

## CHILD WELFARE IN CRISIS: A FOCUS ON EASTERN EUROPE

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*Rights are important because they recognise the respect their bearers are entitled to. To accord rights is to respect dignity: to deny rights is to cast doubt on humanity and on integrity. Rights are an affirmation of the Kantian basic principle that we are ends in ourselves, and not means to the ends of others.<sup>1</sup>*

### INTRODUCTION

States have long failed to recognize the rights of children. Even after the enactment of the UN Convention of the Rights of the Child, the international community continues to deny children basic human rights.<sup>2</sup> Though it remains in conflict what holding rights actually means for children,<sup>3</sup> many in opposition argue that children lack the capacity to hold rights and make decisions in their best interests.<sup>4</sup> However, the legitimacy of this argument is called into question by historical instances wherein dominant members of society deny rights to less powerful groups for their own personal gain (exemplified by both race and gender).<sup>5</sup> In this case, caregivers' concerns that granting rights to children will undermine caregiver interests may explain the disjuncture between the enactment of

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<sup>1</sup> Michael Freeman, *Why It Remains Important to Take Children's Rights Seriously*, 15 INT'L J. OF CHILD. RTS. 5, 6 (2007).

<sup>2</sup> *Id.* at 5.

<sup>3</sup> Jean Grugel, *Children's Rights and Children's Welfare after the Convention on the Rights of the Child*, 13 PROGRESS IN DEV. STUD. 19, 26 (2013).

<sup>4</sup> Freeman, *supra* note 1, at 8.

<sup>5</sup> *Id.* at 6.

policies protecting children's rights and the actual application of such policies.<sup>6</sup>

Universally, children's rights can be systematically violated in a variety of ways. Children are denied access to adequate education or healthcare, exposed to corporal punishment and abuse, and even subject to unreasonable institutionalization.<sup>7</sup> For example, in the case of *Nencheva and Others v. Bulgaria*, the European Court of Human Rights held that vulnerable children in care facilities have the right to adequate food, shelter, and medical care; and by failing to provide such resources, the state violated the children's Right to Life under the European Human Rights Convention. Prior to *Nencheva*, the state of child welfare in Eastern Europe, and in particular Bulgaria, has long been a cause for concern. While in the United States institutionalization is regarded as a last resort for youth who have entered the child welfare system,<sup>8</sup> institutionalization is considered the most "convenient" option in Bulgaria and is much more standard.

In the following sections, this article will use the institutionalization case of *Nencheva and Others v. Bulgaria* to explore the history of child welfare, particularly in Eastern Europe. Additionally, it will analyze policy initiatives undertaken to protect the rights of children. Finally, this article will identify the shortcomings of current child welfare policies and present potential strategies for protecting the rights of vulnerable children.

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<sup>6</sup> Grugel, *supra* note 3, at 19.

<sup>7</sup> *Id.* at 20.

<sup>8</sup> Sigrid James et al., *Children in Out-of-Home Care: Entry into Intensive or Restrictive Mental Health and Residential Care Placements*, 14 J. OF EMOTIONAL & BEHAV. DISORDERS 196, 196 (2006).

## I. CASE STUDY: NENCHEVA AND OTHERS V. BULGARIA<sup>9</sup>

### *A. Background*

During the winter of 1996-97, fifteen children and young adults died in the Dzhurkovo home for children with mental and physical disabilities (“the Dzhurkovo home”), located in Dzhurkovo, Bulgaria.<sup>10</sup> In response, the parents of the deceased (“Applicants”) sued in the European Court of Human Rights, alleging violations of the European Convention on Human Rights (ECHR).<sup>11</sup>

The Dzhurkovo home accommodated nearly eighty children with varying degrees of physical and mental disabilities during the winter of 1996-97. Some children had been placed in the home by the state after their parents had relinquished custody, while others had been placed in the home at the direct request of their parents.

To set the stage, in 1996-97, Bulgaria underwent a severe economic, financial, and social crisis with inflation rising over 1,000%. As a result, funding was cut and the home could not cover the costs of food and basic supplies for its residents. During the 1996-97 winter the home only allocated .80 euros per child per day. Additionally, the home was unable to provide adequate medical treatment to its residents due to position vacancies and scarce funding for medication. Further, the home was inaccessible by car because of poor weather conditions, and the nearest hospital was nearly forty kilometers away. Ultimately, the home was unable to provide proper transportation for sick children.

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<sup>9</sup> *Nencheva & Others v. Bulgaria*, No. 48609/06, Eur. Ct. H.R. (2013). All facts in this section drawn from pages 1-5 of the Press Release for the European Court of Human Rights Case of *Nencheva & Others v. Bulgaria*.

<sup>10</sup> *Id.* at 1.

<sup>11</sup> *Id.*

In September 1996, the Dzhurkovo home reported the lack of resources and inability of the home to properly care for its residents to the Ministry of Employment and Social Policy. In addition, the home requested that the Ministry's departments take action, specifying the quantities of resources required to properly care for its residents. Unfortunately, the home's request received little to no follow-up action from the Ministry, so a new request was directed at the Foreign Aid Agency. The home informed the Agency that the situation was worsening and urged the agency to take action. Again, their request received no response.

To make matters worse, in January 1997, Municipal Social Services transferred a group of eight children to the Dzhurkovo home. In an attempt to preserve already scarce resources, the manager of the home appealed the transfer to the Regional Committee of the Red Cross, the Foreign Aid Agency, and the Ministry of Employment and Social Policy. The manager again pled the various agencies to provide immediate assistance. In the absence of any response, the manager launched a radio appeal for private donations, which resulted in some assistance.

By late February 1997 the Dzhurkovo home still had not received any response from the Ministry of Employment and Social Policy or the Foreign Aid Agency, resulting in the deaths of seven children. The manager again contacted the Ministry, emphasizing the need for immediate action. Finally, the home received a one-time payment of approximately 3,720 euros; however, by that time, another eight children had died, totaling fifteen dead children.

During the course of investigation into the children's deaths, the prosecutor's office requested the Ministry of Employment and Social Policy submit documents concerning the case. In response, the Ministry office contended that the Dzhurkovo home fell under the Municipality's budget rather than that of the Ministry. As a result, the Ministry's archives did not contain any record of correspondence with the Dzhurkovo home during the 1996-97 winter. At the same time, the prosecutor's office requested information from the Ministry of Finance. However, the Ministry informed the prosecutor that all

files related to the case had been destroyed at the expiration of the statutory period for keeping such documents. Likewise, the prosecutor's office was informed by the Municipality that documents relating to the case had also been destroyed.

### *B. Procedural Posture*

On July 30, 1999, the regional public prosecutor's office opened an investigation against the home to determine whether a causal link existed between the deaths of the children and a breach of its obligation to protect the life, health, and well-being of the patients. On April 5, 2004, the prosecutor's office charged the manager of the home, the home's medical officer, and head nurse with unintentional homicide through breach of statutory duty. The charge was amended on January 17, 2005 to include a charge for professional negligence. On May 18, 2005 all three defendants were acquitted. The Court of Appeals later upheld the judgment, as did the Supreme Court of Cassation, which serves as the final court of appeal in Bulgaria.

### *C. Applicable Law*

Article 2 of the European Convention on Human Rights (ECHR) provides that "[e]veryone's right to life shall be protected by law."<sup>12</sup> Article 3 of the ECHR mandates the prohibition of torture, establishing that "[n]o one shall be subjected to torture or to inhumane or degrading treatment or punishment."<sup>13</sup> Article 13 establishes a right to an effective remedy for those "whose rights and

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<sup>12</sup> Convention for the Protection of Human Rights and Fundamental Freedoms art. 2, Apr. 11, 1950, ETS 005, [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) [hereinafter ECHR].

<sup>13</sup> *Id.* art. 3.

freedoms as set forth in [the] Convention are violated.”<sup>14</sup> Article 41 establishes “just satisfaction” stating that “[i]f the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”<sup>15</sup>

#### *D. Analysis*

After the acquittal, the parents of the deceased children initiated suit in the European Court of Human Rights alleging violation of Articles 2, 3, and 13 of the ECHR. Applicants argued that the State violated Articles 2, 3, and 13 by breaching its affirmative duty to protect the lives of the persons in its care. Applicants further alleged the conditions in the Dzhurkovo home during the 1996-97 winter amounted to inhumane and degrading treatment. Additionally, reading Article 13 in conjunction with Article 2, Applicants complained of the State’s failure to provide them with compensation for non-pecuniary damages suffered.

Considering Article 1 in conjunction with Article 2, the Court noted that claims for compensation could have been lodged at the time that the criminal claims were alleged against the Ministry of Employment and Social Policy and the Municipality. Additionally, the Court took the view that Applicants’ lack of success in bringing the criminal proceeding against the agencies had not prevented the Applicant’s from lodging corresponding civil claims. Moreover, the Court rejected Applicant’s argument under Article 13 in conjunction with Article 2.

In regards to Article 2, in view of the fact that the tragic events had not occurred in a sudden or unforeseen manner, the State should have known of the risk to the lives of the children in the home

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<sup>14</sup> *Id.* art. 13.

<sup>15</sup> *Id.* art. 41.

and taken the necessary measures to provide life-sustaining resources and treatment. The children residing in the Dzhurkovo home were all vulnerable persons suffering from severe mental and physical disabilities, who had been entrusted to the care and exclusive supervision of the State. Additionally, the manager of Dzhurkovo repeatedly stressed the inadequate conditions of the home and the seriousness of the situation. Despite being informed by the Dzhurkovo home management of the concerns as early as September 10, 1996, the State failed to take necessary measures to prevent the deaths of the vulnerable children placed in its care. Further, following the deaths of the fifteen children residing in Dzhurkovo during the 1996-97 winter, the State failed to open investigation until two years after the tragic events took place. The State's perceived lack of diligence cast doubt on whether the investigations had been conducted in good faith. Moreover, for the foregoing reasons the Court recognized a violation of Article 2 of the ECHR.

After rejecting Applicants claims under Articles 13 and 41, the Court held that the State breached its obligation to protect the lives of the vulnerable children placed in its care. Further, the Court held that the State failed in its duty to implement appropriate procedural mechanisms. Not only did the Court charge the State with a failure to protect the vulnerable children residing in the Dzhurkovo home during the 1996-97 winter, but the public interest at large. The Court therefore found a violation under Article 2 of the ECHR.

## II. CHILD WELFARE REFORM IN EASTERN EUROPE: A FOCUS ON BULGARIA

### *A. History and Background of Child Welfare in Eastern Europe*

Prior to 1989, children in Bulgaria were not considered holders of rights, but rather objects to be controlled by their

caregivers.<sup>16</sup> In 1991 Bulgaria ratified the United Nations Convention on the Rights of the Child (UNCRC). Ratification of the UNCRC came as a response to the external pressure to reform the child welfare systems plaguing most of Eastern Europe. However, after ratifying the UNCRC, the legislature was unable to update the Bulgarian Family Code quickly enough to support the rapid development of child protection legislation.<sup>17</sup> As a result, there was no way for the State to enforce the new child welfare policies.<sup>18</sup> This led to a variety of problems surrounding child welfare in Bulgaria, including the excessive institutionalization of children and youth.

Even after the ratification of the UNCRC, the only type of public care for children in Bulgaria was institutional placement. In mid-1990, less than 1% of children in Bulgaria were institutionalized.<sup>19</sup> By 2000, Bulgaria had one of the highest percentages of institutionalized children in Europe at an outstanding 1.78%.<sup>20</sup> Notably, of these children, only 1% were orphans; 65% had parents.<sup>21</sup> However, the percentage of institutionalized children decreased to 0.61% in the years between 2001 and 2006.<sup>22</sup> As noted, Bulgaria was not the only European country struggling to restructure its child welfare system. In fact, poor management of child welfare was a common theme for most of Eastern Europe. For example, in Hungary, over 22,300 children and youth were living in residential

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<sup>16</sup> Freeman, *supra* note 1, at 6.

<sup>17</sup> Velina Todorova, *Children's Rights in Bulgaria after the End of Communism*, 17 INT'L J. OF CHILD. RTS. 623, 631 (2009).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 636.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

facilities in 1998, with the average length of institutionalization being 3.5 years.<sup>23</sup>

Underlying the implementation of child welfare policies and institutionalization issues were the continued struggles to transition and rebuild following the breakdown of communism. The end of communism led to the collapse of fundamental public services such as health and education, which became especially problematic in the context of child welfare.<sup>24</sup> During the transition period, schools closed, funding to children's institutions was cut, and the challenge of deinstitutionalization was worsened by lack of alternatives.<sup>25</sup> After the end of communism, poverty in Eastern Europe was at its peak, and the economic issues facing Bulgaria elevated the issue of excessive institutionalization in several ways. For example, not only were more and more children being brought into the system due to parents' inability to provide safe and appropriate care, but the lack of funding for public institutions resulted in extremely overworked staff, scarce resources, and inadequate services.<sup>26</sup> The derisory funding available to institutional facilities that housed children and youth resulted in tragic consequences, as exemplified by *Nencheva*.<sup>27</sup>

After the collapse of communism, adoption became the only well-developed child welfare service in Bulgaria. However, at the time, it existed as a service catering to adults looking to adopt rather than to children in need of support and protection. With the rise in the international adoption market, in the years between 1998 and 2003, the adoption process in Bulgaria became very selective. Bulgaria became one of the main donors of children in Europe, with

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<sup>23</sup> Maria Herczog, *Assessing Child Welfare Outcomes in Central and Eastern Europe*, 12 CHILD. & SOC'Y 223, 226 (1998).

<sup>24</sup> Todorova, *supra* note 17, at 641.

<sup>25</sup> *Id.* at 626.

<sup>26</sup> Herczog, *supra* note 23, at 226.

<sup>27</sup> *Nencheva & Others v. Bulgaria*, No. 48609/06, Eur. Ct. H.R. (2013).

1,200 children adopted abroad in 2002.<sup>28</sup> Bulgaria attempted to turn adoption of children into a trade, which failed to comply with UN standards and provoked serious criticism from the international community. As a result, new legislation passed in 2003 (in line with the Hague Convention on Adoption), focusing on the “best interest of the child” principle.<sup>29</sup> While the amendment to adoption legislation has caused the number of international adoptions in Bulgaria to decrease significantly, the focus on the “best interest of the child” remains a cause for concern in many aspects of the Bulgarian child welfare system.<sup>30</sup>

### *B. Policy Initiatives Attempting to Improve Child Welfare*

As previously noted, the UNCRC was adopted in 1989 and quickly became the most ratified human rights treaty in the world, with only two national governments refraining from ratification.<sup>31</sup> Under the UNCRC, the UN Committee on the Rights of the Child (UNCRC Committee) was established as an enforcement mechanism, monitoring national efforts to implement the convention.<sup>32</sup> For example, countries that have ratified are required to submit comprehensive, self-critical reports on their efforts to

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<sup>28</sup> Todorova, *supra* note 17, at 638.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Gertrud Lenzer & Brian Gran, *Rights and the Role of Family Engagement in Child Welfare: An International Treaties Perspective on Families' Rights, Parents' Rights, and Children's Rights*, 90 CHILD WELFARE 157, 162 (2011). As of March 2014, Somalia and the U.S. are the only two countries who have not ratified the UNCRC.

<sup>32</sup> *Id.*

implement the convention within two years of ratification.<sup>33</sup> Further, continued progress reports allow the UNCRC Committee to better examine and analyze child welfare policies in order to determine progress of countries compared to the rest of the world. Although many countries fail to uphold their responsibilities under the UNCRC, the significance of ratifying the UNCRC should not be underestimated. It can play a key role in establishing guidelines on which domestic legislators, government officials, private organizations, and individuals may rely in creating child welfare policies and programs.<sup>34</sup>

Beyond the UNCRC, countries have worked together to form region-specific treaties. Several examples include the African Charter on the Rights and Welfare of the Child, the European Convention on the Exercise of Children's Rights, and the South Asian Association for Regional Cooperation.<sup>35</sup> These international treaties not only represent commitments made by governments, but also signal heightened expectations regarding the treatment of children, held almost unanimously by the international community.

Looking specifically to Bulgaria, child welfare reform really began to take off in 2000 when the State enacted the Bulgarian Child Protection Act (CPA) which closely aligns with the UNCRC.<sup>36</sup> For example, the CPA provides rights such as a general right to protection, protection from abuse and violence, the right to be informed, protection of religious beliefs, the right to education, and access to health and safety.<sup>37</sup> Additionally, the CPA sets forth

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<sup>33</sup> Martha Davis & Roslyn Powell, *The International Convention on the Rights of the Child: A Catalyst for Innovative Childcare Policies*, 25 HUM. RTS. Q. 689, 696 (2003).

<sup>34</sup> *Id.* at 712.

<sup>35</sup> Lenzer & Gran, *supra* note 31, at 162.

<sup>36</sup> Child Protection Act, SG No. 48, June 13, 2000, *available at* <http://www.refworld.org/docid/44ad32014.html> [hereinafter CPA].

<sup>37</sup> *Id.*

measures and services for care and protection to be provided by public agencies, while also establishing administrative procedures.<sup>38</sup> However, services to strengthen the capacity of the family, such as therapy, did not emerge until 2009, and reform continues to proceed very slowly.<sup>39</sup> Possible reasons for such a slow transition include insufficient political commitment, lack of experience and preparation of child care professionals, bad financing and poor funds management, and weak support from the community and government.<sup>40</sup>

While less than perfect, the CPA represents Bulgaria's first domestic attempt to protect children against violence, which in turn has sparked additional protections for the rights of the child. For example, around the year 2000, Bulgaria also put into place a mandatory reporting of child abuse policy.<sup>41</sup> However, identification of child abuse, especially early identification, remains a problem due to the insufficient capacity of the professionals working with the children and inadequate services available to the child victim.<sup>42</sup>

Though the CPA strives to award children the basic right to education and access healthcare, it has fallen short. In fact, both rights remain largely unrealized due to poorly implemented reforms, lack of funding, and poor management of available resources. For example, nearly 2% of the children enrolled in school dropout annually.<sup>43</sup> The largest reasons for such a high dropout rate are poverty, homelessness, and lack of a supportive family environment. Also, despite the fact that education in Bulgaria is free, families have to pay comparatively significant indirect education costs in the form of purchasing textbooks and paying extracurricular fees. For such

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<sup>38</sup> Todorova, *supra* note 17, at 630.

<sup>39</sup> *Id.* at 636.

<sup>40</sup> *Id.* at 637.

<sup>41</sup> *Id.* at 638-39.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 641.

reasons, parents may attempt to discourage children from going to school.<sup>44</sup> Additionally, in regards to health care and inadequate institutional funding, the child death rate in Bulgaria remains higher than any other European country.<sup>45</sup>

Policy measures that have been implemented to protect the educational rights of children include conditional school attendance cash transfers, free meals, free textbooks, and transportation for poor families.<sup>46</sup> Relating to the idea of deinstitutionalization and health care, a number of policies regarding inclusive services for children with disabilities are emerging. Such policies provide support to parents in the form of developmental day care centers, rehabilitation and reintegration centers, and financial support.<sup>47</sup> However, these policies leave largely unaddressed the funding and quality of rehabilitation centers and institutions.

### *C. Identified Shortcomings and Recommendations*

The UN Convention on the Rights of the Child (UNCRC) has set into motion a range of international campaigns working to expose injustices and protect children, exemplified by the enactment of the Bulgarian Child Protection Act (CPA). While the UNCRC has significantly influenced the treatment of children internationally, it remains unclear whether the convention, or campaigns it has given birth to, have actually impacted the lives of children.<sup>48</sup> What is clear is that following the expansion of children's rights under the UNCRC, children remain vulnerable and underrepresented.<sup>49</sup> Aspects of child welfare in Eastern Europe in need of the most

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 642.

<sup>46</sup> *Id.* at 641.

<sup>47</sup> *Id.* at 642.

<sup>48</sup> Grugel, *supra* note 3, at 22.

<sup>49</sup> *Id.* at 19.

improvement include the structure of the child welfare system, excessive institutionalization, lack of attention to individual needs of children, failure to adhere to the “best interest” principle, and poverty.

While many difficulties arise in implementing child welfare reform policies, one of the most common issues seems to be the structure of the child welfare system.<sup>50</sup> Many agencies exist within the child welfare system, and when they each function independently, problems arise in identifying which services should be provided by which institution. Coordination between all child welfare agencies would allow institutions to work together to adjust the scope of their coverage, ensuring that the entirety of children’s needs are being addressed and no child is slipping through the cracks. While a variety of structural changes have been made, the government needs to work as a single unit in order to ensure that these changes are being realized at the individual level. One way a more comprehensive system could be achieved is through legislation providing for adequately staffed, trained, and serviced agencies.<sup>51</sup> Additionally, the introduction of a coercive set of standards for all child welfare agencies to follow – regarding the number of cases per worker, educational development requirements of individuals working for the agency, and services or resources provided by each agency – would help to create a more uniform and complete child welfare system.<sup>52</sup> Further, countries must create new legislation based upon the international standards for youth and justice to create

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<sup>50</sup> Todorova, *supra* note 17, at 644.

<sup>51</sup> NATIONAL NETWORK FOR CHILDREN – BULGARIA, CONTRIBUTION TO THE UNIVERSAL PERIODIC REVIEW (2010), *available at* [http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/BG/NNC\\_NationalNetworkforChildren.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/BG/NNC_NationalNetworkforChildren.pdf).

<sup>52</sup> *Id.*

a system appropriate to handle both child welfare as well as child delinquency.<sup>53</sup>

Another problem plaguing the child welfare system in Eastern Europe, and particularly Bulgaria, is excessive institutionalization of children and youth. Despite the increasing availability of community-based treatment alternatives, such as group homes and specialized foster care, there is no evidence that the use of residential treatment centers is significantly decreasing.<sup>54</sup> Additionally, while Bulgaria has made some progress in the lowering the percentage of institutionalized children and youth, their percentage of institutionalization remains much higher than other countries.<sup>55</sup> As of 2012, approximately 5,633 children remained in institutional care in Bulgaria.<sup>56</sup> While the percentage of institutionalized children has decreased a total of 40% since the enactment of the CPA in 2000,<sup>57</sup> unreasonably high numbers of children continue to enter into institutional care facilities in Eastern Europe.<sup>58</sup> Additionally, recent studies have even found evidence that a substantial number of children placed in residential treatment settings have needs that are no more severe than those of children in traditional foster care and could be served in community-based

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<sup>53</sup> *Id.*

<sup>54</sup> James et al., *supra* note 8, at 198.

<sup>55</sup> *Id.*

<sup>56</sup> *Bulgaria*, OPENING DOORS FOR EUROPE'S CHILDREN, <http://www.openingdoors.eu/where-the-campaign-operates/bulgaria> (last visited Mar. 13, 2014).

<sup>57</sup> UNICEF, BULGARIA: COUNTRY PROGRAMME DOCUMENT, 2013-2017 (2012), *available at* [http://www.unicef.org/about/execboard/files/Bulgaria-2013-2017-final\\_approved-English-14Sept2012.pdf](http://www.unicef.org/about/execboard/files/Bulgaria-2013-2017-final_approved-English-14Sept2012.pdf).

<sup>58</sup> James et al., *supra* note 8, at 198.

settings.<sup>59</sup> Article 3 of the CPA attempts to address this issue by explicitly articulating a leading principle of the act to be the rearing of the child in the family environment.<sup>60</sup> In fact, the CPA's goal in this regard is to promote care and responsibility taken by the natural parents, as opposed to institutional care.<sup>61</sup> However, because child welfare policies in Bulgaria are rarely implemented effectively, the lack of focus on family engagement remains at issue.<sup>62</sup> In response, Eastern Europe should invest in alternative standards to institutionalization, making greater efforts to recruit and train specialized foster parents.<sup>63</sup> Further, continuing national and local campaigns to create a strong public awareness of the dangers of early and unnecessary institutionalization will help create an environment conducive to the concept of deinstitutionalization.<sup>64</sup>

Even if the number of institutionalizations does decrease, another common issue is the lack of individualized attention associated with institutionalizing children. Children do not move neatly up and down the continuum of care depending on their level of clinical severity; some require movement back and forth between settings with different levels of restrictiveness.<sup>65</sup> Additionally, children will require different levels of attention and treatment based on the severity of their diagnosis.<sup>66</sup> However, children with many different diagnoses are regularly grouped into the same treatment programs. More individualized attention must be given to institutionalized children to ensure that they are receiving the

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<sup>59</sup> *Id.*

<sup>60</sup> CPA, *supra* note 36, art. 3.

<sup>61</sup> Todorova, *supra* note 17, at 633.

<sup>62</sup> Lenzer & Gran, *supra* note 31, at 163.

<sup>63</sup> James et al., *supra* note 8, at 204.

<sup>64</sup> UNICEF, *supra* note 57.

<sup>65</sup> James et al., *supra* note 8, at 198.

<sup>66</sup> *Id.*

specific level of care they require in order to progress and grow. Thus, the child welfare budget should be expanded, and at the very least restructured, to ensure the quality of protection and oversight provided to children in institutions.<sup>67</sup> Additionally, legislation should be amended to provided children and youth leaving institutions systematic services to assist with their reintegration into society.<sup>68</sup>

Another big issue unaddressed by current international child welfare reform is the lack of consideration given to the “best interest of the child.” For example, although the CPA and the Bulgarian Family Code expressly state that the child’s interest constitutes the criterion for resolving matters affecting the child, there is no explicit duty for parents to exercise parental rights and obligations consistent with the child’s best interest.<sup>69</sup> Additionally, it is possible that some parents in Eastern Europe may behave in a way most convenient to them, ignoring what is best for their child. Given the power differences that exists between young people and adults – and the potential impact these differences may have on children’s ability to exercise rights – children of a certain age should arguably have the right to participate in decisions made on their own behalf.

However, the right to participate currently has a weak basis in international jurisprudence, especially in Eastern Europe. For example, in Bulgaria, no legislation currently exists to resolve conflict between interests of the child and parent if they differ once a child reaches the age of 14 and gains legal capacity.<sup>70</sup> Aside from creating a legislative process to address conflicts, the best way to remedy this problem seems to be providing children the right to representation in the event that they feel a decision is being made in conflict with their best interests.<sup>71</sup> Really the only way to create

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<sup>67</sup> NATIONAL NETWORK FOR CHILDREN – BULGARIA, *supra* note 51.

<sup>68</sup> *Id.*

<sup>69</sup> Todorova, *supra* note 17, at 633.

<sup>70</sup> *Id.* at 632.

<sup>71</sup> James et al., *supra* note 8, at 165.

effective family engagement and protection from decisions made against the child's best interest is through awarding children the right to information about their well-being, allowing them to participate in decision making, and providing them an outlet to express what they feel is in their own best interest.

A theme common to all shortcomings arising in the context of child welfare and institutionalization in Eastern Europe is poor economic conditions. Not only are poverty and child poverty in particular long established problems frequently left unaddressed by the government, they significantly add to the disregard for children's rights in the child welfare system.<sup>72</sup> 51.8% of children in Bulgaria live in poverty without access to services conducive to their well-being, and 78.2% of families with three or more children are at serious risk of delving into poverty.<sup>73</sup> Poor economic conditions historically result in less funding to the child welfare system as a whole. Lack of funding not only means scarce resources to institutional facilities, but also leads to overworked staff, insufficient competence of the case workers in managing cases, and lack of oversight by managing agencies.<sup>74</sup> Yet a remaining concern is that while proposed funding increases to child welfare institutions may prove beneficial, children and families living in poverty may be completely unable to access welfare institutions.<sup>75</sup> Therefore, a focus should be placed on developing and protecting children's rights through a combined approach to poverty reduction, creating awareness and emphasizing individual entitlements, and reforming structural and underlying forms of inequality.<sup>76</sup>

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<sup>72</sup> Grugel, *supra* note 3, at 24.

<sup>73</sup> *Bulgaria*, OPENING DOORS FOR EUROPE'S CHILDREN, <http://www.openingdoors.eu/where-the-campaign-operates/bulgaria> (last visited Mar. 13, 2014).

<sup>74</sup> Todorova, *supra* note 17, at 631.

<sup>75</sup> *Id.*

<sup>76</sup> Grugel, *supra* note 3, at 21.

## CONCLUSION

Human rights are continually regarded as a vehicle for the weak and vulnerable, a way of improving the livelihoods of some of the most marginal groups in the global political economy, and an instrument for groups that have few other resources to deploy in order to protect themselves. International rights regimes thus attempt to encourage states to take their duties seriously in cases where the very concept of certain rights is subject to dispute.<sup>77</sup> Thus far states have adopted only some parts of the children's rights agenda and ignore the rest, a concept which is exemplified by the continued lack of progress in recognizing children's rights in Eastern Europe.<sup>78</sup> Therefore, international rights regimes must continue to create stronger incentives to protect the rights of children, forcing states to ensure that adequate funding is allocated to child welfare.

One way to achieve this is for the global community to work together to raise awareness and mobilize support and resources to advance child welfare systems in individual countries. The international community must band together, with the help of the UNCRC Commission, to analyze the child welfare policies of states, identify shortcomings, and provide support and oversight in bettering those systems. UNICEF has also been successful in employing global strategies to strengthen the support offered to children at the domestic level, especially in the case of Bulgaria.

However, global participation cannot fix the Eastern European child welfare system unilaterally and until children's rights are protected internationally, tragedies such as *Nencheva* will continue to occur. While outside pressures are what brought about a focus on expanding the rights of the child in the first place, it is now up to the Eastern European community to place the issue higher on the political agenda, to improve policies, and to provide protection to those who need it most, the children.

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<sup>77</sup> *Id.* at 27.

<sup>78</sup> *Id.* at 28.