

Distr.: General
27 April 2023

Original: English

Advance Unedited Version

Human Rights Committee

Views adopted by the Committee under 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 Center)
<i>Alleged victim:</i>	Ms. 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 decision:</i>	15 March 2023
<i>Subject matter:</i>	Right to life
<i>Procedural issue:</i>	Inadmissibility – non-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 behalf and on behalf of their deceased sister and daughter Valya Yordanova Lazarova. They are all citizens of Bulgaria. Valya Yordanova was born on 25 March 1974. The authors submit that the treatment of Ms. Lazarova, while confined in a Social Care Home, and her subsequent disappearance and death, amount to a violation of her rights under articles 6, 7 and 10 (1) of the Covenant by Bulgaria. The Optional Protocol to

* 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, Laurence R. Helfer, Carlos Gómez Martínez, Bacre Waly Ndiaye, Marcia V.J. Kran, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Koji Teraya, Hélène Tigroudja and Imeru Tamerat Yigezu.

the Covenant entered into force for Bulgaria on 26 June 1992. The authors are represented by counsel.¹

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 Ms. Lazarova in the Social Care Home in Radovtsi (Radovtsi Home), an institution run by the State and Municipality. The Radovtsi Home has been controlled and financed by the Ministry of Labour and Social Policy (Ministry) and the Municipality of Drianovo. She remained in care of the Radovtsi Home until her death, in January 2007.

2.2 On 11 December 1998, Ms. Lazarova was diagnosed with a mental and intellectual disability and was declared "mentally incapable" by the Veliko Tarnovo Regional Court. She was represented by her parents from that date as guardians. During the 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 discharged by the institution.

2.3 In October 2006, an inspection by the Agency for Social Assistance (Agency), under the Ministry, established that the Radovtsi Home was in a poor state of repair. The inspectors found some 20 residents with severe disabilities isolated in the Special Care Room, locked in appalling conditions, walking with bare feet, unwashed and soaked with urine and excrements. The Agency ordered the immediate closure of this room. It was subsequently closed down and the practice of isolating residents ceased on 1 November 2006. Ms. Lazarova was one of the residents isolated in the Special Care Room.²

2.4 In the morning of 3 January 2007, Ms. Lazarova was administered a medication with a sedative effect to moderate states of agitation. Afterwards, it was discovered that she had disappeared from the institution. Subsequently, another inmate 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 with high support needs such as Ms. Lazarova. 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 allegedly died.

2.5 The police were contacted on 3 or 4 January 2007 by the institution,³ 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, Ms. Lazarova was found dead in a forest approximately eight kilometres away from the Radovtsi Home by a shepherd who notified the police. The cause of death was hypothermia and physical exhaustion. She had died 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, the Explanatory Note by the Director of the Radovtsi Home, and the Social Assessment prepared on 1 March 2006 by a commission established by a Director of the Municipality Department of Social Assistance. Those documents revealed allegations of ill-treatment and beatings in the institution as the residents were 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 requiring medication administration three times a day. Any interruption of the medication could have drastically affected her medical condition. Despite requests by the authors to the authorities, no expert report was prepared relating to the medication of Ms. Lazarova to determine if traces of the drugs could be found in her body after her death. During

¹ The power of attorney has been provided by the complainants to Mental Disability Advocacy Center (Ms. Aneta Mircheva Genova and Ms. Ann Campbell). The original counsel has been succeeded by the Validity Foundation (Ms. Aneta Mircheva Genova).

² During inspection on 25 and 26 October 2006.

³ The authors have received contradicting information.

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 inmates occupying that room became less effective. The former residents of the Special Care Room were left to walk freely without any adequate support or measures to protect them, including walking around the buildings and the yard in an unsupervised manner, and the possibility of leaving the institution unnoticed. It was reported that inmates 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 into manslaughter. On 8 March 2007, the Dryanovo Police investigator proposed to terminate the proceedings due to lack of evidence of manslaughter. On 9 March 2007, the Gabrovo Regional Prosecutor terminated the criminal investigation for lack of evidence. The authors did not appeal this decision as they had not alleged manslaughter in their complaint but believed that the death of their relative was the consequence of systematic neglect, lack of oversight and adequate care. On 9 March 2007, the Dryanovo District Prosecutor refused to open criminal investigation of the alleged neglect. On 27 March 2007, the authors appealed this decision. On 5 April 2007, the Gabrovo Regional Prosecutor quashed the District Prosecutor's refusal to open criminal proceedings and ordered an investigation regarding the alleged neglect. On 21 May 2007, the District Prosecutor refused again to initiate criminal proceedings due 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 this decision. On 22 June 2007, the 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 this 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. By 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 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, which resulted in the harm to the plaintiffs. On 22 July 2008, the authors sent a clarifying letter. On 23 September 2008, the Administrative Court refused to open a civil case stating that the authors had failed to respond to the court's instructions to identify the officials and specific activities concerned by their claims. 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 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 European Convention, the Court held that the application was inadmissible for non-exhaustion of domestic remedies, concluding that the civil remedy before the Administrative Court was in this case an effective remedy, that the applicants had failed to submit the clarifications requested by the Court and that after this finding, it remained open 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, by its request of 10 July 2008, it became apparent that the Administrative Court failed to recognise that the authors were challenging a structural

failure arising from the omissions of multiple authorities, rather than one particular unlawful administrative act.

The 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. Where individuals are held in the custody or care of the State, there is a particular obligation on the State to take adequate measures to protect their life.⁴ The authors note that Ms. Lazarova was under the care and responsibility of the Radovtsi Home, which was under the State authority, at the time of her death; 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 was administered strong sedatives which added to the need for her to be supervised. No adequate records of her medication were produced. On the day she left Radovtsi Home, there were an insufficient number 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 due to a failure to conduct an adequate investigation into the circumstances of Ms. Lazarova's death.⁵ 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, their resulting death may involve a violation of article 6.⁶ In addition, no inquiry was undertaken in respect of the medication administered to Ms. Lazarova prior to her disappearance. Finally, the authorities failed to question the information provided by the Director of the Radovtsi Home when it was conflicting with the information presented by the authors based on their own inquiries.

3.4 The authors submit that Ms. Lazarova, while resident at the Radovtsi Home, was subjected to inhuman and degrading treatment. Firstly, 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 was 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, or 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 the State party's authorities were aware of the failures in the care and treatment at the Radovtsi Home, at least following its inspection in 2006, amounting to inhuman or degrading treatment, and that no steps were taken to remedy this situation. They argue that particular protection must be offered to "patients in teaching and medical institutions", note that specific protection be provided against "excessive chastisement or punishment"⁷ and note that treatment leading to physical and mental distress should be prevented. They also 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,⁸ and that inhuman or degrading treatment must be assessed against

⁴ *Dermat 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 v. Spain* (CCPR/C/95/D/1473/2006).

⁵ General Comment No. 36, para. 58.

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

⁷ Committee's General Comment No. 20: Article 7, para. 5.

⁸ *Hauman v. Peru* (CCPR/C/85/D/1153/2003), paras. 6.3 - 6.4.

particular vulnerabilities of the individual concerned, including any physical or mental illness or disability.⁹

3.6 The authors reiterate that the Radovtsi Home is under the aegis of 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.¹⁰

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 regrets at the circumstances of the case.

4.2 As regards 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 behalf and of the family (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 the Ruling No. 169/23.09.2008, the Administrative Court has found that the claimants sought "compensation for non-pecuniary damages sustained in the amount of BGN 99,000 or BGN 33,000 for each claimant". The damages claimed had occurred due to the lack of adequate care for the institutionalized patients in the Social Care Home for Mentally Ill Adults in Radovtsi (Radovtsi Home), which allegedly caused the death of Ms. Lazarova.

4.4 The claim was rejected by the Administrative Court's order 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 to 3) have been rectified. With respect to the remaining irregularities (para. 4), the text of the response of 22 July 2008 simply paraphrases the original claim without specifying the type of administrative activity under which the alleged omissions were made. The authors' response to the remaining irregularities is general, without naming the official(s) whose specific conduct is associated with the claim. Along with the respondents identified in the original claim as being "responsible" for the omissions, the authors' response also names the social activities administration of the Agency for Social Assistance, weakening the claim directed against the originally indicated respondents. Such vagueness 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 Administrative Procedure Code, 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 only be filed after the administrative act has been repealed, in accordance with established procedure. In this 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 they allege an omission to carry 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 not citing circumstances relevant to the admissibility of their claim filed with the administrative court, the claimants have failed to comply with the court's instructions to rectify the irregularities of said claim, on account of which the ongoing court proceedings have been terminated. The ruling of the Administrative Court of Gabrovo was appealed before the Supreme Administrative Court; its three-member panel upheld the ruling of the Administrative Court of Gabrovo. The decision of the Supreme Administrative Court is final.

⁹ *Slimani v. France*, ECtHR (Application No. 57671/00), para. 27.

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

4.6 On 22 January 2007, pursuant to article 212(3) of the Criminal Code, pre-trial 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 in 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 pre-trial investigation. Once the result of investigation was presented to Yordan Lazarov and Dimitrina Lazarova as concerned parties,¹¹ 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 Public Prosecutor's Office (RPPO) terminated the criminal proceedings on the grounds of para. 1 of article 243 (1) of the Criminal Procedure Code (CPC), due 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 has noted 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 Public Prosecutor's Office (DPPO) 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 DPPO 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 DPPO refused to initiate pre-trial proceedings, having found that there was insufficient evidence of culpable conduct on part of the staff at the Radovtsi Home amounting to crimes under articles 137 and 138 (1) of the Criminal Code. Ivan Lazarov appealed against the decision before the Gabrovo Regional Prosecutor, and the latter, by a decision dated 5 April 2007, granted the appeal on the basis that it was well-founded and overruled the Dryanovo DPPO's 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 police investigation in relation to the Dryanovo District Police Department (DPD) Pre-Trial Procedure No. 17/2007 and the investigation of the Dryanovo DPPO's Case File No. 58/2007 established that Valya Lazarova had been suffering from a mental disorder since 1992, the disorder being a paranoid form of schizophrenia: hallucinatory-paranoid syndrome. The investigation did not find evidence of culpable or deliberate behaviour on 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 DPPO refused to initiate pre-trial 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 (SPOC). The SPOC 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 of the Supreme Prosecutor Office of Cassation's Chief Prosecutor or by the Prosecutor General. No such review has, however, been sought by the authors. The authors have neither made use of the option to initiate an internal review of the decision terminating the criminal proceedings and of the SPOC decision declining to initiate pre-trial proceedings, nor resorted to the available remedies under the civil law. In light of the above, the authors' communication does not meet the

¹¹ Protocols of 7 March 2007, No. 1.53-54 DP.

admissibility criteria under article 5 of the Optional Protocol, which requires exhaustion of all available domestic remedies.

4.12 In this 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 Responsibility for Damage Act and the Obligations and Contracts Act. Paragraph 36 of the said decision explicitly states that “..., *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 As regards the merits of the communication, the State party submits that Ms. Valya Lazarova was deprived of legal capacity by a judgement of the Veliko Tarnovo Regional Court No. 508/1998, dated 11 December 1998. The 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 at the Radovtsi Home in Dryanovo Municipality. Qualified staff were responsible for her treatment following an individual plan. Based on a decision by the treating psychiatrist in charge, Dr. Stoykova, she had been prescribed ongoing therapy including special medicaments.

4.14 Due to her disorder, Valya Lazarova often had mood swings and her therapy had little effect on her 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, tended to be self-injurious and injurious to others, unconscious of her surroundings, disoriented about time and place, unable to control her excretory functions and utterly dependent on attendant care.

4.15 During the period between her placement and her death, Ms. Lazarova was once on a home leave 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 the absence of Valya Lazarova from the specialized institution when medications were dispensed around 12:15 pm on 3 January 2007. The staff promptly searched the yard and the area around the care home. Part of the staff headed towards the town of Tryavna. On the same day, at 1:30 pm, a missing person report concerning Ms. Lazarova was filed with the District Police Department in the town of Dryanovo and the town of 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 Balgareni until about 7:00 pm. 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 under the Bulgarian Red Cross to assist in the search. The search was unsuccessful; on 22 January 2007, at about 7:00 pm, 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 identification, the police investigator issued an order for a coroner’s expert opinion on Ms. Lazarova’s body. Following an external examination, an autopsy report No. CM-5/2007 was drawn up, stating 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 which 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 It should be noted that the Radovtsi Home buildings had been in poor material conditions and had not been secured, for reasons beyond the management’s control including the lack of funds, according to the Agency for Social Assistance. The number of medical and auxiliary staff was too small to attend to the inmates, given their state and specific needs. In the period between 2006 and 2017, the Inspectorate of the Social Assistance Agency

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 were issued to the institution.

4.20 The memoranda of assessments and the reports on the checks were distributed to all parties concerned, including the Mayor of Dryanovo Municipality, in his capacity as provider of the social service 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 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

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 administrative court’s¹² request for complementary information, and the case was dismissed for non-exhaustion of domestic remedies due to procedural error or omission. The authors object to such an assertion since the court’s dismissal clearly demonstrates that this remedy is by its nature ineffective to provide redress for the violations experienced by the authors.

5.3 The Gabrovo court held that the procedure required the authors to “personally name the officials whose specific conduct has been associated with the claim”. As stated in the initial communication, the court also required the authors to clarify the concrete 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 the 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 instant case in particular, there is no single act that can be argued to have resulted in death of itself. For a remedy to be effective, it must include recognition of these 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 unavailable in practice, as the required details cannot be proved. These 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 court, the authors should have also designated “the type of administrative activity as part of which the alleged omissions were made”. The authors therefore addressed their claim against all State authorities implicated in the structural failures: Dryanovo Municipality, including its Mayor, 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 the Agency for Social Assistance, is responsible for supervising and controlling all social services to ensure they meet legal standards. The Ministry in particular was concerned, as its Agency for Social Assistance investigated the Radovtsi Home 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 to do 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.

¹² Administrative Court of Gabrovo 2.

5.5 As for the structure of 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 systemic failure to coordinate, supervise and control functions across the system. This has resulted in provision of social services to people with disabilities, which are so inadequate that in the present case, they materially facilitated the ill-treatment and death of Ms. Lazarova. The authors relied before the Gabrovo Administrative Court on the State and Municipalities Responsibility for Damage Act.

5.6 The authors admitted that the “Special Care Room” was rightly closed two months before Ms. Lazarova’s death in 2006. However, inmates were provided with no alternative care despite their serious disabilities. The institution’s staff had not been sufficiently trained and had not treated the inmates humanely, and the living conditions were substandard. Ms. Lazarova’s death was directly linked to the lack of appropriate care in the Radovtsi Home, lack of administrative supervision by the Dryanovo Municipality, lack of adequate financial and methodological support for the operation of the institution, and 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 employer of the Radovtsi Home’s director, and the bodies for social assistance, part of Agency for Social Assistance, had failed to monitor the performance by staff of the institution of their duty to “provide individually tailored social services and assess the needs of Valya 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, provision of basic needs and guarantees of physical safety were satisfactory, given Ms. Lazarova’s state of health. The Minister 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 necessary policies to ensure that the staff of social care institutions are 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, autonomy), a safe environment including places for outdoor activities, and appropriate material conditions such as sufficient light in the rooms, heating etc. 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 Therefore, the State party’s argument as to non-exhaustion of domestic remedies due to a procedural error or omission by the authors is incorrect and seeks to wrongly obviate accountability for the substantive violations committed by it at national level.

5.9 The State party mentioned the possibility of initiating a civil claim for damages under either the Responsibility for Damage Act or the Obligations and Contracts Act. The authors recall the original arguments that the claim before the Gabrovo court was in fact based on the Responsibility for Damage Act, although the court based its dismissal on the Administrative Code instead. As to the availability of a second civil claim under the same Act, or a claim under the Obligations and Contracts Act, the authors considered that re-initiating the same case again under the first Act had no reasonable prospect of success. The claim was already rejected by the administrative court without any attempt to engage with the structural nature of the complaints and the fact that liability rests with multiple authorities. The decision of the administrative court makes clear that no identifiable individual directly caused Ms. Lazarova’s death and the substance of the authors’ claim was ignored. Further, 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 is no reason to expect that filing the case a second time would have resulted in its resolution within a reasonably expeditious timeframe, and with a different outcome than its decision of 23 September 2008.

5.10 In any case, the authors submit that the Obligations and Contracts Act cannot offer effective redress as it is inapplicable to the facts set out in the communication. Firstly, the Act requires that an identified individual be responsible for the violations, which is not the case. During the time when the authors were litigating these issues, the judicial system underwent a fundamental reform with the creation of the administrative courts in 2007. This

was the first time that 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 concerning claims of damages for persons with mental disabilities in social care institutions. The Responsibility for Damage Act applies to compensation claims related to damages by an administrative body. The Obligations and Contracts Act has no application in this regard. The Radovtsi Home is managed by the Municipality. Its Mayor 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 Responsibility for Damage Act, which the authors invoked. While there is insufficient case law on damages caused by social care institutions, the case law supports the above interpretation. The authors also point out an analogy with cases concerning harm caused in prisons. In 2010, the Supreme Cassation Court 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. Thus the court transferred the case to the administrative jurisdiction.

5.11 As to 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, i.e., that it was not possible to establish culpable behaviour on 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 these factors, combined with the "established health condition" of the residents, had facilitated Ms. Lazarova's disappearance. The decision noted that these factors had not been within the control of staff. Its findings substantiate the authors' arguments that the alleged violations resulted from systemic failures at multiple levels: administrative, policy and legal ones. The State party admitted that "the buildings of the Radovtsi Home were in poor repair and had not been secured, This was for reasons beyond the management's control including the lack of funds. The number of medical and auxiliary staff was too small to attend to the inmates, given their condition and specific needs."¹³

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 they refer to the Prosecutor General's discretionary power under article 243 of the Criminal Procedure Code to repeal the decision terminating criminal investigation. This 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".¹⁴

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 evidence by international mechanisms of severe violations in social care institutions in Bulgaria, there are almost no effective remedies available at the national level, as confirmed by the European Court of Human Rights.¹⁵ In *MDAC v. Bulgaria*,¹⁶ the European Committee of Social Rights found systemic violations and stated that Bulgaria's financial constraints cannot be used to justify the fact that children with intellectual disabilities in Homes for Mentally Disabled Children cannot enjoy their right to

¹³ Supreme Prosecutor's Office of Cassation findings, para. 2, page 5.

¹⁴ *Lozenkov v. Belarus* (CCPR/C/112/D/1929/2010).

¹⁵ *Stanev v. Bulgaria*, Application No. 36760/06, judgment of 17 January 2012; *Stankov v. Bulgaria*, Application No. 25820/07, judgment of 17 March 2015; *Nencheva and others v. Bulgaria*, Application No. 48609/06, judgment of 18 June 2013.

¹⁶ *Mental Disability Advocacy Centre (MDAC) v. Bulgaria*, application No. 41/2007, decision of 3 June 2008.

education, which applies to the rights at issue before the Committee. Multiple reports from the European Committee for the Prevention of Torture (CPT) as well as Concluding Observations from the Committee against Torture and this Committee also attest to the systemic issues, including in the Radovtsi Home.¹⁷ Despite high occupancy rates, there has not been a single complaint filed in court by the victims because access to justice is impossible for people in social care institutions. There have only been two successful cases by victims of rights violations similar to those complained of in the present communication at the national level.¹⁸

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 appalling neglect and ill-treatment of Ms. Lazarova in the Radovtsi Home and ultimately her death. The State party made generic statements on the quality of care in the institution, contradicting findings of its own authorities. For example, the State party has not disputed the inadequacies of the search initiated on the day of Ms. Lazarova's disappearance or their 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, only informed on 8 January 2007. Nor has the State party disputed the facts of the ineffective investigation. Finally, the State party has not disputed that Ms. Lazarova was deprived of her liberty. Therefore, those allegations should be considered proven.

5.16 The State party admits that the search was discontinued at 7:00 pm on the day of Ms. Lazarova's disappearance, and not at 10:30 pm 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 Dr. Stoykova 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 individualised needs. The authors argue that at no point in the domestic or international proceedings has the State party indicated that it put in place any alternative or appropriate measures to support Ms. Lazarova after closure of the Special Care Room. There is enough 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 thus 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 this regard and inadequacies in Ms. Lazarova's medical records undermine the veracity of such a claim.¹⁹

5.18 The State party's claim relating to the quality and individualised nature of Ms. Lazarova's care is in contradiction with the admission in its observations that the number of medical and auxiliary staff was too small to attend to the inmates, given their state and specific needs. The State party has not contested that Ms. Lazarova's needs were acute and she was indeed "utterly dependent on attendant care". It is precisely the authors' claim that the institution was incapable of providing the specialised and individualised care necessary for Ms. Lazarova. It transpires from the documentation that Ms. Lazarova was known to have an intellectual disability since early childhood and was recognised in 1992 to have a severe psychosocial disability. Prior to her institutionalisation in 1998, her family did not receive the supports necessary to allow them to adequately care for her. 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.

¹⁷ CPT report on the visit to Bulgaria from 25 September to 6 October 2017, CPT/Inf (2018) 15.

¹⁸ In 2017, the Supreme Cassation Court, following the ECtHR decision in *Dodov v. Bulgaria*, 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.

¹⁹ The State party did not specify prescribed medications used to regulate Ms. Lazarova's mood.

5.19 As regards the violations other than the existence of the Special Care Room, the State party's observations do not deny the substance of the claims and provide 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, the contradictions of 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 of the same 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 has been 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 this ill-treatment. The neglect, isolation, lack of support and rehabilitation are compounded by poor conditions and failure to ensure any alternatives for the families of institutionalized individuals in Bulgaria like Ms. Lazarova and her family. 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 recurrence of similar ill-treatment and deaths in institutions in Bulgaria, and to ensure that the State party respect its obligations under the Covenant and respect the rights of people with disabilities, including by facilitating access to justice and obtaining redress.

Authors' additional comments

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

6.2 In order to ensure effective remedy, the authors suggest to: a) 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) ensure that necessary psychological rehabilitation and support are available to the authors; and c) provide reimbursement of the legal costs incurred by the authors which amount to 21,899 EUR.

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 and 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: a) 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 independent supervisory bodies such as the Ombudsman and civil society organisations; b) a ban of the use of chemical and physical restraints, including seclusion or solitary confinement of persons with mental disabilities in residential social care or psychiatric facilities; c) that all cases of death in residential social care or psychiatric facilities are investigated; d) that all professionals engaged in investigation receive training in human rights law with a focus on disability; e) removing obstacles

preventing people living in residential social care or psychiatric facilities from accessing justice; and f) that all professional staff of social care and psychiatric facilities have comprehensive training on human rights of people with disabilities, in particular 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 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained 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 in their application to the European Court of Human Rights.²⁰ Their application was rejected as inadmissible by chamber decision of 26 August 2014, due to a lack of victim status as regards the claims under articles 3 and 8 of the European Convention, declaring their incompatibility *ratione personae*²¹, and due to non-exhaustion of available domestic remedies as regards the claims under article 2.²² Since the State party has not entered a reservation that would enhance the scope of article 5 (2) (a) of the Optional Protocol,²³ 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.²⁴

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.²⁵ The Committee notes the State party's argument that the authors have not exhausted all administrative and civil remedies since they had 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. These proceedings lasted for several years, however, 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 thus the domestic remedies as regards administrative and civil claims for redress were not effective since they 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, however, their multiple claims were unsuccessful (paras. 2.8 – 2.10). 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.

²⁰ Application no. 26874/08 of 17 April 2008.

²¹ Article 35 (3) (a) of the European Convention.

²² Article 35 (1) and (4) of the European Convention.

²³ *Jesús Rivera Fernández v. Spain* (CCPR/C/85/D/1396/2005), para. 6.2.

²⁴ *B.H. v. Austria* (CCPR/C/119/D/2088/2011), para. 8.5.

²⁵ See e.g. *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 *Singh et al. v. Canada* (CCPR/C/125/DR/2948/2017), para. 6.4. See also *B.P. and P.B. v. the Netherlands* (CCPR/C/128/D/2974/2017), para. 9.3.

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.²⁶ The Committee recalls that it has recognised the standing of the victim's next-of-kin (i.e., 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.²⁷ In 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 mental and 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 Human Rights Committee has considered the communication in light of all the information made available to it by the parties, as provided for under 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 due to her unnoticed departure from the Radovtsi Home where she had been treated since 1998, the Committee notes the authors' allegations on the several points. First, on the morning of 3 January 2007, the day she disappeared, Ms. Lazarova was administered a medication with a sedative effect to moderate states of agitation. Second, the authors also claim 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 the time and place. Third, on occasion she was also kept in an isolation ward called the Special Care Room where 20 residents resided 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 unsecured, 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 due to understaffing 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 frozen 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, circumstances of her disappearance from the Radovtsi Home, and the causes of her death after a departure. The Committee notes that the State party has denied the causal link between the conditions of internment of Ms. Lazarova, her disappearance and

²⁶ *Andersen v. Denmark* (CCPR/C/99/D/1868/2009), para. 6.4; *Beydon et al. v. France* (1400/2005), para. 4.3; *Aalbersberg et al. v. The Netherlands* (1440/2005), para. 6.3; and *Brun v. France* (1453/2006), para. 6.3.

²⁷ *Almeida de Quinteros et al. v. Uruguay* (CCPR/C/19/D/107/1981), para. 14.

ultimately her death, as the investigations undertaken by State authorities remained inconclusive.

8.5 The Committee affirms that it is incumbent on States to ensure the right to life of individuals in medical and social institutions, and not incumbent on the latter to request adequate protection.²⁸ The State party by confining individuals to state institutions takes the responsibility to care for them. Consequently, it is up to the State party to support, fund, and organize its social care institutions to adequately 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 were 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 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 the care and treatment at the Radovtsi Home, at least following its inspection in 2006, and that these included a lack of staff leading to ineffective oversight following the closure of the isolation ward. In the circumstances of this 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 due to chronic underfunding, and that, at the relevant time, residents could not be properly supervised due to understaffing. The Committee also notes the information from the authors, that Ms. Lazarova was regularly locked in an isolation ward until October 2006, 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 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 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. The State party should take effective measures to grant appropriate compensation and full reparation to the authors. The State party should also ensure that similar violations do not recur in the future, especially by taking immediate 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.

²⁸ Committee's General Comment No. 36 (CCPR/C/GC/36), para. 25.

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 Committee's Views.
