



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3171/2018\*, \*\*

<i>Communication submitted by:</i>	Ivan Yordanov Lazarov and Yordan Ivanov Lazarov (represented by counsel, Aneta Mircheva Genova and Ann Campbell from Mental Disability Advocacy Centre)
<i>Alleged victim:</i>	Valya Yordanova Lazarova
<i>State party:</i>	Bulgaria
<i>Date of communication:</i>	25 August 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 (2) of the Committee's rules of procedure, transmitted to the State party on 3 April 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	15 March 2023
<i>Subject matter:</i>	Right to life
<i>Procedural issue:</i>	Inadmissibility – exhaustion of domestic remedies
<i>Substantive issues:</i>	Right to life; torture and other cruel, inhuman or degrading treatment or punishment; conditions of detention
<i>Articles of the Covenant:</i>	6, 7 and 10 (1)
<i>Articles of the Optional Protocol:</i>	2 and 5 (2) (b)

1. The authors of the communication are Ivan Yordanov Lazarov and Yordan Ivanov Lazarov, acting on their own behalf and on behalf of their deceased sister and daughter, respectively, Valya Yordanova Lazarova. They are all citizens of Bulgaria. Ms. Yordanova was born on 25 March 1974. The authors claim that the State party has violated Ms. Lazarova's rights under articles 6, 7 and 10 (1) of the Covenant. The Optional Protocol to the

\* Adopted by the Committee at its 137th session (27 February–24 March 2023).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Héléne Tigroudja and Imeru Tamerat Yigezu.



Covenant entered into force for Bulgaria on 26 June 1992. The authors are represented by counsel.<sup>1</sup>

### **Facts as submitted by the authors**

2.1 In 1992, Ms. Lazarova was diagnosed with schizophrenia. On 6 June 1998, Ms. Lazarova's family, lacking support to ensure care for her, was forced to place her in the Social Care Home for Mentally Ill Adults (Radovtsi Home) in the village of Radovtsi, Bulgaria. The Radovtsi Home is an institution that is controlled and financed by the Ministry of Labour and Social Policy and Dryanovo municipality. She remained under the care of the Radovtsi Home until her death, in January 2007.

2.2 On 11 December 1998, Ms. Lazarova was diagnosed with an intellectual disability and was declared intellectually incapable by the Veliko Tarnovo Regional Court. From that date, she was represented by her parents as guardians. During her nine-year stay in the Radovtsi Home, her parents were never asked to make any decisions in respect of her accommodation, care or treatment, which was carried out by the institution.

2.3 In October 2006, an inspection by the Agency for Social Assistance, which operates under the authority of the Ministry of Labour and Social Policy, established that the Radovtsi Home was in a poor state of repair. The inspectors found some 20 residents with severe disabilities isolated in a special care room. They were locked in under appalling conditions, barefoot, unwashed and soaked in urine and excrement. The Agency ordered the immediate closure of the room. It was subsequently closed down, and the practice of isolating residents ceased on 1 November 2006. Ms. Lazarova was one of the residents who had been isolated in the special care room.<sup>2</sup>

2.4 On the morning of 3 January 2007, Ms. Lazarova was administered a medication with a sedative effect, used to moderate states of agitation. Afterwards, it was discovered that she had disappeared from the institution. Another resident reported that she had decided to go to the village, as she was hungry. According to the residents, Ms. Lazarova often cried because she was hungry, and she had previously visited a man in the village who had given her food. On that day, seven staff were working at the institution, which housed 114 residents, including 20 like Ms. Lazarova, with high support needs. The staff carried out a search on that day, which was completed by the evening. Temperatures below 0° C were expected during the night, creating a substantial risk to Ms. Lazarova. There is evidence that residents had previously gone missing in extreme temperatures and that they allegedly had died.

2.5 The institution contacted the police on 3 or 4 January 2007,<sup>3</sup> and Ms. Lazarova was declared missing on 4 January 2007. On 8 January 2007, the authors were notified of her disappearance, and they initiated a further search.

2.6 On 22 January 2007, in a forest approximately 20 kilometres away from the Radovtsi Home, Ms. Lazarova was found dead by a shepherd, who notified the police. The cause of death was hypothermia and physical exhaustion. She had been dead for at least 10 days before her body was found.

2.7 Following Ms. Lazarova's disappearance, it became evident that she had been subject to neglect and abuse during her time at the Radovtsi Home. The details emerged from a report by the Agency for Social Assistance, an explanatory note by the Director of the Radovtsi Home, and a social assessment that had been prepared on 1 March 2006 by a commission established by a director of the municipality's department of social assistance. The documents revealed allegations of ill-treatment and beatings in the institution, as the residents had been seen with bruises and blood on their bodies. No record of Ms. Lazarova's medication was kept in the weeks prior to her death, despite the fact that she requiring medication that was administered three times a day. Any interruption of the medication could have drastically affected her medical condition. Despite the authors' requests to the

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<sup>1</sup> Power of attorney was provided by the complainants to the Mental Disability Advocacy Centre (Aneta Mircheva Genova and Ann Campbell). Original counsel has been succeeded by the Validity Foundation (Ms. Genova).

<sup>2</sup> At the time of the inspection on 25 and 26 October 2006.

<sup>3</sup> The authors have received contradicting information.

authorities, no expert report was prepared regarding the medication of Ms. Lazarova to determine if traces of the drugs might have been found in her body after her death. During the criminal investigation that followed her disappearance, the Radovtsi Home authorities admitted that, after the closure of the special care room, oversight of the 20 residents that had occupied that room became less effective. The former residents of the room were left to walk around freely without any adequate support or protective measures, including walking around the buildings and the yard in an unsupervised manner, which made it possible for them to leave the institution unnoticed. It was reported that residents were able to visit the nearby village unsupervised and unsupported.

2.8 On 24 January 2007, the authors submitted a complaint to the Dryanovo District Prosecutor, who started a criminal investigation for manslaughter. On 8 March 2007, the Dryanovo police investigator proposed terminating the proceedings owing to lack of evidence of manslaughter. On 9 March 2007, the Gabrovo Regional Prosecutor's Office also terminated its criminal manslaughter investigation for lack of evidence. The authors did not appeal that decision, as they had not alleged manslaughter in their complaint but believed that the death of their relative was the consequence of systematic neglect and a lack of oversight and adequate care. On 9 March 2007, the Dryanovo District Prosecutor refused to open a criminal investigation into the neglect alleged in the authors' complaint. On 27 March 2007, the authors appealed the decision. On 5 April 2007, the Gabrovo Regional Prosecutor quashed the District Prosecutor's refusal to open criminal proceedings and ordered an investigation into the alleged neglect. On 21 May 2007, the Dryanovo District Prosecutor refused again to initiate criminal proceedings owing to lack of evidence of a crime, stating that the Radovtsi Home staff, with the assistance of the police, had carried out all reasonable efforts to find Ms. Lazarova. The authors appealed that decision. On 22 June 2007, the Gabrovo Regional Prosecutor upheld the decision not to open criminal proceedings. The authors appealed to the Appellate Prosecutor's Office, alleging insufficient investigation. On 18 August 2007, the Appellate Prosecutor's Office upheld the refusal to open criminal proceedings. On 24 October 2007, the Supreme Prosecutor's Office of Cassation confirmed the decision.

2.9 In March 2007, the authors initiated administrative proceedings before the Ministry of Labour and Social Policy requesting that the Ministry examine the allegations of negligence in the treatment and care at the Radovtsi Home and the disappearance and death of Ms. Lazarova. In a letter dated 25 March 2007, the Ministry responded that the Radovtsi Home had undertaken timely and adequate measures and did not comment on the alleged negligence.

2.10 On 13 November 2007, the authors initiated civil proceedings against the municipality, the Ministry of Labour and Social Policy and the Council of Ministers, seeking redress for damages resulting from systemic and flagrant neglect in the Radovtsi Home that had led to the disappearance and death of Ms. Lazarova. On 10 July 2008, the Gabrovo Administrative Court requested that the authors provide further details regarding the specific act or omission that had resulted in harm to the plaintiffs. On 22 July 2008, the authors sent a clarifying letter. On 23 September 2008, the Gabrovo Administrative Court refused to open a civil case, stating that, in their claims, the authors had failed to respond to the court's instructions to identify the officials and specific activities concerned. On 12 January 2009, the authors' appeal against the court decision was dismissed by the Supreme Administrative Court.

2.11 The authors also submitted an application to the European Court of Human Rights. On 26 August 2014, the Court, in chamber of seven judges, deemed the application inadmissible. As for allegations under articles 3 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), in connection with the treatment of Ms. Lazarova at the Radovtsi Home, the Court considered that the authors were not victims and did not have standing to pursue the relevant claims before the Court. Regarding allegations under article 2 of the Convention, the Court held that the application was inadmissible for non-exhaustion of domestic remedies, concluding that the civil remedy before the Gabrovo Administrative Court was an effective remedy in the case, that the applicants had failed to submit the clarifications the Court had requested and that, after that finding, it remained possible for the applicants to bring a new action complying with the requirements, which they had not done.

2.12 The authors submit that civil proceedings in this case cannot be considered an effective remedy since the allegations concern human rights, such as the right to life. Furthermore, the authors consider that, in the light of its request of 10 July 2008, it became apparent that the Gabrovo Administrative Court had failed to recognize that the authors were challenging a structural failure arising from the omissions and lapses in oversight of multiple authorities, rather than one particular unlawful administrative act.

### Complaint

3.1 The authors allege that the inadequate and negligent care of Ms. Lazarova in the Radovtsi Home, her disappearance and subsequent death constitute a violation of her rights under articles 6, 7 and 10 (1) of the Covenant.

3.2 The authors argue that persons with disabilities are entitled to special measures of protection so that they can enjoy the right to life under article 6 on an equal basis with others. When individuals are held in the custody or care of the State, it is a particular obligation of the State to take adequate measures to protect their life.<sup>4</sup> The authors note that, at the time of her death, Ms. Lazarova was under the care and responsibility of the Radovtsi Home, which was operating under the authority of the State; that no adequate steps were taken after the closure of the special care room to ensure the security of Ms. Lazarova; and that on the morning of her disappearance, she had been administered strong sedatives that heightened the need for her to be supervised. No adequate records of her medication were produced. On the day she left the Radovtsi Home, an insufficient number of staff were present, and insufficient steps were taken by the staff or the police to find Ms. Lazarova after her disappearance.

3.3 The authors consider that the State party has further violated article 6 of the Covenant owing to a failure to conduct an adequate investigation into the circumstances of Ms. Lazarova's death.<sup>5</sup> Where the individual concerned has disappeared from the custody of the State, there may be a particular obligation to investigate and a presumption that, in the absence of contrary evidence, the resulting death of that individual may involve a violation of article 6.<sup>6</sup> In addition, no inquiry was undertaken in respect of the medication administered to Ms. Lazarova prior to her disappearance. Lastly, the authorities failed to question the information provided by the Director of the Radovtsi Home when it was in conflict with the information the authors had presented, on the basis of their own inquiries.

3.4 The authors submit that Ms. Lazarova, while a resident at the Radovtsi Home, was subjected to inhuman and degrading treatment. The confinement of Ms. Lazarova in the special care room, as described by the inspection report of the Agency for Social Assistance, amounts to a violation of her rights under article 7 of the Covenant. Ms. Lazarova was confined in a small, unattended space for a significant duration of time, along with others with similar psychosocial disabilities, soaked in urine and excrement. The fact that no records of the medical treatment and medication of residents of the special care room were kept raises the question of the degree of abuse to which those residents may have been subjected. Following the closure of the special care room, adequate care was not provided for Ms. Lazarova, and there was evidence of physical harm resulting from apparent beatings at the institution inflicted by staff or by residents, as well as from hunger, malnutrition, underclothing, use of strong sedative medication without proper supervision, and understaffing. The Radovtsi Home admitted that, following the closure of the special care room, the oversight of its former residents became less effective.

3.5 The authors contend that, at least following its inspection in 2006, the State party's authorities were aware of the failures in care and treatment at the Radovtsi Home, which amounted to inhuman or degrading treatment, and that no steps were taken to remedy the situation. They argue that particular protection must be offered to patients in teaching and medical institutions, note that specific protection must be provided against excessive

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<sup>4</sup> *Dermi Barbato v. Uruguay* (CCPR/C/17/D/84/1981), paras. 9.2–11; *Lantsova v. the Russian Federation* (CCPR/C/74/D/763/1997), para. 9.2; and *Tornel et al. v. Spain* (CCPR/C/95/D/1473/2006).

<sup>5</sup> General comment No. 36, paras. 27 and 58.

<sup>6</sup> *Saker v. Algeria* (CCPR/C/86/D/992/2001).

chastisement or punishment<sup>7</sup> and also note that treatment leading to physical and mental distress should be prevented. They argue that a refusal to provide appropriate medical care, treatment and attention according to the needs of an individual patient may amount to inhuman and degrading treatment,<sup>8</sup> and that inhuman or degrading treatment must be assessed against the particular vulnerabilities of the individual concerned, including any physical or mental illness or disability.<sup>9</sup>

3.6 The authors reiterate that the Radovtsi Home is under State authority. Since Ms. Lazarova was one of its residents, she was de facto deprived of her liberty there. Until October 2006, she was routinely locked in the special care room. The authors assert that the treatment outlined above, while Ms. Lazarova was deprived of her liberty, amounts to a violation of her rights under article 10 (1) of the Covenant, as she was deprived of humanity and inherent dignity as a person with disability.<sup>10</sup>

### **State party's observations on admissibility and the merits**

4.1 On 4 June 2018, the State party submitted its observations on admissibility and the merits, expressing regret at the circumstances of the case.

4.2 With regard to admissibility, the State party argued that the proceedings before the Gabrovo Administrative Court had been initiated by Ivan Yordanov Lazarov (brother of Ms. Lazarova), on his own behalf and on behalf of the family (the father and deceased mother of Ms. Lazarova), against the municipality of Dryanovo, the Ministry of Labour and Social Policy and the Council of Ministers.

4.3 Based on the facts of the case, and following its ruling No. 169/23.09.2008, the Administrative Court found that the claimants sought compensation for non-pecuniary damages sustained in the amount of 99,000 Bulgarian lev, or 33,000 Bulgarian lev for each claimant. The damages claimed had occurred owing to the lack of adequate care for institutionalized patients in the social care home for adults with a mental health condition in Radovtsi (Radovtsi Home), which allegedly caused the death of Ms. Lazarova.

4.4 The claim was rejected by order of the Administrative Court on 10 July 2008, as it did not meet the admissibility requirements. The claimants were instructed how to rectify the omissions. The court's instruction stated explicitly that failure to rectify the irregularities within the prescribed time would result in the claim and the attachments being dismissed. In a written response by the authors, the irregularities referred to in the court order (paras. 1–3 of the court request) were rectified. With respect to the remaining irregularities (para. 4 of the court request), the text of the response of 22 July 2008 simply paraphrased the original claim without specifying the type of administrative activity under which the alleged omissions had been made. The authors' response to the remaining irregularities was general, without naming the official or officials whose specific conduct was associated with the claim. In addition to naming the respondents identified in the original claim as being responsible for the omissions, the authors' response also named the social activities administration of the Agency for Social Assistance, weakening the claim directed against the respondents originally indicated. Such ambiguity hindered the judicial inquiry and prevented the court from ruling on the merits.

4.5 Pursuant to articles 203 and 204 (1) and (2) of the Code of Administrative Procedure, claims for damages caused to members of the public as a result of unlawful acts, actions or inactions on part of the administrative authorities or officials can be filed only after the administrative act has been repealed, in accordance with established procedure. In the present case, neither the original claim nor the supplementary response seeks to stop an action that is grounded in an administrative act or law. Nor do the authors allege an omission in carrying out factual actions that the administrative authority was mandated to carry out by law, where such actions or omissions constitute cause for alleged damages sustained by the claimant. By

<sup>7</sup> General comment No. 20, para. 5.

<sup>8</sup> *Hauman v. Peru* (CCPR/C/85/D/1153/2003), paras. 6.3–6.4.

<sup>9</sup> European Court of Human Rights, *Slimani v. France*, Application No. 57671/00, Judgment, 27 October 2004, para. 27.

<sup>10</sup> *Brough v. Australia* (CCPR/C/86/D/1184/2003); and *Henry and Douglas v. Jamaica* (CCPR/C/57/D/571/1994).

not having cited circumstances relevant to the admissibility of the claim that they had filed with the administrative court, the claimants failed to comply with the court's instructions to rectify the irregularities of said claim, on account of which the ongoing court proceedings were terminated. The ruling of the Gabrovo Administrative Court was appealed before the Supreme Administrative Court; its three-member panel upheld the ruling of the Gabrovo Administrative Court. The decision of the Supreme Administrative Court is final.

4.6 On 22 January 2007, pursuant to article 212 (3) of the Criminal Procedure Code, pretrial proceedings were initiated against an unknown perpetrator for a crime under article 115 of the Criminal Code, namely the murder of an unidentified woman (Ms. Lazarova) committed during the period between 3 January and 22 January 2007 in the area of the village of Runya, Dryanovo municipality.

4.7 The procedural actions, required to uncover the objective truth, were performed during the pretrial investigation. Once the result of the investigation was presented to Yordan Lazarov and Dimitrina Lazarova as concerned parties, and they examined the case file, they did not raise any requests, remarks or objections concerning the outcomes. By a decision dated 9 March 2007, the prosecutor overseeing the case at the Gabrovo Regional Prosecutor's Office terminated the criminal proceedings on the grounds of paragraph 1 of article 243 (1) of the Criminal Procedure Code, owing to the absence of a criminal offence. The termination decision was duly served to Yordan Lazarov and Dimitrina Lazarova. The decision was not appealed before the Gabrovo Regional Court or before the higher-standing prosecutor's office. The State party notes that it is still possible for the decision terminating the investigation to be internally reviewed by the Prosecutor General.

4.8 On 24 January 2007, a complaint was filed with the Dryanovo District Prosecutor's Office by Ivan Lazarov, in which he alleged that the staff at the Radovtsi Home had been negligent and had knowingly endangered Valya Lazarova's life by not securing the facility and by not initiating a timely and adequate search following her disappearance. The Dryanovo District Prosecutor's Office was requested to prosecute the culpable staff for a crime under article 123 of the Criminal Code.

4.9 On 9 March 2007, the Dryanovo District Prosecutor's Office refused to initiate pretrial proceedings, having found that there was insufficient evidence of culpable conduct on the part of the staff at the Radovtsi Home amounting to crimes under articles 137 and 138 of the Criminal Code. Ivan Lazarov appealed against the decision before the Gabrovo Regional Prosecutor, and the Prosecutor, by a decision dated 5 April 2007, granted the appeal on the basis that it was well founded, overruling the Dryanovo District Prosecutor's Office decision. The Gabrovo Regional Prosecutor found that the preliminary investigation had not been comprehensive, that the relevant facts had not been established and that further investigation was required, following specific instructions.

4.10 The investigations carried out by the Dryanovo District Police Department in relation to pretrial procedure No. 17/2007 and by the Dryanovo District Prosecutor's Office in relation to case file No. 58/2007 established that Valya Lazarova had been suffering from an intellectual disorder since 1992, the disorder being a paranoid form of schizophrenia: hallucinatory-paranoid syndrome. The investigators did not find evidence of culpable or deliberate behaviour on the part of members of the medical or auxiliary staff amounting to the elements of the crimes under articles 137 and 138 of the Criminal Code. On 21 May 2007, the Dryanovo District Prosecutor's Office refused to initiate pretrial proceedings in relation to case file No. 58/2007. Ivan Lazarov appealed against the decision before the Gabrovo Regional Prosecutor and, subsequently, the Veliko Tarnovo Prosecutor's Office of Appeal. Both authorities rejected the appeal as unfounded. Ivan Lazarov also appealed before the Supreme Prosecutor's Office of Cassation, which upheld the findings of the prosecutor's office initially dealing with the case and of the reviewing prosecutor's offices that there was insufficient evidence of crimes under articles 137 or 138 of the Criminal Code, or of acts or omissions by any individual that had a direct causal link to Ms. Lazarova's death. The findings were considered correct.

4.11 The decision issued by the Supreme Prosecutor's Office of Cassation is final. However, it may be internally reviewed by a deputy to the Chief Prosecutor of the Supreme Prosecutor's Office of Cassation or by the Prosecutor General. No such review has, however,

been sought by the authors. The authors have not made use of the option to initiate internal reviews of the decision terminating the criminal proceedings and of the Supreme Prosecutor's Office of Cassation decision declining to initiate pretrial proceedings, nor have they resorted to the available remedies under civil law. In the light of the above, the authors' communication does not meet the admissibility criteria under article 5 of the Optional Protocol, which requires exhaustion of all available domestic remedies.

4.12 In that regard, it should be noted that the European Court of Human Rights, by its decision dated 26 August 2014, dismissed Application No. 26874/2008 by Ivan Lazarov and others against Bulgaria, finding that the applicants had at their disposal a civil law remedy, namely an action for damages under the State and Municipalities Liability for Damages Act and the Obligations and Contracts Act. Paragraph 36 of the decision states:

... there is nothing to indicate that Valya Lazarova's death was caused intentionally, and the circumstances in which it occurred were not such as to raise suspicions in that regard. Therefore, article 2 of the Convention did not necessarily require a criminal-law remedy and could be satisfied if the applicants had at their disposal an effective civil law remedy.

4.13 In respect of the merits of the communication, the State party submits that Valya Lazarova was deprived of legal capacity by judgment No. 508/1998, dated 11 December 1998, of the Veliko Tarnovo Regional Court. Parental rights and obligations were vested in her parents, and her father, Yordan Lazarov, was appointed as her legal guardian. Since 6 June 1998, she had been placed in care at the Radovtsi Home in Dryanovo municipality. Qualified staff were responsible for her treatment, following an individual plan. On the basis of a decision by the treating psychiatrist in charge, Ms. Lazarova had been prescribed ongoing therapy, including special medicaments.

4.14 As a result of her mental health condition, Valya Lazarova often had mood swings, and her therapy had little effect on her mental state. For this reason, individual daytime social services were provided to Valya Lazarova and 20 other residents. Ms. Lazarova's medical record notes that she was often aggressive, tending to inflict harm on herself and others, and that she was unconscious of her surroundings, disoriented about time and place, unable to control her excretory functions and utterly dependent upon attendant care.

4.15 During the period between her placement and her death, Ms. Lazarova visited her home once, in 2002, and was visited twice by her parents, in 2005 and 2006. Her parents and brother showed greater concern only after they were informed of her disappearance.

4.16 The on-duty medical staff discovered Ms. Lazarova's absence from the specialized institution when medications were dispensed, at about 12.15 p.m. on 3 January 2007. The staff promptly searched the yard and the area around the care home. Some of the staff headed towards the town of Tryavna. On the same day, at 1.30 p.m., a missing persons report concerning Ms. Lazarova was filed with the district police departments in the towns of Dryanovo and Tryavna, and her family was informed of her disappearance. On 4 January 2007, the Dryanovo District Police Department declared a nationwide search for her.

4.17 On 3 January 2007, the staff of the facility continued searching for Ms. Lazarova near the villages of Radovtsi, Shushnya and Balcareneni until about 7 p.m. On the next day, the search continued in the area of Radovtsi and the neighbouring villages. Staff members of the facility also continued searching for her in neighbouring villages and areas. On 10 January 2007, the facility's director requested the Tryavna team of the Mountain Rescue Service of the Bulgarian Red Cross to assist in the search. The search was unsuccessful. On 22 January 2007, at about 7 p.m., Valya Lazarova's body was found in the area of the village of Runya, approximately 20 kilometres away from the Radovtsi Home.

4.18 After Ms. Lazarova's body had been identified, the police investigator issued an order for a coroner's expert opinion. Following an external examination, autopsy report No. CM-5/2007 was drawn up, in which the coroner stated that the cause of Ms. Lazarova's death was hypothermia caused by low ambient temperature in outdoor conditions. No indication of injuries or bodily harm that might be related to the death was found during the examination and the autopsy. No traces of fighting or violence, including sexual abuse, were found.

4.19 At the time of Ms. Lazarova's death, according to the Agency for Social Assistance, the buildings of the Radovtsi Home were in poor physical condition and had not been made secure, for reasons beyond the management's control, including a lack of funds. The number of medical and auxiliary staff was too low to attend to the residents, given their state of health and specific needs. In the period between 2006 and 2017, the inspectorate of the Agency for Social Assistance conducted five inspections at the Radovtsi Home, and the Gabrovo regional directorate of social assistance and Dryanovo municipality conducted one joint inspection. A total of 53 binding instructions had been issued to the institution.

4.20 The memorandums of the assessments and the reports on the inspections were distributed to all parties concerned, including the mayor of Dryanovo municipality, in his capacity as provider of social services under the Social Assistance Act. The inspections did not find evidence of the existence of an isolation ward or that Ms. Lazarova had been neglected or subjected to violence. In the light of the above, the State party submits that the claims of a violation of articles 6, 7 and 10 (1) of the Covenant have not been substantiated.

#### **Authors' comments on the State party's observations on admissibility and the merits**

5.1 On 18 September 2018, the authors submitted their comments on the State party's observations, inviting the Committee to accept as undisputed their arguments, which have not been expressly refuted by the State party.

5.2 In its observations, the State party argues that the authors failed to respond adequately to the request by the Gabrovo Administrative Court for complementary information, and the case was dismissed for non-exhaustion of domestic remedies, owing to procedural error or omission. The authors object to such an assertion, since the court's dismissal clearly demonstrates that that remedy is by its nature ineffective in providing redress for the violations experienced by the authors.

5.3 The Gabrovo Administrative Court held that the procedure required the authors to personally name the officials whose specific conduct was associated with the claim. As stated in the initial communication, the court also required the authors to clarify the specific acts or omissions, such as the number of acts, the day on which the act in question was carried out and the place of commission of such act. However, the violations in the complaint relate to structural and systemic failures in the management of social services by the Ministry of Labour and Social Policy and Dryanovo municipality. The violations arise from the acts and omissions of multiple administrative authorities across the social system over a period of time. In most cases of neglect in social care institutions in Bulgaria, and in the present case in particular, there is no single act that can be demonstrated to have resulted in the resident's death. For a remedy to be effective, it must include recognition of such structural and systemic failures. A remedy that is limited to specific acts by named individuals with a direct causal link to the death of the authors' family member, considering the fact that medication records could not be provided, is insufficient and is unavailable in practice, as the required details cannot be proved. Those arguments have not been refuted by the State party, which has failed to recognize or address the systemic nature of the violations complained of by the authors.

5.4 According to the Gabrovo Administrative Court, the authors should also have designated the type of administrative activity during which the alleged omissions occurred. In response, the authors addressed their claim against all State authorities implicated in the structural failures: Dryanovo municipality, including its mayor, and the Ministry and the Council of Ministers. The municipality is directly responsible for the management of social institutions, including Radovtsi Home. It is also responsible for providing alternative services within its jurisdiction, including ensuring support for families caring for people with disabilities in their homes and other community-based supports. The mayor is also responsible for appointing the director of Radovtsi Home and allocating necessary resources for its operation. The Ministry, including its Agency for Social Assistance, is responsible for supervising and controlling all social services to ensure that they meet legal standards. The Ministry in particular was concerned about the Radovtsi Home, as the Agency for Social Assistance had investigated conditions there in 2006, a few months before Ms. Lazarova's death. The investigation revealed significant human rights violations in the institution, including isolation and serious neglect of the residents. However, the Ministry took no



remedial measures, nor did it assist the municipality or the institution in doing so. The Council of Ministers is required to ensure that sound legal, financial and policy frameworks exist to regulate the provision of social services across the country.

5.5 As for the structure of the social care system in Bulgaria, local municipalities are responsible for the operation of services, while their regulation and financing are carried out by the Ministry and the Council of Ministers. This structure results in fragmented accountability, which is coupled with a systemic failure to coordinate, supervise and control functions across the system. As a result, the social services provided to people with disabilities are so inadequate that, in the present case, they materially facilitated the ill-treatment and death of Ms. Lazarova. In presenting their claim before the Gabrovo Administrative Court, the authors relied on the State and Municipalities Liability for Damages Act.

5.6 The authors admitted that it was right to close the special care room in 2006, two months before Ms. Lazarova's death. However, residents were provided with no alternative care despite their serious disabilities. The institution's staff had not been sufficiently trained and did not treat the residents humanely, and living conditions were substandard. Ms. Lazarova's death was directly linked to the lack of appropriate care in the Radovtsi Home, the lack of administrative supervision by the Dryanovo municipality and a lack of adequate financial and methodological support for the operation of the institution, as well as a failure to improve the provision of social care for persons with disabilities.

5.7 In their response of 22 July 2008 to the court's request, the authors specified that the mayor of the Dryanovo municipality, as the employer of the Radovtsi Home's director, and the social assistance bodies that were part of the Agency for Social Assistance had failed to monitor the performance by the staff of the institution of their duty to provide individually tailored social services and assess the needs of Ms. Lazarova. They had failed to ensure the presence of qualified medical personnel in the institution. The mayor had failed to ensure that the living conditions, the provision of basic needs and the guarantees of physical safety were satisfactory, given Ms. Lazarova's state of health. The Ministry of Labour and Social Policy had failed to ensure methodical assistance, administrative supervision and the necessary financing. The Council of Ministers had not created the necessary legislative framework, had not adopted the policies necessary to ensure that the staff of social care institutions were adequately qualified and had not provided the Dryanovo municipality with the financing needed by the Radovtsi Home. Moreover, the authorities failed to provide basic elements of care in the institution, such as basic personal care (hygiene, personal space and autonomy), a safe environment, including places for outdoor activities, and appropriate material conditions such as sufficient light in the rooms, heating and the like. Ultimately, in such a case, it is the role of the domestic courts to determine the facts and extent of responsibility of each named respondent, not of the authors.

5.8 In the light of the information set out above, the State party's argument in respect of the non-exhaustion of domestic remedies owing to a procedural error or omission by the authors is incorrect, and the State party seeks to wrongly obviate accountability for the substantive violations it has committed at the national level.

5.9 The State party mentioned the possibility of initiating a civil claim for damages under either the State and Municipalities Liability for Damages Act or the Obligations and Contracts Act. The authors recall the original argument that the claim before the Gabrovo Administrative Court was based on the Liability for Damages Act, although the Court based its dismissal on the Code of Administrative Procedure instead. In respect of the availability of a second civil claim under the Liability for Damages Act, or a claim under the Obligations and Contracts Act, the authors consider that reinitiating the same case under the Liability for Damages Act had no reasonable prospect of success. The claim had already been rejected by the Gabrovo Administrative Court, without any attempt to engage with the structural nature of the complaints or the fact that liability rests with multiple authorities. The decision of the Court makes clear that no identifiable individual directly caused Ms. Lazarova's death, and the substance of the authors' claim was ignored. In addition, there had already been a one-year delay between filing the case and the refusal of the Court to accept the authors' response to its instructions. There was no reason to expect that filing the case a second time would

result in its resolution within a reasonably expeditious time frame or lead to an outcome different from that stated in the Court's decision of 23 September 2008.

5.10 The authors submit that the Obligations and Contracts Act cannot offer effective redress, as it is not applicable to the facts set out in the communication. First, the Act requires that an identified individual be responsible for the violations, which is not the case. During the period when the authors were litigating the issues concerned, the judicial system underwent a fundamental reform, with the creation of the administrative courts in 2007. For the first time, court practice began to separate cases into civil and administrative claims, and the courts struggled to decide through which system cases should proceed. Jurisdiction was completely unpredictable during the transition period and remains so in respect of claims of damages for persons with mental health conditions in social care institutions. The State and Municipalities Liability for Damages Act applies to compensation claims related to damages by an administrative body. The Obligations and Contracts Act has no application in that regard. The Radovtsi Home is managed by the municipality. The mayor of the municipality is responsible for the functions of Radovtsi Home and for damages caused by bad governance. In retrospect, it is clear that the correct legislation on which to base the claim is the Liability for Damages Act, which the authors invoked. While there is insufficient case law on damages caused by social care institutions, existing case law supports the preceding interpretation. The authors also point out an analogy with cases concerning harm caused in prisons. In 2010, the Supreme Court of Cassation overturned a lower court's findings under the Obligations and Contracts Act as the claim for harm attributable to poor governance of a prison in the case could not be based on that particular legislation. Consequently, the court transferred the case to the administrative jurisdiction.

5.11 In respect of the criminal remedies, the authors did not appeal or challenge the termination of the criminal investigation into murder. The authors emphasize that at no point have they claimed that Ms. Lazarova's death was a result of murder or manslaughter. The authors' complaint to the police was based on negligence under article 123 of the Criminal Code.

5.12 The State party's reference to the findings of the Supreme Prosecutor's Office of Cassation, that is, that it was not possible to establish culpable behaviour on the part of members of the medical or auxiliary staff amounting to a crime, was incomplete. In fact, the decision went on to note that the building had been in a poor state of repair and the institution understaffed. It found that the preceding factors, combined with the established health condition of the residents, had facilitated Ms. Lazarova's disappearance. The decision noted that those factors had not been within the control of the staff. The findings substantiate the authors' arguments that the alleged violations resulted from systemic failures at multiple levels: administrative, policy and legal. The State party admitted that, for reasons beyond the management's control, including the lack of funds, the buildings of the Radovtsi Home were in poor repair and had not been made secure. According to the findings of the Supreme Prosecutor's Office of Cassation, the number of medical and auxiliary staff was too small to attend to the residents, given their condition and specific needs.

5.13 The authors could not exhaust the option of an internal review of the termination of the investigation by a complaint to a deputy of the Supreme Prosecutor's Office of Cassation's Chief Prosecutor or to the Prosecutor General. The State did not refer to any available legal provision. The authors assume that reference is made to the Prosecutor General's discretionary power under article 243 of the Criminal Procedure Code to repeal the decision terminating criminal investigation. The review procedure is applicable only in exceptional circumstances, which were not present in this case, and is entirely discretionary. The authors state that the Committee does not require authors to exhaust remedies that are neither available nor effective, such as a remedy which is dependent on the exercise of discretion by a judicial or political official.<sup>11</sup>

5.14 The State party sought to obviate accountability for its failure to provide an appropriate framework through which effective remedies for systemic violations could be obtained. Notwithstanding the evidence, provided by international mechanisms, of severe

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<sup>11</sup> *Lozenkov v. Belarus* (CCPR/C/112/D/1929/2010).

violations in social care institutions in Bulgaria, almost no effective remedies are available at the national level, as confirmed by the European Court of Human Rights.<sup>12</sup> In *Mental Disability Advocacy Centre v. Bulgaria*,<sup>13</sup> the European Committee of Social Rights found systemic violations and stated that the financial constraints of Bulgaria could not be used to justify the fact that children residing in homes for children with intellectual disabilities were unable to enjoy their right to education, which applies to the rights at issue before the Committee. Multiple reports from the European Committee for the Prevention of Torture and concluding observations from the Committee against Torture and the Human Rights Committee attest to the systemic issues, including in the Radovtsi Home.<sup>14</sup> Despite high occupancy rates in social care homes, victims of care violations have not filed a single complaint in court because access to justice is impossible for people in social care institutions. At the national level, there have been only two successful cases by victims of rights violations similar to those contained in the present communication.<sup>15</sup>

5.15 On the merits, the State party does not respond to the authors' claim regarding systemic failures in the social care system which resulted in the appalling neglect and ill-treatment of Ms. Lazarova in the Radovtsi Home and ultimately in her death. The State party made generic statements on the quality of care in the institution, contradicting findings of its own authorities. However, the State party has not disputed the inadequacies of the search initiated on the day of Ms. Lazarova's disappearance or the failure to involve the emergency unit of the civil protection unit until the first author did so himself. While the State party asserts that the authors were informed of their relative's disappearance on 3 January, it provides no evidence. This assertion differs from the experience of the authors who were, in fact, informed only on 8 January 2007. Nor has the State party disputed the facts of the ineffective investigation. Lastly, the State party has not disputed that Ms. Lazarova was deprived of her liberty. Therefore, the allegations set out in the present paragraph should be considered proven.

5.16 The State party admits that the search was discontinued at 7 p.m. on the day of Ms. Lazarova's disappearance, and not at 10.30 p.m. as understood by the authors. The Mountain Rescue Service was not contacted until 10 January, one week after Ms. Lazarova's disappearance.

5.17 The State party alleges that qualified staff conducted Ms. Lazarova's treatment following an individual plan, and that her treating psychiatrist had prescribed her ongoing therapy, including special medications. The authors object that the individual plan for Ms. Lazarova was nothing more than an administrative formality bearing no relation to her actual individualized needs. The authors argue that at no point in the domestic or international proceedings has the State party indicated that it put into place any alternative or appropriate measures to support Ms. Lazarova after the closure of the special care room. There is ample evidence that Ms. Lazarova lived in appalling conditions, received no support, was often hungry, was subjected to physical violence leaving bruising and visible injuries, and was deprived of her liberty in the special care room. It was established that she had left the institution without support on at least two occasions prior to her death; therefore, the institution was aware of the risks. While the State party claims that special medications were prescribed and that therapy was not limited to medication alone, it provides no details in that regard, and inadequacies in Ms. Lazarova's medical records undermine the veracity of such a claim.

<sup>12</sup> *Stanev v. Bulgaria*, Application No. 36760/06, Judgment, 17 January 2012; *Stankov v. Bulgaria*, Application No. 25820/07, Judgment, 17 March 2015; and *Nencheva and others v. Bulgaria*, Application No. 48609/06, Judgment, 18 June 2013.

<sup>13</sup> Application No. 41/2007, Decision, 3 June 2008.

<sup>14</sup> Council of Europe, "Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 25 September to 6 October 2017", document CPT/Inf (2018)15; [CAT/BGR/CO/6](#); and [CCPR/C/BGR/CO/4](#).

<sup>15</sup> In 2017, the Supreme Court of Cassation, following the decision by the European Court of Human Rights in *Dodov v. Bulgaria*, Application No. 59548/00, Judgment 17 January 2008, specifically stated that, if there is no direct link between an identifiable individual's acts or omissions and the alleged damage, redress is not possible.

5.18 The State party's claim relating to the quality and individualized nature of Ms. Lazarova's care is in contrast with the admission in its observations that the number of medical and auxiliary staff was too low to attend to the residents, given their state of health and specific needs. The State party has not contested the findings that Ms. Lazarova's needs were acute and that she was indeed utterly dependent on attendant care. The authors' claim is precisely that the institution was incapable of providing the specialized and individualized care necessary for Ms. Lazarova. From the documentation, it is clear that Ms. Lazarova was known to have had an intellectual disability since early childhood and that, in 1992, it was recognized that she had a severe psychosocial disability. Prior to her institutionalization in 1998, her family did not receive the support necessary to allow them to care for her adequately. As her parents grew older, it became necessary to place her in an institution. The State party assumed direct responsibility for Ms. Lazarova, having placed her in an institution, which they admitted was in poor repair, underfunded and lacking medical and auxiliary staff.

5.19 With regard to violations other than the existence of the special care room, in its observations the State party does not deny the substance of the claims and provides no evidence to the contrary. The State party alleges that inspections carried out by the authorities did not find evidence of the existence of an isolation ward or that Ms. Lazarova was neglected or subjected to violence. However, those findings can be rebutted with the findings of its own Agency for Social Assistance in 2006, which provided details of the room, the neglect of the residents and the subsequent order by that Agency for the room's closure.

5.20 The authors strongly object to the State party's assertion that the family did not care for Ms. Lazarova prior to her death and find such allegations reprehensible. As set out, the authors were compelled by circumstances created by the State party to place their family member in the Radovtsi Home. The complete lack of necessary support left them with no alternative. They were distraught regarding her treatment there but, being entirely dependent on the institution for her care, they had no other option.

5.21 The death of Ms. Lazarova was the fatal result of the systemic violations for which the State party and its individual authorities are responsible, as specified in the authors' civil liability claim. Before her death, she was placed in isolation in inhuman and degrading conditions. When released from isolation, she received no care, treatment or rehabilitation to address the effects of that ill-treatment. The neglect, isolation and lack of support and rehabilitation were compounded by poor conditions and a failure to ensure any alternatives for the families of individuals, such as Ms. Lazarova, who are institutionalized in Bulgaria. The lack of redress available to victims and the inability to enforce the accountability of the authorities are of serious concern. The authors had no financial support or training to deal with her impairment or the consequences of inhuman and degrading treatment. They also feared that any eventual complaints could result in negative repercussions for Ms. Lazarova. Nevertheless, they still sought to speak with the director and others to advocate for quality care for Ms. Lazarova.

5.22 The authors seek to prevent the recurrence of similar ill-treatment and deaths in institutions in Bulgaria, and to ensure that the State party respects its obligations under the Covenant and respects the rights of people with disabilities, including by facilitating access to justice and obtaining redress.

6.1 On 22 February 2019, the authors proposed remedies in the event that the Committee finds a violation by the State party of articles 6, 7 and 10 (1) of the Covenant.

6.2 To ensure an effective remedy, the authors suggest the following: (a) to take appropriate steps to provide them with compensation for the loss of their daughter's and sister's life, for the inhuman and degrading treatment to which the victim was subjected and for the pain and anguish that the authors themselves suffered as a result of their family member's disappearance and death; (b) to ensure that necessary psychological rehabilitation and support are available to the authors; and (c) to provide reimbursement of the legal costs incurred by the authors, which amount to 21,899 euros.

6.3 In addition, the State party should: (a) conduct a prompt, thorough, effective and impartial investigation into the ill-treatment, disappearance and death of Ms. Lazarova; prosecute and punish those responsible; and (b) keep the authors regularly informed about the progress of the investigation and ensure their effective participation at all stages.

6.4 The authors assert that the State party is also obliged to take all steps necessary to prevent the recurrence of similar violations. It should review its legislation and policies to ensure that general standards of quality of care or services provided to persons with disabilities, including safeguards to protect them from all forms of abuse, are adopted and regularly monitored in practice by such independent supervisory bodies as the Ombudsman of Bulgaria and civil society organizations; that a ban is put into place on the use of chemical and physical restraints, including seclusion or solitary confinement of persons with intellectual disabilities in residential social care or psychiatric facilities; that all cases of death in residential social care or psychiatric facilities are investigated; that all professionals engaged in investigations receive training in human rights law, with a focus on disability; that obstacles preventing people living in residential social care or psychiatric facilities from accessing justice are removed; and that all professional staff of social care and psychiatric facilities have comprehensive training on the human rights of people with disabilities, in particular regarding their protection from ill-treatment and abuse.

### Issues and proceedings before the Committee

#### *Consideration of admissibility*

7.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement. For clarity, the Committee notes the authors' argument that they alleged a violation of articles 2, 3 and 8 of the European Convention on Human Rights in their application to the European Court of Human Rights.<sup>16</sup> Their application was rejected as inadmissible by chamber decision of 26 August 2014, owing to a lack of victim status in respect of the claims under articles 3 and 8 of the European Convention, declaring their incompatibility *ratione personae*,<sup>17</sup> and owing to non-exhaustion of available domestic remedies in respect of the claims under article 2.<sup>18</sup> Since the State party has not entered a reservation that would enhance the scope of article 5 (2) (a) of the Optional Protocol,<sup>19</sup> the Committee considers that the authors' claims under articles 6, 7 and 10 (1) of the Covenant can be examined, since the requirements of article 5 (2) (a) have been met.<sup>20</sup>

7.3 The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5 (2) (b) of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.<sup>21</sup> The Committee takes note of the State party's argument that the authors have not exhausted all administrative and civil remedies since they have not submitted information regarding the specific perpetrators and their acts and omissions, as requested by the courts. However, the authors have pursued three types of legal proceedings before domestic authorities in order to have the responsibility of State officials assessed regarding the death of Ms. Lazarova: administrative, civil and criminal. Although the proceedings lasted for several years, the authors were not able to identify particular officials responsible for the relevant acts or omissions. They alleged that Ms. Lazarova's death was a result of systemic failures in the State institution. The Committee notes the authors' argument that the information requested by the courts was at the State's disposal and not theirs;

<sup>16</sup> Application No. 26874/08 of 17 April 2008.

<sup>17</sup> European Convention on Human Rights, art. 35 (3) (a).

<sup>18</sup> *Ibid.*, art. 35 (1) and (4).

<sup>19</sup> *Rivera Fernández v. Spain* (CCPR/C/85/D/1396/2005), para. 6.2.

<sup>20</sup> *B.H. v. Austria* (CCPR/C/119/D/2088/2011), para. 8.5.

<sup>21</sup> See, for example, *Patiño v. Panama* (CCPR/C/52/D/437/1990), para. 5.2; *P.L. v. Germany* (CCPR/C/79/D/1003/2001), para. 6.5; *Riedl-Riedenstein et al. v. Germany* (CCPR/C/82/D/1188/2003), para. 7.2; *Gilberg v. Germany* (CCPR/C/87/D/1403/2005), para. 6.5; *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 7.4; and *H.S. et al. v. Canada* (CCPR/C/125/D/2948/2017), para. 6.4. See also *B.P. and P.B. v. the Netherlands* (CCPR/C/128/D/2974/2017), para. 9.3.

consequently, the domestic remedies in respect of administrative and civil claims for redress were not effective since the authors could not establish a link between the acts or omissions of a particular perpetrator and the resulting death. The Committee observes that the State party has not adequately explained why and how the concerned domestic remedies were effective. The State party disregarded the fact that the authors' applications under the administrative, civil and criminal law did not result in any substantive advancement of the investigation into the alleged violation of the right to life or to a remedy. The Committee considers that the authors resorted to available domestic remedies; their multiple claims were, however, unsuccessful (see paras. 2.8–2.10 above). Accordingly, the Committee concludes that the examination of the authors' claims is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol.

7.4 The Committee observes that the authors complained that the authorities were responsible for the death of Ms. Lazarova. The Committee recalls its jurisprudence that a victim must be personally and directly affected.<sup>22</sup> The Committee recalls that it has recognized the standing of the victim's next of kin (that is, family members as indirect victims) to submit a communication where the victim died in circumstances alleged to engage the responsibility of the State, for example, when family members were directly affected on account of constant fear.<sup>23</sup> In the light of the above, the Committee considers that the authors' claims are admissible *ratione personae* since they submitted their communication as family members of the victim, a person with a severe intellectual disability, who died while residing in a social care institution, under the authority of the State, with a view to ensuring an effective investigation and accountability of the personnel concerned.

7.5 As there are no other impediments to admissibility, and the claims have been sufficiently substantiated, the Committee declares the communication admissible since the authors' claims raise issues pertaining to articles 6, 7 and 10 (1) of the Covenant with regard to Ms. Lazarova, and proceeds with its consideration on the merits.

#### *Consideration of the merits*

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee must determine whether the State party violated articles 6, 7 and 10 (1) of the Covenant in connection with the death of the authors' relative.

8.3 Concerning the death of Ms. Lazarova as a result of her unnoticed departure from the Radovtsi Home where she had been undergoing treatment since 1998, the Committee notes the authors' allegations on several points. First, on the morning of 3 January 2007, the day she disappeared, Ms. Lazarova was administered a medication with a sedative effect, which is used to moderate states of agitation. Second, the authors claim that she faced neglect and abuse in the Radovtsi Home, which was under the authority of the State. Her medical and physical needs were unattended in spite of her severe disability, which at times made her unaware of her surroundings and disoriented about time and place. Third, on occasion she was kept in an isolation ward called the special care room, which was occupied by 20 residents until it was closed in October 2006. Fourth, given the lack of staff, Ms. Lazarova and other residents were not properly supervised. The Committee also notes the authors' argument that the residents were held in dilapidated buildings which were in disrepair and not secure, as admitted by the State party, and that several residents, including the victim, were left to walk freely, without adequate support or protective measures, within the buildings and in the yard. They were also able to visit the nearby village. A witness in the Radovtsi Home reported that Ms. Lazarova had on an earlier occasion walked to the nearby village, as she was hungry. The Committee notes the authors' claim, based on the above, that the prevailing circumstances and the lack of adequate supervision owing to understaffing

<sup>22</sup> *Andersen v. Denmark* (CCPR/C/99/D/1868/2009), para. 6.4; *Beydon et al. v. France* (CCPR/C/85/D/1400/2005), para. 4.3; communication No. 1440/2005, *Aalbersberg et al. v. The Netherlands*, para. 6.3; and *Brun v. France* (CCPR/C/88/D/1453/2006), para. 6.3.

<sup>23</sup> *Almeida de Quinteros et al. v. Uruguay* (CCPR/C/19/D/107/1981), para. 14.

combined with the closure of the special care room enabled the victim's unnoticed escape from the Radovtsi Home.

8.4 Concerning the death of Ms. Lazarova, the Committee observes the authors' submissions that, following her disappearance the authorities did not start looking for her promptly and adequately; that the family was informed too late; that some of the investigations had to be initiated by the authors; and that this situation directly contributed to the death of Ms. Lazarova, who was found dead from hypothermia in the woods 20 kilometres away from the Radovtsi Home. It also takes note of the information provided by the State party, namely that several inquiries by the State authorities were carried out into the conditions of confinement of Ms. Lazarova, the circumstances of her disappearance from the Radovtsi Home, and the causes of her death after her departure. The Committee notes that the State party has denied a causal link between the conditions of internment of Ms. Lazarova, her disappearance and ultimately her death, as the investigations undertaken by State authorities remained inconclusive.

8.5 The Committee affirms that it is incumbent upon States to ensure the right to life of individuals in medical and social institutions,<sup>24</sup> and not incumbent upon those individuals to request adequate protection. The State party, by confining individuals to State institutions, assumes the responsibility to care for them. Consequently, it is up to the State party to support, fund and organize its social care institutions to provide adequate care for individuals in need of assistance. The lack of financial means and personnel, particularly medically specialized staff capable of addressing the severe disabilities of some of the residents, who are entitled to special measures of protection, does not diminish this responsibility. The Committee considers that the medical personnel within the Radovtsi Home knew or should have known about the medical and psychosocial needs of Ms. Lazarova and were in a position to assess the risks of her potential departure, which had occurred previously. The Committee considers that the State party failed to take appropriate measures to protect Ms. Lazarova's life during the period she resided at the Radovtsi Home. Consequently, the Committee concludes that, in this case, there has been a violation of article 6 (1) of the Covenant.

8.6 Regarding the authors' claim that Ms. Lazarova, while at the Radovtsi Home, was subject to inhuman and degrading treatment, the Committee notes the authors' arguments. First, they indicate that she was regularly confined in the special care room, as described by the inspection report of the Agency for Social Assistance. Second, she was left unattended for significant periods of time, along with others with similar psychosocial disabilities, soaked in urine and excrement. Third, no record was kept of Ms. Lazarova's medical treatment while in the isolation ward and prior to her death, although she required medication that was to be administered three times a day. Fourth, she was not provided adequate care, particularly following the closure of the special care room, where she had been kept in isolation. Generally, there was evidence of neglect and abuse resulting from beatings at the institution, malnutrition and the use of strong sedative medication without proper supervision. The State party has admitted that the authorities were aware of the failures in care and treatment at the Radovtsi Home, at least following its inspection in 2006, and that those failures included a lack of staff, leading to ineffective oversight following the closure of the isolation ward. In the circumstances of the present case, where respect and protection have not been guaranteed to a resident with severe disabilities, in disregard of her specific medical care and treatment needs, the Committee considers that Ms. Lazarova was exposed to inhuman and degrading treatment in violation of article 7 of the Covenant.

8.7 Regarding the conditions of confinement, the Committee notes that the State party concedes that the material conditions at the Radovtsi Home were substandard mainly as a result of chronic underfunding and that, at the relevant time, residents could not be properly supervised owing to understaffing. The Committee also notes the information from the authors that Ms. Lazarova was regularly locked in an isolation ward until October 2006 and that the residents were held in inhuman and insanitary conditions, without proper medication and clothing, often hungry and lacking adequate hygiene, which amounts to humiliating treatment. The Committee finds that holding Ms. Lazarova in the conditions that prevailed at

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<sup>24</sup> General comment No. 36, para. 25.

the Radovtsi Home at that time entailed a violation of her rights under article 10 (1) of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses that the State party failed in its obligation to ensure the protection of Ms. Lazarova, who lost her life as a direct consequence of the deplorable conditions in the Radovtsi Home. The Committee finds that articles 6 (1), 7 and 10 (1) of the Covenant were violated.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*, to take appropriate steps to ensure that conditions in psychiatric care facilities are compatible with the State party's obligations under articles 6, 7 and 10 of the Covenant. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. In addition, it requests the State party to publish the present Views.

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