people with disabilities, means above all that the desires, preferences and emotions of the person are valued, irrespective of the medical diagnosis and/or the communication difficulties. In this sense, it is impossible to believe that the measures for SDM can be combined with institutional care. The institution itself precludes the concept of identity, self-determination and recognition of individual needs.

The two value models, the two social interventions (care for the person in an institutional system vs. support so that he/she can cope alone) are mutually exclusive. This does not mean that nothing should be done for people who are placed in social institutions. On the contrary, the first and most important intervention that should be taken is to involve them in the community life including, if necessary, accommodation in residential services in the community which focus on social inclusion and human development. The opposite is also impossible - to have de-institutionalisation without provision of SDM. In fact, then it would only be a transfer, without a true "rejection of the institution" as a model.

- **Understanding of the functions of the state**

All of us by virtue of the social contract we have as citizens expect the state equally and even-handedly to ensure the following three functions (provided in the Constitution and in other legislation respectively):

- **protective function** - originates from the constitutional requirement to protect all persons who are at risk - lack of care, inability to cope alone, presence of another factor which as a direct consequence will lead to social exclusion.
In view of the Bulgarian context and historical development of systems of protection these functions should be performed through the powers of social services; their main duties should be directed always to responding and taking measures for social protection, and to targeting measures for support.

✓ function of ensuring the exercise of legal capacity to act - stems from the obligation of the state to ensure the identity and uniqueness of each person, and the obligation of the state to cooperate in the exercise of rights. This, in turn, includes the obligation to ensure that everyone (regardless of the situation and the condition he/she is) will be provided with a process in which his/her will would be leading in making decisions that affect the exercise of his/her rights.

This function of the new legislation should be reflected in:

* regulation of legal proceedings, which set out the measures for support in view of the standards and precautions laid down in the Convention and the legislation;

* keeping a special register and registration of the measures for SDM;

* institutional and financial provision of the measures for SDM.

✓ Ensuring the rights and independent resolution of disputes: using a controlling body that meets the criteria of impartiality and independence.

In the Bulgarian context, this can only be a judicial authority and in this case the most suitable within the judicial system is the district court, in order to ensure maximum accessibility for persons to participate in the proceedings.

➢ Public Attitudes

When we aim at a social change it is crucial to actually talk about values, attitudes and even beliefs that are the basis of the change. SDM and the change that CRPD requires is extremely challenging. The provision of Article 12 destroys the myth that only a reasonable subject can exercise rights - it is a real test of whether we perceive ourselves as actually equal before the law along with all other people (including people with intellectual disabilities or mental health problems), whether we accept that all people have equal rights not only "on paper" but have the right to exercise them, enjoy them and draw benefits as well as make mistakes. If we divert from this understanding, if we assume, even with the best and concerned motives that for certain groups the definitions are different – we have started to discriminate (direct discrimination). Furthermore, when we do not provide support to vulnerable groups in order to reach the equal start for all - to exercise their rights personally, according to their will and preferences – we are still discriminating them (indirect discrimination). And this time let us not think about whether others are willing to change their attitudes - this will have to happen or we will have to be honest and change the attitudes towards ourselves i.e. to accept openly that certain groups of people,
despite our best intentions, do not deserve the freedom of self-determination and self-expression that others have.

The recent advances in the field of human rights are primarily the result of values and philosophical change. At different periods of its development the law also knew the limitation of the capacity to act based on gender, given social status or the presence of physical disability. This legal regulation reflected the maturity and the moral values of society at those moments. The possible paradigm shift now (according to Article 12 of CRPD) faces us with a purely humane and value challenge to acknowledge that people with intellectual disabilities and mental disorders are equal before the law like everyone else – they should exercise their rights through personal actions and make decisions about their lives. In essence, this is another step towards the acknowledgment and respect for diversity, different life experiences and choices, the recognition that the right of this difference should be respected and accepted as equal part of our society. If this is seen as a public good, the law will find an adequate answer to end the paradox of securing rights by limiting them.

Along the same line, it should be noted and taken into account the special attention paid in the Convention to women with disabilities and the guaranteeing an environment and conditions for their equal participation in social life (Article 6 of the Convention). Considering the fact that for women with disabilities there is a superimposition of risk factors and that they are a potential victim of unequal treatment of various types simultaneously (gender and disability) increased guarantees and safeguards should be provided against abuse and violence.

Human rights approach to disability

Deprivation of the legal capacity to act actually puts artificial barriers to a certain group of people to try to enjoy certain benefits at all, an attempt to seize the opportunity to address important questions about themselves because another person is authorized to determine on their behalf if, what, when and how. At present, the institute of restriction of the legal capacity to act is governed by the Persons and Family Act and the Civil Procedural Code and full and partial guardianship – in the Family Code and the Civil Procedural Code. The last two codes though changed relatively recently - in 2007 and 2009 respectively, do not offer new solutions to the problems associated with the exercise of rights of people with disabilities. In practice the rules concerning restriction of legal; capacity to act are replicated in their previous, ineffective form.

Historically, the regulations on the capacity to act of adult individuals are developed to provide protection. The protective function unfolds on three levels: for the person with a disability, for the third parties and for society. In the first place the regulations on the capacity to act protect the individuals from themselves, suggesting that it prevents them from an action whose meaning and significance they do not understand due to lack of "legally valid will". Protection is achieved by the possibility of restricting or depriving of the capacity to act of the person. This means divesting of the right to make decisions for himself/herself and granting this right to another person (especially in deprivation of legal capacity)11, depending on the assessment of the extent of the disability.

10 Statistics shows that for women with disabilities there has been a rise in domestic violence, and other violations of personal privacy
11 In this respect also: Quinn, G. ‘Liberation, Cloaking Devices and the Law. Or a Personal Reflection on the Law and Theology of Article 12 of the UN CRPD.’ www.nuigalway.ie/cdlp - paper read the international law seminar, 16-17
But the restriction of the legal capacity to act is not only a protection but ultimately a divestment of rights (because if we think - what are our rights for if we cannot exercise them according to our will and preferences and in this line of thinking - it is well worth noting, that for the personal exercise of rights the contemporary doctrine admits in practice that the defining quality is "a person" and not "legally valid will"), given the impossibility of their personal enjoyment: the substance of the capacity to have rights is granted for exercise to other individuals and leads to subjection to another's will, puts the person in subordination which undoubtedly restricts personal freedom/autonomy in general and is virtually inequality before the law. A “proxy” is appointed to the person in the legal relations such as the guardian and to a lesser extent - the custodian.

The legislation has no rules to allow taking into consideration the degree of disability, the dynamics and individual specificity of the diseases and disabilities in different individuals. As a result only two degrees of "lack of ability" of a person to take care of him/her are perceived, justifying both forms of placing under restricted legal capacity. Thus structured the institution of restricted legal capacity reflects the medical model of disability and the understanding of the norm in medicine and respectively of the atypical divergence from the norm necessarily described as an illness.

Historically, the stigma connected to intellectual disabilities and mental disorders practically excludes the analysis of the causative relationship between the disability and the quality of the decisions that the person must make for himself/herself. The stigma replaces the analysis: it provides a ready answer for each decision, which is different from the conventional, taken by a disabled person by putting the label of "disease motivated" or even by equating it to a lack of decision.

Again the stigma excludes the analysis of the quality and the importance of the decisions made by people with disability in terms of their unique human situation by replacing so the necessary understanding of the individual with a superficial widespread, often unsupported by any evidence, understanding of what is good "for everyone".

In the context of the changes in the rights of people with disabilities and the establishment of a social approach to different kinds of disabilities, it has become clear that this doctrine no longer meets the value paradigm, which is based on all the international laws on human rights, but also on the objective social needs. The question is if the modern policies in this area have long been based on inclusion, the removal of barriers to this social group, what is the legal response to this trend.

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October 2012 Sofia, organized by BCNL and Institute for Legal Studies – Bulgarian Academy of Science.

12 Based on the facts of the case Stanev v. Bulgaria, it should be noted that for persons with restriction of the legal capacity in the modern civic relations and social reality, the effect of restricting their capacity to act and the appointment of a custodian are the same as the degree of restriction of freedom and autonomy of those in full deprivation of legal capacity with appointed guardian.
HIGHLIGHTS OF POLICIES ANALYSIS

- **Intervention, imposed from outside vs. support based on trust**

  The basis of the personal exercise of rights of people with intellectual disabilities and people with mental health problems should be primarily the support desired and recognized by the person himself/herself, while the intervention imposed from outside must be the exception. This exception should be allowed to happen only when there is an imminent risk of serious harm to the life, health or property of the person. It is crucial to emphasize that the concept of action for vulnerable groups is not based on decision making in view of their "best interest" but in view of that their will and personal choice are always respected, including allowing the making of the so-called unreasonable decisions. There is no justification to have super protective functions for this group of people, particularly in view of the fact that due to disability it is presumed that their choices are inherently unsuitable and leading to adverse effects or results from which they should be protected. All other people have the right to make choices and decisions that may be with adverse consequences. It is not right and justifiable to put higher standards on the process of decision making for persons with disabilities compared to other people who have the autonomy to make their mistakes and thus learn from them or not.

- **Scope of the new legal regulations**

  New legislative texts should regulate public relations, which relate to the exercise of rights of persons who are at least 18 years old. It is necessary to describe the prerequisites for the acquisition of the legal capacity to act (a certain age only), the irrefutability of the presumption of legal capacity to act and the circumstances in which the new institute of "supported decision making" must be included. The law should regulate the SDM as a set of measures that are aimed at the ability of individuals to exercise their rights; the principles governing the new legislation; the safeguards; the powers of the authorities which are engaged in making and implementing decisions relating to the exercise of the legal capacity to act of individuals.

  On the other hand, the social system and policy needs to ensure well working, individually oriented and effective mechanisms to assess, implement, and maintain social interventions and to look for their result. In other words the SDM will be both a set of measures which determine the legal status of the person, but at the same time (reciprocally) – it will have to be organized as measures for social interventions in order to provide sustainable change in the environment in which the person lives and for overcoming the difficulties he/she encountered as a result of his/her contact with it.

  Changes in legislation\(^{13}\) should aim to ensure within the social care system, including also the provision of social services, efficient and adequate provision of mechanisms and environment for supported decision making for people with intellectual disabilities or mental health problems in a way that they can independently and effectively exercise their rights.

- **The Convention redefines disability by focusing on its social dimension**

  The Convention expressly states what should be the concept of disability. This is necessary after such a long time in human history,

\(^{13}\) Here the authors consider not only the laws and the statutory acts, all kinds of regulations, including methodologies for different types of services, etc.
regardless of the proclamation of a number of human rights for all because certain groups, including people with disabilities, are deprived of the opportunity to fully exercise them. The preamble to the Convention defines explicitly "disability" as "an evolving concept", which is not the result of human disease but of the interaction with the environmental barriers that hinders their full and “effective participation in society on an equal basis with others”. Article 1 paragraph 2 indicates that people with disabilities include "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others".

Denying the person the possibility to exercise rights will not achieve the satisfaction of needs to which these rights are targeted. The environment should be acted upon so that it can adapt to the person.

Bulgarian legislation currently does not reflect the values on which human rights are built, but rather treats disability as unchangeable phenomenon and aims to "protect the environment" from its potential/possible distortion, and not vice versa - to "distort" the environment to empower the individual and thus - to protect him/her from civil legislative and social death (in the sense of discrimination/exclusion/poverty/deprivation of liberty/violation of privacy, etc.). In this context, the changes in the different sectoral policies must reflect this new understanding of disability and thus the problems encountered by people with disabilities in the exercise of these rights can be resolved in an efficient manner. This means to make changes not only in the terminology but also in the measures and mechanisms that will be implemented which have to be directed not so much to "protect public relations” from the individual but to the modification of the environment to the individual’s needs.

- Need to change the terminology in laws and policies

Unfortunately Bulgarian legislation not only does not contain adequate legal instruments and mechanisms for the effective exercise of rights of people with disabilities, but there can be found quite discriminatory terms and outdated concepts. Most certainly terms like "feeble mindedness", "mental illness", "mental retardation" are no longer used in the medical doctrine\(^\text{14}\). And Bulgarian legal doctrine works with these outdated concepts. In this sense, all statutory acts must harmonize the terms so that they are in line with the latest trends and terms in the humanities (especially in medicine and social sciences). For instance the approach of the legislator is inconsistent since the terms used in the Integration of People with Disabilities Law (considered vital in terms of regulation of the guidelines for change in the sectoral policies for people with disabilities) are "people with intellectual disabilities" and "persons with mental disorders\(^\text{15}\)" and in other regulations these terms are not appropriately implemented.

- Exclusion of the direct link between the disability and the exercise of the so-called, personal rights

Of particular importance in understanding the new paradigm of rights of people with disabilities is to conceptualize a new way of exercising personal rights. They are related to the personality and its identity and unique experiences – the private life, the freedom of conscience, religion and association and therefore depend on the discretion of their holder. These include the right to marriage and

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\(^{14}\) These terms are used in Article 7, par. 1, i. 2 Family Code, Article 131, par. 2 Family Code, Article 90 and others of Penal Code, Article 5 Persons and Family Act

\(^{15}\) Article 44 of Integration of People with Disabilities Act;
family, reproductive rights, freedom of testation, freedom of association, the right to vote.

The mentioned rights are not only fundamental, but so strictly personal that it is not possible to include them in any hypothesis of their evaluation/measurement in order to be exercised by anyone else. Of course, this does not mean that social services which help people who have expressed a need for support to exercise these rights will not be developed, but this will be social support and not support for decision making.

For each one of them there should be different safeguards - especially the right to marriage and freedom of testation, as the risk of their abuse is high. As regards the right to vote there should not be similar special safeguards but rather the common ones which apply to all voters/candidates.

Free access to political participation cannot be restricted on the basis of disability either. The ability to form a will connected with the exercise of the right to vote cannot be tested and evaluated under any circumstances.

- **Modification of the environment to the person** ("reasonable accommodations") is the obligation and responsibility of everyone of us

The Convention (Article 5) obliges the States Parties to promote equality and eliminate discrimination, to take all appropriate steps to ensure that reasonable accommodation is provided to people with disabilities to exercise their rights, including attributing and guaranteeing the performance of the obligation by "third parties" as well. For the purposes of this Convention "reasonable accommodation" includes any necessary, appropriate modifications and adjustments which do not entail disproportionate and unjustified burden on others in order to ensure to people with disabilities the recognition or exercise of any rights and freedoms on an equal basis with others.

In the context of Article 5 in conjunction with Article 12 of the Convention, the obligation of the States Parties to provide reasonable accommodations for persons with disabilities to exercise their rights is twofold. One is the abolishment of the regime of restriction of the legal capacity and regulation of the supported decision making as a mechanism for adaptation of the tools for exercise of human rights to the needs of people with intellectual disabilities or mental health problems. The other aspect involves regulating the obligations for third parties backed by appropriate safeguards and sanctions towards the implementation of reasonable accommodations and adaptation of their services and activities so that they can be used by people with intellectual disabilities or mental health problems. The commitment of the States Parties includes their obligation to provide reasonable accommodations for people with disabilities in the areas of health, education, employment and to ensure the freedom and security of the person, as well as access to justice.

The legal standards relating to the provision of reasonable accommodations and to ensuring access for people with disabilities to social environment, services, communications, information and other facilities for the general public is sporadic in Bulgarian legislation. Regulated steps in this direction are mainly in the field of standards in public and house building, access to public places and buildings. They are aimed primarily at ensuring accessibility and

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16 According to Article 5 of the Protection Against Discrimination Act "building and maintaining the architectural environment, which impedes the access of persons with disabilities to public places is considered discrimination"
adaptation of the architectural environment for people with physical or sensory disabilities. The Protection Against Discrimination Act contains a number of texts which ensure protection from discrimination on the grounds of "disability" in the exercise of the right to education and training, the right to work and other rights. The implementation of this protection requires the introduction of reasonable accommodations and modification of the environment to people with disabilities, taking into account all types of disabilities, including learning disabilities and mental health problems. Article 16 of the same act stipulates that the employer is required to adapt the workplace to the needs of a person with disability when he/she is hired or when disability occurs after he/she has been hired, unless the cost is excessive and would incommode the employer seriously. But in the application of this text it can be concluded that the adaptation of the workplace is mainly associated with people with physical and sensory disabilities and concerns the physical adaptation of the workplace.

Thus, the objective fact is that people with intellectual disabilities and people with mental health problems are placed in a more disadvantaged position compared to people with physical and sensory disabilities and are more excluded from public life to a larger extent. Most of them are placed in specialized institutions and put under restricted legal capacity and therefore their chances of access to the primary labour market are very limited. Therefore, practice raises fundamental questions relating to the physical workplace adaptations. The legal practice follows suit. According to Decision № 8436/08.07. 2008 of SAC on administrative case № 5804/08 "the provision of Article 16 of the Protection Against Discrimination Act is not aimed at changing the work functions but at creating accommodations and external adaptation of the working conditions to the needs of a disabled person for whom the workplace may create difficulties for exercising the work functions". The possibilities of modifying the workplace for people with intellectual disabilities and/or mental health problems are not discussed.

In these groups of people with disabilities adaptation related to removing the physical difficulties is not that important as the adjustment of the information about the production process or job function in an easy to read way, creating an appropriate workplace environment that promotes optimal functioning of a person with a disability, the introduction of other forms of communication other than the approved verbal means, if necessary, even allowing the presence of a supporter in the workplace. International jurisprudence provides sufficient examples of solutions in this direction but in countries where people with intellectual disabilities and mental health problems have real access to the labour market and thus the question of reasonable accommodation in the workplace is raised in the context of Directive 2000/78/EC of 27.11.2000 for establishing a general framework for equal treatment in employment and occupation, which is transposed in the Bulgarian Protection Against Discrimination act.

In the Protection Against Discrimination Act there are no other rules establishing reasonable accommodations and modification of the environment and provision of services by third parties in connection with the exercise of the rights of persons with disabilities and protection against discrimination. Leading is the main principle of non-discrimination on the grounds of "disability" as set out in Article 5, and the prohibition to refuse supply of goods and services

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17 It should be noted that under the Action Plan 2014 - 2015, on the implementation of the Strategies to ensure equal opportunities for people with disabilities 2008 - 2015 the development and provision of additional services are provided to facilitate access to public information and public services but with respect to persons with intellectual disabilities and mental disorders such additional services are provided to their companions, and not the individuals themselves.
as well as offering products or services of lower quality or in less favourable conditions to people with disabilities, regulated in Article 37 of the act.

It is interesting to trace the connection with the introduction of reasonable accommodations and modification of the environment in the existing legal practice in matters relating to the implementation of such provisions. For example in case № 3458/2010 of SAC with Decision № 7713/10.06.2010, the Supreme Administrative Court ruled that there is "direct discrimination on the grounds of “disability” as the headmaster and the class teacher did not provide supportive environment for a pupil, which is an obligatory condition for conducting effective integrated education of children with special educational needs and thus they placed the pupil in unequal educational environment compared to his peers who are non-disabled children". In connection with the application of Article 37 of the Protection Against Discrimination Act SAC with decision № 9544 of 28.06.2011 of SAC on administrative case № 6588/2010, held that "the Bulgarian anti discrimination law does not permit justification of direct discrimination. Whether the discriminating person has made efforts to enable services to citizens with disabilities by introducing the appropriate procedure, or did not have enough funds, i.e. what were his/her objectives, the efforts made and the causes that led to the different treatment are irrelevant to direct discrimination”. Therefore, all third parties who provide goods and services should adapt these activities and offer them in an accessible way to people with disabilities, including people with intellectual disabilities and/or mental health problems.

The Law on Electronic Governance (LEG) has also regulations relating to the provision of electronic services in a manner accessible to persons with disabilities. According to Article 8 paragraph 2 of the Administrative Authorities Act, persons performing public functions and organizations providing public services are required to provide all services within their competence electronically as well. Respectively, according to Article 12 paragraph 2 of the act electronic administrative services are provided in an accessible manner and in a user-interactive mode to persons with disabilities too. The interface must also ensure the electronic declaration of wills and electronic documents in an easy and understandable way for consumers, including people with disabilities (Article 20 paragraph 2 of the LEG). Secondary legislation related to electronic governance requires that when creating information systems for administrations and organizations providing public services the standards for access to electronic services of persons with disabilities including intellectual disabilities and/or mental health problems should be taken into account and the information should be presented in an easy to read form and accessible to users with different abilities and levels of reading and perception of numbers, letters and text.

The issues related to the provision of reasonable accommodations and modification of services to ensure access for people with disabilities are not subject to scrutiny and regulation by the regulatory framework for financial services, credit and banking. In the Law on Credit Institutions in the chapter regulating the relations between banks and the people serviced by them is stipulated that the bank can take money on deposit under the stated conditions which it must apply to all depositors. There are no requirements for granting reasonable accommodation for the use of financial and banking services by people with disabilities.

The Law on Consumer Protection (LCP) stipulates a general obligation for retailers to provide consumers with information on goods or services prior to their acquisition or use, respectively. (Article 4 of the LCP) This information should be provided in writing or in another appropriate manner that allows its perception by the user. The act does not stipulate obligations for retailers to
provide information in a form accessible to people with disabilities, including in an easy to read form.

The requirement of Article 13 of the Convention is related to the reasonable accommodation of procedural rules in order to ensure access to justice of persons with disabilities. Analysis of Bulgarian legislation in other areas shows that in general there are no rules to oblige subjects, third parties and public authorities and institutions to provide reasonable accommodation and to adapt their activities and services to ensure their accessibility for people with different types of disabilities. For example, in relation to access to justice in the Civil Procedural Code there is only one rule of Article 4 Paragraph 3 according to which when the case involves a deaf or mute person an interpreter shall be appointed. Standards for procedures and adequate support measures ensuring the effective performance by the persons with disabilities of their role of participants in any proceedings are not provided. Similar conclusions can be made with respect to the Penal Procedural Code, the provisions of Article 142. Reasonable accommodation of the court rules to ensure the effective participation of persons with disabilities includes appropriate training for those working in the judicial process to communicate with people with disabilities, which is not regulated by the Bulgarian legislation.

Reasonable accommodations targeted at people with disabilities are mentioned in a number of strategic and policy documents, but again what is meant are mainly adaptations of the physical and architectural environment. It should be noted that the Concept for changes in the the Social Assistance Act and the Ordinance on its implementation in connection with the sentencing of the ECHR in the case of Stanev vs. Bulgaria, unfortunately demonstrates a misunderstanding of the essence of Article 12 and related needs to adapt the tools for independent enjoyment of rights by people with intellectual disabilities and mental health problems in the use of social services.

In the light of the aforesaid the overall regulation and stipulation in the Bulgarian legislation of the obligation of third parties (retailers, public entities, institutions and bodies) to create reasonable accommodations aimed at people with intellectual disabilities for independent exercise of their rights is imminent.

Essential for the actual exercise of rights of people with disabilities is the reasonable adjustment of procedures in various legal proceedings, including those relating to measures for the treatment of people with mental health problems. The adequate training of all stakeholders (courts, prosecutors, investigative bodies, etc.) to work with people with disabilities, in particular - with persons with intellectual disabilities or mental health problems is also necessary.

It is because most countries do not clearly take into account the standards laid down in Article 9 of the Convention that the United Nations Committee on the Rights of People with Disabilities launched the procedure for the issuance of General Comment on Article 9 which will have the status of interpretation of that provision. According to the Draft General Comment, ensuring access for people with disabilities should also cover adaptation into easy to read and understand forms of the information that is intended for the general public in connection with the provision of public and private services, ensuring forms of support such as assistants and intermediaries, guides, readers, professional translators in the sign language, the use of large and easy to read font, pictures and signs, capacity building of government institutions to communicate with people with different types of disabilities in order to ensure their access to public services and public information (as defined in Article 9 standards). Without ensuring these standards it is not possible to ensure the environment necessary for enjoyment of other
rights set out in the Convention (Article 11, Article 12, Article 14, Article 19, etc.)

In the authors’ opinion the explicit obligations of the government institutions and private providers to ensure accessible public information (for all public services), as well as information provided by private providers of goods, facilities and services for public use should be stipulated. For this purpose, we consider it necessary the Concept on the amendments of the Social Assistance Act to specify both the measures ensuring amendments to the relevant statutory acts such as the Integration of People with Disabilities Act and the Rules for its implementation; the acts and regulations governing the structure and operation of various government institutions (ministries, government and executive agencies, commissions, the National Assembly, courts, etc.) regarding the requirements which should be met by the information published and disseminated to the public, the Statutory Acts Act, the Access to Public information Act, the Consumer Protection Act as well as the measures ensuring their actual implementation.

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GUIDELINES FOR POLICY CHANGE

Applying the standards of Article 12 of the Convention, aimed at creating personal guarantees for personal, full and effective exercise of rights should trigger changes in many different sectoral policies. The purpose of these changes should be:

- to provide the person access to the very exercise of rights;
  
- to give guarantees that the concrete measures and procedures adhere to the principle that a person makes decisions according to his/her personal wishes and preferences, that there are safeguards not only against abuse, manipulation and violence, but also against "substitution" in decision-making.

The sectoral policies in which changes should be made can be summarized through the specific rights:

- the right to choose with whom and where to live or to determine one’s the place of residence;
- the right to dispose of one’s property and funds;
- the right to select and organize one’s treatment;
- the right to work;
- personal relationships.

According to the thus outlined fields the specific policies that should be subject to reforms are: housing, access to social services, access to health care, promotion of employment and social entrepreneurship. Of course, all proposed guidelines for change of sectoral policies should necessarily be preceded by a change in the pattern of the legal capacity to act, and the elimination of the
restrictions that exist in the Bulgarian legislation on people who suffer from certain conditions and/or diseases, resulting in putting them under full or restricted legal capacity. Detailed proposals for change of national legislation on restriction of legal capacity are contained in the Position on the change of the legal environment "New Formula for Legal Capacity to Act - Opportunity for Everyone to Exercise Their Rights. Opinion on the Paradigm Shift of Article 12 of CRPD" prepared by a team of lawyers and experts at BCNL.

However, given that the SDM is "a fan of measures," which includes a set of mechanisms and interventions to ensure the diversity of measures, it is not enough only to change the basic laws related to the legal capacity to act (the Persons and Family Act, The Family Code, the Civil Procedural Code). It is necessary to initiate appropriate changes in policy and legislation in each of these spheres of life.

**Determining place of residence**

**Address registration**

At present under the current regimes of full and partial guardianship, persons with restricted legal capacity have the address registration and the place of residence of the guardian/custodian. They do not have their ID cards and thus conditions for abuse are created. This situation should be changed in the regulation of the changes related to the standards of Article 12 of the CRPD.

**Accommodation in residential services**

Persons with intellectual disabilities or mental health problems should be guaranteed the opportunity to determine their own place of residence. The use of social services in specialized institutions and residential services in the community and accommodation there respectively should be made solely and only on account of their will and preferences. There always should be respect for the will and wishes of the person both in the court proceedings and in the administrative proceedings on the institutionalization, including the prediction of periodic judicial review of the imposed measure. It is necessary to abolish the bad practice of accommodating people with intellectual disabilities and/or mental health problems in institutions and residential services by third parties, their proxies in the civil relations, in spite of their desire to live independently in a home environment. Placement in residential service should be regulated as a last resort and must be implemented based on the decision of the court and the person may appeal the placement.

The measure “placement in an institution” can be applied only when all possibilities for care in the community have been exhausted and there are no opportunities for using residential social services operating in the region for the respective target group. To accommodate a person in an specialized institution he/she first must be offered, in an effective and accessible way, support by the existing community-based services, i.e. it should be explicitly stipulated the requirement to offer first community-based support and if after a statutory period of time the person does not have the possibility to lead a relatively independent life even with the help of professionals, the person may be accommodated in a residential service (e.g. in a centre for family type) or in a specialized institution (SI).

The placement should always be temporary in accordance with the law, and it should be stipulated expressly that the period of placement should not exceed 3 years and that there should be a mandatory review of the case and periodic evaluation/expert appraisal of the person.

In order to ensure maximum protection of the rights of the person concerned and to fulfil its function, the court proceedings should include the following:
✓ Mandatory personal hearing of the person without exception;
✓ Mandatory comprehensive expert appraisal with the participation of a psychiatrist, psychologist, speech specialist, social worker (supervising the case) or a person who is close with the candidate for placement;
✓ Comprehensiveness of the field of activity of the person;
✓ Determination of the duration of the measure;
✓ Ensuring an opportunity to engage a lawyer or a special representative of the person from the Legal Aid Bureau as is the case with individuals placed in specialized institutions for provision of social services or using residential social service.

Also, as part of the procedure the Act should explicitly stipulate that persons are accommodated in residential services in the area where they reside. If there are no suitable residential services or the persons do not want to use such services in their place of residence, they should be directed to other appropriate services in other municipalities. A prohibition should be stipulated against the use of lack of appropriate services in the community as the sole reason for person's placement in a residential service.

Legal aid

Information about the legal possibility to use legal assistance through the appointment of public defender is provided to persons placed in homes for social services or residential services in the community. Their right to free legal aid stems from their status of beneficiaries of the social assistance system. The provided legal assistance may cover the hypotheses expressly stipulated in the Legal Aid Act (LAA) such as the use of legal advice and legal representation in the event of litigation. Under the LAA a specialized body is created, the National Legal Aid Bureau (NLAB), in charged of the administration and control of the quality of the rendered legal assistance. In order to provide legal aid for consultation with a view to reach a settlement prior to initiating legal proceedings or filing a suit, and the preparation of documents for filing a suit, the decision to grant legal aid is taken by the President of NLAB in 14 days after the presentation of the documents required by law. It is vital that lawyers appointed as public defenders for people with intellectual disabilities or mental health problems are trained in the standards of the CRPD and the new paradigm so that they are able to provide adequate legal protection of their principals. Practice shows that currently lawyers appointed as public defenders in the proceedings for involuntary and obligatory commitment for medical treatment do not share the values of the CRPD. Driven entirely by the medical model of disability they are rather formal representatives of the persons and do not organize their defence effectively.

Housing

It is necessary to develop strategies and policies for social housing at municipal level, including for development of supported living and creation of social services such as temporary or monitored housing for persons with disabilities. Currently, the practice shows that often, especially people with mental health problems are prevented to live independently in their own homes, even if they own them. The stigma with respect to them is so strong that neighbours take illegal actions restricting their access to their homes and they are forced to live on the street. It is therefore necessary to provide quick and effective working measures to prevent acts arbitrarily restricting access of individuals to their own real estate, combined with support measures to ensure their autonomy and ability to manage their lives. It is also important to develop a system of mobile social services such as supported living and others which
daily support people with disabilities and provide social interventions when necessary.

**Process of evaluation of the needs and efficient provision of services**

The actual supply of services should be effective and for this purpose safeguards should be provided to ensure the individual and comprehensive evaluation of the needs of the person and a personalized approach should be applied throughout the process of research and re-evaluation of the use of social services.

The currently existing system of evaluation of the needs of persons applying for the use of social services (including institutionalization) under Article 40 of the Ordinance for Implementation of the Social Assistance Act (OISAA) is formal and does not reflect the objective need for support. The stipulated rules of Article 40 of OISAA and Annex № 10 thereto reveal a model centred on the deficits of the individual. The only issue related to the environment of the disabled person is the question of whether he/she has friends and relatives and if they are willing to care for him/her.

When conducting the evaluation, particular attention should be given to the information about the factors of the everyday, family and social environment in which the disabled person lives, its limitations and strengths.

To improve the method of evaluation the authority in charge of conducting the evaluation of the needs of the person with a disability should be obliged to:

- ✓ provide the necessary individual support to the person in need of social service to assess independently his/her own needs;
- ✓ provide independent formation and expression of the will: all persons aged 18 to be able to express their will, which cannot be substituted by other people. The disability itself or a specific diagnosis cannot be construed to limit the possibility of expressing the will and accepting the consequences of this.
- ✓ direct the focus not on the medical diagnosis but on the various obstacles and barriers in the environment that impede the full and effective participation of people with disabilities in society on an equal basis with others.
- ✓ carry out a comprehensive evaluation of the everyday, family and social environment of the person with disabilities by differentiating the strengths and weaknesses of each element of the environment and identify people significant to the person (potential supporters);
- ✓ prepare a conclusion based on the above circumstances as well as on the observations of the evaluator and his/her professional competence and expertise on the actual needs of the person who expresses a wish and a need for a social service (or for whom such a need has been requested). The conclusion should contain assumptions about the need for support for the person with disability and for his/her family system, circle of friends and relatives and/or social environment, as well as recommendations on the need for the community to develop certain services, the lack of which was found during the evaluation.

**Access to services**

Any person with a disability should be given access to social services to improve his/her functioning and to support him/her in the development of his/her skills. Social services should be varied giving different opportunities so that an individual approach can actually be implemented according to the specific level of functioning and capabilities of the person identified through a comprehensive and independent evaluation and self-evaluation.
It is possible that in the course of the study of the needs of a person with a disability it is established that the services that he/she needs are not developed in the community or there is no possibility for his/her admission due to the full capacity of existing relevant services. In the event that among the available services there is no appropriate service matching the individual needs of the person in a municipality, the person is directed to use social service delegated by the state or other service of the respective type, operating within the nearest municipality.

**Informed choice**

Any person with a disability has the right to freedom of expression and informed choice, including agreeing to use the offered social services or any part thereof, but he/she can also refuse to use any of them. For this purpose, the SAA should ensure that the person with a disability has a free and informed choice of social services, including the right of refusal without this automatically leading to the risk of institutionalization.

If the disabled person agrees to use the proposed social services SAA can guarantee that a social worker follows the case on a periodic basis and actively intervenes in the event of a change of the needs in relation to the used social service.

If the person with a disability declines to use a part of the offered services, but accepts another, then the social worker should analyze the reasons for the refusal and seek alternatives that are appropriate to the stated needs of the disabled person. If the person with a disability refuses all social services that may be offered in the community, it does not mean to proceed automatically to placement in an institution which would be guaranteed as exhaustive by the legislative measures.

The reasons for refusal can be different, it is even possible they to be due to lack of critical thinking regarding the severity of the situation in which the person is, or the presence of unrealistic expectations and/or requirements to the people close to him/her. It is also possible that some people with disabilities have a realistic idea of how to overcome the difficulties and wish to make efforts to cope with them alone. In such a case specialized social work must be carried out for understanding the actual situation and a joint search for additional alternatives, including working with the family system, etc. should be done.

**Choice and organization of treatment**

Persons with intellectual disability/or mental health problems should have guaranteed access to hospital and out-patient care. Naturally a system of services, working on prevention and mental health issues should be seriously developed in order to improve the environment overall and this can be the topic of a separate analysis.

For the measures for involuntary treatment and forced and compulsory placement and treatment mechanisms for effective

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18 Compulsory treatment is regulated as a compulsory medical measure in Article 90 of the Penal Code, under which compulsory treatment in a general psychoneurological establishment may be ordered by the court regarding the mentally ill, who in view of his/her mental condition and the nature of the committed socially dangerous act requires compulsory care and treatment. Compulsory treatment in a special psychiatric hospital or in a special ward may be ordered by the court regarding the mentally ill, who in view of his/her mental state and nature of the socially dangerous act is particularly dangerous for society or for their relatives and friends. In these cases the person is kept under strong supervision, precluding the possibility he/she to commit an act dangerous to society.

19 According to Chapter Five, Section II of the Health Act in relation to the provision of Article 146 of the same act, compulsory placement and treatment is a procedure in which, on the basis of legal proceedings the mentally ill with any
participation of persons in all procedural actions should be provided, regardless of their condition and the presence of a medical diagnosis. In terms of the court rules relating to the procedures for forced and compulsory placement and treatment policies and measures for appropriate reasonable accommodations must be provided and regulated to ensure the participation of persons and to regulate such in respect of all procedural actions regardless of the capacity in which the persons are engaged.

With regard to the issues related to informed consent to treatment it is necessary to provide support measures that take into account the wishes and preferences of individuals. Also, the legal framework must provide a variety of medical interventions to be used only on the basis of a personally given informed consent by the person and the decisions about these interventions (like the exercise of the so-called personal rights) should be part of the scope of the SDM (for example, sterilization, etc.).

Crucial in this case will be to develop the capacity of social service providers to support effectively the person to be given access to health care. In this sense, it will be important to supply integrated services that combine social and health interventions. Considering that the main providers of social services are NGOs, the legislation should allow them to provide health services and to register as hospitals.

With regard to the healthcare the basis for evaluation of disability and disease needs to be changed by distancing it from the medical model of disability. Currently the decisions issued by the Territorial Expert Medical Commission (TEMC), which are important for access to social services and benefits by people with disabilities and are also applied to the court cases for restriction of legal capacity, are based entirely on medical diagnosis. They assess the disability of the persons rather than the existence of a resource that can be supported. This should change both at the level of the regulatory framework as well as in relation to practice. In the policy and legal framework it is necessary to establish guarantees that the new tools for SDM (contract, advance powers of attorneys, preliminary declaration, facilitation, etc.) will be adequately applicable to the decisions of persons with disabilities about where to be treated and give informed consent including the choice of a psychiatric hospital for people with mental health problems.

An important change will be to make investments in the development of human resource and in the development of the expertise of professionals in the medical profession in relation to the standards of Article 12 of the Convention. Such training in raising the awareness about the rights of people with disabilities, their dignity, autonomy and needs is necessary both for specialists-psychiatrists and for other specialists and GPs to be able to ensure access for people with disabilities to health services and care by respecting their rights.

**Employment**

Currently, persons with intellectual disabilities or mental health problems are entirely excluded from the labour market. One reason for this is that persons with fully restricted legal capacity cannot enter into labour contracts. Another reason lies in the way in which disability is determined according to the decisions of the TEMC. Leading is the medical diagnosis and medical understanding of disability as the lack of resources is assessed, not their availability and what needs to be done to support the development of these
resources. The assessment of TEMC disregards social skills and accumulated experience in the evaluation of disability and disease and does not account for the way this person functions in the different areas of his/her life. Disability is defined as a percentage relative to all areas of activity.

In this regard the authors of this analysis consider that the most advisable would be if Bulgarian legislators and decision makers take action for the official introduction of the WHO International Standard for evaluation of diseases and disabilities. These standards make it possible to assess the way in which the individual operates as opposed to disease and disability assessment applied in the current Bulgarian legislation justifying the conclusions of the TEMC. Known are absurd decisions of TEMC in which due to the presence of certain medical diagnosis, people who can manage extremely well in life and function at a high level have disability assessed between 90 % and 100%.

Moreover, the employment of persons with intellectual disabilities and/or mental health problems is perceived as social rehabilitation and art therapy, i.e. as part of a social service and intervention and without a connection to the real labour market, and after a person has acquired a certain skills level as a result of social intervention, he/she is deprived of the opportunity to use them in reality and provide for their own lives through a regular employment at the primary labour market.

It is necessary to change completely employment policies in that direction, and the focus in the strategic documents and legislation should be placed on the measures for creating reasonable accommodations for people with disabilities when signing a contract of employment (presentation of the text in an easy to read form and other relevant information), providing reasonable accommodations in the workplace for people with disabilities, including people with intellectual disabilities and mental health problems.

It is also necessary to take steps for the development of protected and supported employment for people with disabilities. In this respect, the development of social enterprises could have an important role. To achieve this, besides the programmes that are aiming at supporting the social enterprises, other measures can be taken as part of the budget of the social services similar to the personal budget systems.

**Management of property, finance, private funds**

The Convention in Article 12 Paragraph 5 requires ensuring equal rights for people with disabilities to own or inherit property, to control their own financial affairs and to have access to bank loans, mortgages and other forms of financial credit. The protection of people with disabilities from arbitrary deprivation of their property should be ensured, a significant change of the policies and legal framework on the activities and the provision of reasonable accommodations for people with disabilities by the notaries, banks and credit institutions, land registry and other entities operating in this area should be provided.

It is necessary to improve and develop the expertise of the legal professionals (notaries, lawyers, judges), experts from the banking sector and others working with people with disabilities through programs and training, and to familiarize them with the standards of Article 12 of the CRPD. Mechanisms should be developed through social services as part of social work to promote the resources and skills of people with disabilities to manage their property and finances according to their preferences.

**Personal relationships**

In connection with the recognition of people with disabilities the right to personal ties and relationships, including the right to marriage, family planning, choice of the number and time of birth of
children on an equal basis with others, the ban on persons with fully restricted legal capacity to contract marriage should be removed. Moreover, policies aimed at the development of social services should focus on services and social interventions that aim to support individuals with disabilities in the development of networks of friends. It is necessary the system of social services to promote the creation of personal ties and relationships as part of social work for the effective inclusion of persons.

As far as traditional family ties of individuals with mental health problems often break down because of the specifics of the diseases, people remain in complete isolation. For people with intellectual disabilities these ties are confined to the circle of the biological family because of the stigma. This is why the policies and legislation associated with the provision of social services should be oriented to support the socialization of individuals and to establishing personal connections and relationships with others outside the service personnel which they use or the circle of family and friends.

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SDM AS SOCIAL INTERVENTION

As mentioned at the beginning of this document, to talk about Article 12 and the freedom to make choices is primarily related to the change of the legislation on legal capacity to act. But apart from the specific measures defining the legal status of the person these measures can/must be implemented through social interventions that need to find their regulation in Bulgarian social policy. It would not be appropriate to rely on the current profile and capacity of existing services without taking into account the specifics of these interventions.

This comprehensive reform in legislation means that the social interventions should be regulated as a separate type of social services for the measures for SDM to be effective. Quality standards should be provided for those social services to ensure the necessary funding and to include the requirement for special training for providers of such services in compliance with the requirements and standards of Article 12 of the CRPD.

Social interventions in the process of SDM, that have proven to be effective in the implementation of the “Next Step” Programme related to facilitation of the support networks and identification of significant for the person supporters should be defined as a new kind of social service. Funding for those social services should be provided, but not within a single financial standard added to the existing types of social services for people with disabilities. It is necessary to quantify this type of service independently as an activity and function of support.
Of course, if there is a change of the policies in different areas it is imperative to provide safeguards as well. It is important to note that these safeguards should not be allowed to slip along the plane of restrictions to people with disabilities in order to protect their "best interest" in a specific area but to be developed in the direction of best communication and interpretation of their will and preferences.

In providing this kind of social service related to SDM it is essential to use the resource of providers which work in the field of intellectual disabilities and mental health problems. They have experience in working with these target groups and perform a number of social interventions similar to those associated with SDM as part of other social services. As far as the social activities related to SDM are new to the Bulgarian reality and should reflect and meet the standards stipulated in Article 12 of the CRPD it is very important for this kind of service to develop standards of quality and to train the providers of these service. The need for training is justified by the fact that the CRPD requires the States Parties to the Convention to promote the training of professionals and staff working with persons with disabilities in exercising their rights under the Convention (Article 4 paragraph 1 "i" of CRPD). The financing of these services should be separated from their provision and the training should be carried out by organizations that are not involved in performing this work.

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**STRUCTURAL REFORM**

In view of the introduction of SDM as a tool for personal exercise of rights

Some structural reforms will be needed to assure the reform. The protective functions of the state should remain in the authority of the social services. In the new legislation they should be constituted as a party in the court proceedings, but only as a party without the ability to lead the process on behalf of the person. Another aspect of their responsibility should be to provide information (and to collect it actively) and to participate in the evaluation of the person, referral to services and participation in the general action plan. Anyone who becomes aware that a person is at risk should be obliged to refer to them.

The mayor as the current authority on full and partial guardianship should be kept as an authority with specific powers, but under different name - authority on the legal capacity to act. As an authority on the legal capacity the mayor will have the following obligations:

* in cases where it is known that a person cannot exercise his/her rights - to organize the necessary procedures;
* to ensure the involvement of all stakeholders;
* to enter/delete circumstances off the register;
* to appoint facilitators and to convene the individual council when facilitation measure is instituted with a court decision;
* to actively gather information and to maintain a specific fund with which to pay the designated facilitators.
The specified support measures should be entered in a special register within the "Population" National Database (this could be the personal registration card in the population register within the meaning of Article 22 of the Civil Registration Act ESGRAON). Not all third parties will have access to the register, but only explicitly mentioned ones (notaries public, banks, business organizations, etc.).

CONCLUDING SENTENCES

This document is not a detailed analysis of the necessary changes as we assume that the public spheres which should be reformed have already been determined by the very fact of the adoption of the UN Convention and its ratification by the European Union and the Bulgarian state. That is why, the authors, starting from few fundamental analyses and practices preceding this document (experience of “New “Formula” for the Capacity to Act - Opportunity for Everyone to Exercise Their Rights. Statement on the Paradigm Shift of Article 12 of CRPD”, Sofia 2014, Cost Benefit Analysis of the Supported Decision Making, Sofia 2014, Action research. The Pilot Projects on SDM – is it possible to learn, Sofia 2014, Guidelines to the exercise of rights, Sofia 2014.) offer specific guidance to changes in sectoral policies with a single purpose - to ensure that people with intellectual disabilities and mental health problems can exercise their rights fully and equally with other members of society. The guidelines can be easily developed into specific parameters for reforms (action plans and legislative texts) which can be effective if the principles and standards of Article 12 of the Convention are observed.