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Problematic Aspects of the Social Services' Law: A Partial Analysis

By

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and

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Freedom for All is a human rights and publishing group which has been active since 2004. During these years *Freedom for All* has successfully and consistently participated in a number of court cases and public debates protecting basic human rights such as the right of freedom of conscience, religion and speech and the traditional family.

Parents United for Children (ROD) is an association founded to represent the interests of a parental rights' movement which arose as a response to the National Strategy of the Child 2019 – 2030 and aims to protect the traditional Bulgarian family.

In this statement we offer a partial criticism of the Social Services Act, published in the State Gazette, issue 24, on March 22, 2019, and comes into force on 01.01.2020.

The new Social Services Act, and the social legislation connected to it for protecting the child, is tyrannical and anti-democratic in its philosophical and ideological aspects. The Social Services Act contradicts the European Convention on Human Rights and the Constitution of the Republic of Bulgaria. The Social Services Act has to be immediately and entirely revoked.

In principle, the Social Services Act places the rights of children in opposition to their parents and introduces the possibility of the social services, and their service providers, to exercise significant control over both family and personal life. For example: judicial supervision is lacking or it is reduced to a minimum; the idea of human virtue and charity is privatized and made an object of commercial profit; foreign merchants and non-governmental organizations are allowed to function in the country, including those which are not licensed, and they will have access to the personal data of Bulgarian citizens which is in violation of national sovereignty and of the required protection of Bulgarian citizens' rights by the Bulgarian state and its laws; and massive databases will store the personal information of citizens and their children, which threatens their rights and privacy. In practice, the Social Services Act and the changes introduced by it into social legislation validates the ideology of the withdrawn National Strategy of the Child 2019 – 2030, tearing apart the parent-child relationship, threatening the pillars of the

traditional family and their corresponding basic human rights, such as the right to privacy and family life and the right of parents to raise and educate their children.

Specifically, some of the problems of the Social Services Act are as follows:

1. **The constitutional term “social support” is replaced with “social service.”** *Support* is a charitable activity, or an activity of solidarity, guaranteed by the state, for citizens in need, while *service* is a paid, commercial activity for profit (article 1, paragraph 1 of the Social Services Act). [1]
2. **The law encourages a “public-private partnership” under the provision of “social services”** (article 1, paragraph 2, item 5). This creates a totalitarian state-corporation (trade) hybrid, in which the interests of commercial profit and the making of money is supported by state coercion (see article 137 – interference by the Ministry of the Interior in executing the law, and other state authorities and article 169 – huge fines).
3. **Totalitarianism.** The principles which regulate “support” mandate that it be “comprehensive, integrated and uninterrupted” (article 2, item 4) and show the total encroachment of the state (and that which has entwined itself with the state) into the fields of social services, local trade, and foreign interests in regards to personal and family life.
4. **The lack of a clear and effective mechanism for judicial supervision** of the decisions and activities of the social service providers; and this is in spite of the stated beliefs in the protection of the rights and personal dignity of the users of these social services (see article 2, item 6 and article 9, paragraph 1,3 and 4).
5. **The introduction of “compulsory social services”** (article 11, paragraph 1). Regarding the previous point, the absence of a judicial supervision mechanism is evident by the fact that “compulsory social services are used only with a court order,” however, when and how this order is to be issued is not clarified. It is obvious that the judicial supervision, mentioned in article 90, requires an evaluation to be performed only every six months once children are placed in residential care, including children for whom a “child protection” measure has been applied. The supervision by the courts is insufficient, especially given that the protection is provided on the basis of article 26, paragraph 1 of the Child Protection Act, according to which, until the court decision, the child is accommodated outside the family on the basis of only an administrative order. After the removal of a child or children on the basis of article 27 of the Child Protection Act, the director of the Social Help Directorate has 30 days to submit a claim to the District court. The legal process itself can continue for much longer than a month after the claim of the Social Help Directorate has been submitted. Meanwhile the trauma from the separation of the child from its parents is inevitable. See commentary on Chapter II – “Specific Rules for the Provision of Social Services.”
6. It is permitted for foreign entities and merchants to provide social services within the country after obtaining a license. Moreover, **activity by a foreign organization is permissible within the country even without a license.** On the basis of article 31, paragraph 3, foreign individuals, merchants and non-government organizations “who according to the legislation of another country – a member of the European Union, or of another country – party to the European Economic Area Agreement, have the right to provide social services according to the meaning of this law and are not required to be licensed when temporarily performing these services without being established within the territory of Bulgaria.” In fact, the compromised Norwegian Child Protection Service – Barnevernet – would be able to operate

seamlessly in the country and even benefit from the assistance of the Bulgarian police (see art. 31, cf. art. 137).

7. Limiting the procedural rights of parents. During the court procedure, when a child is housed at a residential care facility, or outside the family in general, according to article 28, paragraph 1 of the Child Protection Act, the parents are not participants in the proceedings; only the individual who reported the child and the child itself can participate. (The parent is a participant in this case only if he himself has given the signal for the removal of the child, which is a possibility in a very limited number of cases.) The Social Services Act does not change anything but refers to this procedure of limited judicial supervision, in which the rights of children and parents are violated – contrary to the European Convention on Human Rights, article 8, and the Constitution of the Republic of Bulgaria (article 32, paragraph 1 and article 47).

8. In regards to the “functions of the social services,” the definition of function is problematic according to article 13, paragraph 2 in connection with article 13, paragraph 1, item 1. The specific problematic area has to do with the so-called “preventative social service.” It is offered to “certain persons or a specific group of persons without the identification of a particular risk in advance.” The ambiguity of the preemptive social service, the fact that the services are subject to payment – article 102, the fact that it is possible to impose a “compulsory social service,” together with the above mentioned lack of effective judicial supervision of the activities of the social service providers, is a serious precondition for violating fundamental human rights and damaging the legal interests of preventatively “serviced” individuals or “specific groups of persons.” In this way, the declarations of protecting the rights and dignity of the users of “social services,” mentioned in article 2 and article 9, remain questionable. The same applies to subsequent problematic texts of the Social Services Act.

9. The sources for funding the activities under the Social Services Act are numerous and include foreign foundations and organizations, as well as individuals and private merchants. This funding scheme, along with the comprehensive nature of the services, causes large segments of the Bulgarian population, as well as the individual, to be dependent on these financial sources and interests which do not take into consideration Bulgarian reality, traditions, culture, national identity and customs. Article 41, paragraph 1 of the Social Services Act, including the entire Chapter II – “Funding the Social Services,” creates a framework of intertwined budgetary and international funding, on the one hand, and commercial interests on the other. Based on article 46, fees are calculated for the use of social services even if they are funded by the state budget. Thus, we have a fee-for-service structure which is paid by the taxpayer, according to the principle of *social solidarity* with those in need of social support per the Constitution of the Republic of Bulgaria. In practice, however, and because of the comprehensive, integrated and uninterrupted character of the “social services,” we have the existence of an enforced state-regulated market for a “service” which, in numerous cases, can appear to be unwanted or against the will of the user due to its obligatory character. The logic of this regulation is like the one of market totalitarianism, which converts into a trade exchange categories and values which are not connected to purely material interest, namely: relations between parents and children in a family, charity, aid for those in need, poverty, beliefs, etc.

10. Especially indicative of the worldview and ideological schism between the Social Services Act and Bulgarian traditions, as well as its contradiction to the European Convention on Human Rights and the Constitution of the Republic of Bulgaria, is the law’s disregard of parents as individuals who are legally competent to care for their own children. Article 104 discusses the free-of-charge “service” in “support of the formation of parenting skills.” Besides the hard-to-understand meaning of how “parental

capacity” can be increased, the question arises of why the social services and their private providers claim to understand parenting to such an extent that they have the right to evaluate what “parental skills” are essential for parents. In the above cited regulation, the interference of the state is obvious through the apparatus of the social services and private players, such as private social service providers, into one’s protected personal space and family domain, namely the rearing of children, which, except for in extremely severe cases of crime, has to be protected from such external interventions.

11. Even more striking is the extreme nature of placing parental rights in opposition children’s rights found in Chapter II – “Specific Rules for Providing Social Services.” Article 87, which is entitled “Ban on the Refusal of Child Support,” introduces the rule that when a child requests a social service from a provider, the provider cannot refuse. The rule goes even further clarifying that if the child is under the age of 14, or it is a child-at-risk, which actually is any child due to the very broad definition of “risk” (see article 1 of Additional Regulations on the Rule of Implementation of the Law for Children), the provider must notify the Social Help Directorate about the claim, but not the child’s parents. Obviously, the legislator’s opinion is that parents are the ones who would prevent their child from being “serviced” by the provider, or that, if a “risk” is present, then the parents are the most natural source of threat to the child.

12. Minimal judicial supervision of the activities of the social services and service providers. In addition to article 87, article 88 of the Social Services Act includes that the parents “are obliged to use the social services determined by the court and the Social Help Directorate for the implementation of child protection measures.” Due to the already mentioned low standards of judicial supervision, which is evident here as well, a broad interpretation of this regulation enables the Social Help Directorate determine the obligatory social services without the approval of the court.

13. The mandatory nature of the “protection” offered, which is a paid service. The social services can be “directed” in this matter. If we accept that providing a paid “social service” is constitutionally and morally acceptable, which is arguable, we can reflect on the extent to which this service can be *directed*. “Directing” social services is laid out in Chapter VI, section 1, of the law. *Directing* as a means of researching the needs of the user of a certain social service before providing it is logical at first glance. It can be compared to the process of evaluating a service from a provider in any other commercial activity. On the basis of article 73, the “directing” of a social service includes what is equivalent to commercial advertisement of the activity– informing people of the services which are available, prices to be paid, and an assessment of the service best suited for them. However when an individual needs-assessment plan is drawn-up, we read about the enormous number of rights to information and access given to the *directing* authorities, the Social Help Directorate – see article 76, and to the providers: “When preparing the individual evaluation of the needs and of the individual plan for support, the provider of the social services can require information, assistance and statements from state institutions, the municipality, the general practitioner of the individual, family and relatives of the individual, health institutions, institutions in the area of pre-school and school education and other institutional providers of social services; and they are obliged to provide them within the term determined by the provider” (article 81, paragraph 1). In addition, *directing* becomes compulsory when it regards a child protection service according to the Child Protection Act (article 74, paragraph 3). The provisions of article 82 guarantee that schools, kindergartens, hospitals, bureaus of labor, etc., provide people with information on social services, and likewise, according to paragraph 2, the applicable state authorities can inform the Social Help Directorate about the need of “directing.” What this means is that the information gathered on citizens and their children, which is available to schools, hospitals and bureaus for unemployment, will

be provided to the Social Help Directorate so that they can “direct” people, who are, for example, in hospitals or people whose children attend state-run kindergartens or schools, to social services.

14. The Agency for the Quality of Social Services has legal rights which also threaten personal and family privacy. Article 116, paragraph 1, items 3 and 7 give the right to employees to visit people, the users of services, in their home environment and to request and receive information regarding the service.

15. According to Chapter VIII, article 119 ff., **employees providing social services are trained and can be subject to “supervision” by “people who are external for the particular service”** – see article 122, paragraph 2, item 2. In fact, the door is wide-open for numerous foreign and local service providers to apply ideological influence over social workers and even their own employees; and this influence may very well be unacceptable to the users of these services.

16. In article 4 of the Additional Regulations to the Social Services Act, the Child Protection Act is amended. Here we will discuss the problematic item 17 which creates new articles in the Child Protection Act – article 36a – article 36d. It requires that anyone who considers that a child is being threatened with abandonment, or has been neglected, that said person is obligated to make a report. According to this current legislation and in violation of the Constitution of the Republic of Bulgaria, and of the fundamental principles of law in a free and just society, the report can be made anonymously (Rules of Implementation of the Law on Children, article 10). Article 36b is especially draconic which obliges the head of the maternity ward in a hospital to notify the social services if there is an imminent danger of abandoning a child after birth. The law requires that the child not be discharged until verification of the report is completed, which is a form of detention, kidnapping or other form of imprisonment without a court order (article 36b, paragraph 4).

17. Article 36g of the Child Protection Act, amended by section 17 of article 4 of the Social Services Act, introduces the so-called **“coordination mechanism against violence.”** This is a multidisciplinary team of representatives from various state institutions, including the Ministry of the Interior, the Public Prosecutor’s Office, the municipality, health and educational authorities, etc., who evaluate reports of violence against children. An item of concern is that in their evaluation, due to the extreme ambiguity of the definition of the term “violence,” completely normal events from the daily routine of family life can consequentially fall within this broad definition (see paragraph 1 of the Rules of Implementation for the Law on Children, items 1, 2, 3 and 5). Neglecting a child is also “violence,” and “neglecting” means the failure of a parent to “ensure the development of the child in one of the following areas: health, education, emotional development, nutrition, and ensuring both home and security when they are able to do it.” “Violence” is also defined as “psychological violence” (from the Greek “psyche,” meaning soul) which is actually a type of control and the imposing of negative legal consequences on people through the intervention of the state and approved-by-it private players into the innermost private areas of parents, children, and families – their soul and their spirit.

18. Conferring excessive power and rights on the social services and their representatives contradicts the Constitution; one example of this is in making the multidisciplinary team participants subordinate to the social worker. The leader of the multidisciplinary team is the social worker and under her authority are the representatives from the Ministry of the Interior, the Public Prosecutor’s Office and the mayor’s office. The social worker can also draw onto her team, and under her guidance, other state officials in order to verify reports of abuse according to article 36g, paragraph 3. The social worker, the leader of the team, is appointed by the Director of the Social Help Directorate. The question which obviously

arises here is since when has the Prosecutor's Office in Bulgaria been under the authority of the social services? The above cited regulation explicitly contradicts the Law of the Court Authority and the Bulgarian Constitution. The prosecutor must control the legality of the actions of the social workers, as opposed to being under their authority.

Other reasons for the revocation of the Social Services Act

In addition to the above partial list of problems we should consider some circumstances surrounding the adoption of this law. It is built upon the principles laid out in the previously withdrawn National Strategy for the Child 2019 – 2030, and introduces many of these same principles. The Social Services Act is sponsored and promoted by a number of non-governmental organizations, which are presented as civil society organizations, but do not have anything in common with its actual interests, being sponsored by large, external donors or even by the state. [2] From an ideological point of view, these non-governmental organizations do not conceal their derogatory attitude towards the traditional family and religion, and deliberately impede the exercise of basic human rights by individuals and parental organizations, such as the right to the exchange of information and the expression of opinion. [3] Examples of these NGOs are the various "children's" non-governmental organizations, the network named the National Network for Children [4], and the Animus Association, which operates and manages the "children's helpline" to confidentially submit signals of child abuse 115 111. [5]

We should also note the unlawful conduct of the State Agency for Child Protection which refused, despite the court's ruling, to reveal the organizations which participated in drafting the National Strategy for the Child 2019-2030 [6]. We will also mention the funding of Bulgarian institutions and state bodies by EU programs and the Norwegian financial mechanism, [7] which includes funds for projects for "children and youth-at-risk," [8] the justice system [9] and internal affairs; having in mind the fact of anti-humane practices of the Norwegian State's "child protection" which has led to two judgements against Norway in cases before the European Court on Human Rights, including *Lobben and Others vs Norway*, 2019. Mrs. Strand Lobben is a mother whose son was taken unlawfully by the Norwegian service for child protection when he was an infant. Over 30 other similar cases await a decision in the same court, while the Social Services Act gives the opportunity to foreign entities, including the Norwegian state social services (Barnevernet), to operate on the territory of the country.

Although some of the listed circumstances may not seem to be directly related to the Social Services Act, they are part of the legal vision and philosophy that underlies the law. The Social Services Act is an important legislative element in the development of a common ideology, worldview and lawmaking platform, in which the family and the parent-child relationship are treated in an atypical and unacceptable way, where Bulgarian traditions are concerned, and which, if wrongly implemented, can undermine the foundations of its free and democratic society.

In addition to these facts, the actions of the social services must also be considered: the social services systematically carry out the final measure of taking children away from their parents, including because of reasons of poverty. We will mention one of the cases which has become famous of late, the case of Ekaterina Ivanova from the village of Balsha. Ms. Ivanova's children and grandson were taken away with the help of the police; including the baby who was grabbed from the stroller due to the poor conditions in which the family lived. This family is not the only one which has suffered due to the uncontrolled methods of the child protection services. Statistics show that over 2,000 children annually are "removed" or taken away from their parents and families. Without judicial supervision and procedural protection, it is impossible to evaluate the extent to which the social services have abused the rights of

children and their parents, violating their constitutional right to privacy. The Social Services Act introduces a model which will increase the arbitrariness with which the Social Help Directorate and the Department of Child Protection functions.

We will also mention the obvious disrespect demonstrated by the Ministry of Labor and Social Policy toward the Constitution and of the right to protection that every citizen should enjoy, but whose rights and legal interests are harmed, in contrast to what we see preserved in article 56 of the Constitution, as well as in the law for attorneys. In a letter to its regional directors, the Executive Director of the Agency for Social Help provided unlawful instructions to oppose the right of defense by an attorney to citizens who appear before the relevant social authorities. [10]

Conclusion

This proposed partial analysis does not cover all of the serious contradictions which exist between the Social Services Act and the Constitution of the Republic of Bulgaria, basic human rights and the traditional morals of the Bulgarian people; namely that the traditional family, comprised of a man and a woman, and, according to the Constitution and tradition, defend the rights of their children. The laws, which are currently in force, must also be criticized because their comprehensive, restrictive and unlawful actions are strengthened by the Social Services Act – the Child Protection Act and rules of its implementation, the Law on Domestic Violence, etc.

Overall the ideology which stands behind the Social Services Act and “child protection” legislation contains elements of social engineering which neither respects the millennia of traditions of the Bulgarian people nor does it respect the fundamental essence of a natural family unit and the hierarchy within relationships and between parents and children.

The Social Services Act adds to the legislative framework and, under the pretext of providing “social services,” actually violates the sanctity of personal and family life.

The Social Services Act complements the already determined scope of power of the social services and of the providers of social services by introducing new powers, with little to no accountability, nor the possibility for counteraction by parents and children, whose family and personal life, rights and interests are threatened by the actions of the social services and their private providers.

The Social Services Act contradicts the European Convention on Human Rights – article 8 – and the Constitution – article 32, paragraph 1 and article 47, by providing a legal framework for ruthless and illegal interventions by state authorities and private persons into the unalienable spheres of family and personal privacy. The Social Services Act threatens Bulgarian sovereignty and deprives Bulgarian citizens living on Bulgarian territory from the protection of the Bulgarian Constitution and the European Convention on Human Rights.

The disadvantages of the Social Services Act are so significant and numerous that no amendments or additions could correct its unlawfulness. All attempts and projects for amendments and additions must be rejected as irrelevant due to the radical ideological and anti-democratic essence of the law.

The Social Services Act has to be entirely revoked.

22.11.2019

Notes

[1] When mentioning only an article or a paragraph without mentioning the normative act, it shall be considered that the reference is to the Social Services Act.

[2] For the interlocking interests of non-government organizations, in this case the National Network for Children, with the state, see: <https://nmd.bg/partnyorstva/>.

[3] See the letter from the National Network for Children to the Prime Minister Boyko Borisov from 16.10.2019. on the internet: <https://nmd.bg/natsionalna-mrezha-za-detsata-izprati-priziv-do-premiera-za-speshni-daystviya-sreshtu-desinformatsiyata/>.

[4] Letter from the National Network for Children with outgoing No. 271/20.12.2018, incoming number KP 821-003 from 20.12.2018 of the Parliament. By “children’s non-governmental organizations” we mean organizations whose activity aims to turn the rights of the child into ones outside their relationship with the family and in opposition to the rights of the parents.

[5] See the internet site of the Child Protection Services Agency and the site of the foundation Association Animus here: <http://animusassociation.org/programi-uslugi/nacionalna-telefonna-linia-deca/>, also the annual report of foundation Association Animus here, item II, 3,5: <http://animusaassociation.org/wp-content/uploads/2019/06/ANNUAL-REPORT-AUDIT-2018-GN.pdf>.

[6] The Child Protection Services Agency handed a verdict by the Administrative Court in Sofia from 28.09.2019 and asked to provide within 15 days the information requested by the National Association “March for the Family.” Up to the present time, instead of meeting this legal and court requirement, the Child Protection Services Agency made a “cassation appeal” against the court decision even though it cannot be appealed and is entirely against all legal requirements and procedural rules.

[7] See here: [//eeagrants.org/countries/Bulgaria](http://eeagrants.org/countries/Bulgaria).

[8] We call to your attention that the above-mentioned foundation Association Animus, which runs the national helpline for children 116 111, is funded by the same Norwegian financial mechanism (European Economic Area), see here: <http://animusassociation.org/finansirane/>.

[9] The idea of justice for children is promoted by “children’s” non-governmental organizations, including the National Network for Children.
See: <https://nmd.bg/onlyan-platforma-shte-zapoznava-nepalnoletnite-sas-sinyata-staya/>.

[10] Letter with outgoing No. 9103/29.01.2015
See here: <https://zpd.bg/wp-content/uploads/2016/05/pdf>.