



НАЦИОНАЛНА МРЕЖА ЗА ДЕЦАТА

Ex. № 378 / 21.12.2020
TO
Mr. SLAVCHO ATANASOV
CHAIRMAN
COMMITTEE ON MATTERS
OF CHILDREN, YOUTH AND SPORTS
TO THE NA

MRS. ANNE ALEKSANDROVA
CHAIRMAN
COMMITTEE ON LEGAL AFFAIRS TO
THE NA

Subject: Opinion of the National Network for Children and the Network for Legal Aid at the National Network for Children regarding the [Bill for amendment and supplement of the Child Protection Act](#) № 054-01-111 of 04.12.2020.

DEAR MR. ATANASOV,

DEAR MRS. ALEXANDROVA

The National Network for Children (NNC) is a non-governmental organization for public benefit, uniting a membership of over 130 organizations working with children and families. The organization has existed for 17 years, following the principles of promoting, protecting and respecting the rights of the child. We remind you that in developing, implementing and monitoring all policies and practices that directly or indirectly affect children, the best interests of children should be a leading consideration, incl. and ensuring the active participation of children and young people themselves. In all our actions, we are guided by the [UN Convention on the Rights of the Child](#) as a guiding document that defines the philosophy, values and way of working of the Children's Network.

From 2020, the NNC has a Network for Legal Aid, uniting lawyers and jurists with an interest in the field of children's rights and ensuring their effective application.

The NNC expresses a negative opinion on the [Bill on Amendments to the Child Protection Act № 0054-01-111 \(the "Bill"\), submitted on 04.12.2020 by the deputies Alexander Sidi, Iskren Veselinov, Milen Mihov, Maria Tsvetkova, Krassimir Bogdanov, Boris Borisov, Julian Angelov and Dean Stanchev](#). It aims at a complete revision and replacement of the principles introduced in the



НАЦИОНАЛНА МРЕЖА ЗА ДЕЦАТА

Child Protection Act ("CPA") in fulfillment of our country's obligations under the UN Convention on the Rights of the Child ("the Convention"). It is proposed to introduce contradictory concepts such as "protection of children in compliance with morals, traditions and common decency in the State." We believe that such concepts, which are subject to ambiguous interpretation and whose content lacks a common understanding, have no place in a modern system of the way in which children's rights will be protected.

We focus on the following concepts and provisions of the Bill, which we believe should **NOT** find a place in the Child Protection Act:

First of all, the PA introduces a new concept in the Bulgarian legislation - "biological parents".

Bulgarian law, and, in particular, the Family Code (FC), which regulates the origin and parental rights and obligations, uses the term parents. By "parent" the FC means the person in respect of whom the origin of the child has been established by legal means. This origin does not always coincide with the biological one and one of the principles of the FC is to protect legally established, non-biological origin. This is because what is important for the law is not the biological, but the legally established relationship from which parental rights and obligations derive. The legally established origin indicates the persons who must take care of the upbringing, education and maintenance of the child, and this operates in the interest of the child and the society. The biological connection does not always lead to the fulfillment of the obligations to the child and therefore does not enjoy such protection by law. On the contrary – the FC is the law that creates the mechanisms for protection of the biological connection and for its transformation into a legal one.

The term birth parents is also used in the Family Code, but only when it regulates adoption - in 4 (four) places in Section III "Action of adoption" and Chapter Eight "Adoption". The aim is to distinguish the status of the two types of parents. The introduction of a new concept such as the one proposed in the AIS of the CPA will not only create ambiguity and confusion, but also, in practice, discriminate against the rights of adoptive parents, whom the law treats as parents. The legislation also uses the terms foster parents and guardians - as persons who care for the child. It is important for the interest of the child to have caregivers, even if they are not biological parents - this is a point of principle in both Bulgarian law and in international law, from which in practice a deviation is made through the proposed Amendments to the CPA.

In this connection, we strongly oppose the proposal to introduce the definition of 'biological' for a parent, but also for a 'family'. It follows from the above argument that the interest of the child is to receive care for their development in the middle of the family. When the family cannot provide this, the child must be provided with another family to take care of him or her. The biological origin cannot be opposed to the interests of the child to receive care. This is in the interest of society. What matters is the care, not the fact that someone has created a child so as to obtain rights over him / her. This is the understanding of the Constitution as well - Article 14.

It is proposed to introduce the concept of "morals, traditions and common decency in the State" as a criterion for ensuring the best interests of the child. The new concept is unclear, morals and



НАЦИОНАЛНА МРЕЖА ЗА ДЕЦАТА

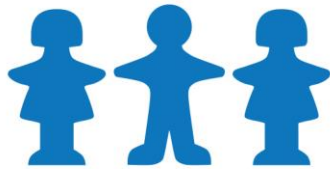
traditions are undefined in the law. Common decency can be a criterion in private relationships, in concluding and interpreting contracts, for example. But not in public relations, when the state fulfills its obligation under the Constitution to ensure the best interests of the child. The concept is in sharp contradiction with the Constitution and the Convention. We draw your attention to the fact that as a country with national and European legislation, public relations in our country are regulated precisely by legally established norms and the rules of conduct arising from them, and by placing "traditions", which are unwritten rules, customs in Bulgaria, the standard on child protection in our country would be significantly lowered. Traditions are diverse in different regions of the country and among different ethnic groups and are subject to different interpretations. As some of their interpretations may not be favorable for the child, this would make it impossible to adequately apply the same standard.

A supplement to Art. 1, para. 1 and para. 2, which provides for the inclusion of the biological parents in the protection policy of the state towards the children.

The proposal in practice completely replaces the basic basis on which the CPA is built. Art. 1 of the Child Protection Act determines the subject of the law: ensuring the protection of children as a state policy. The state would not implement child protection measures if the child received adequate parental care. It should be noted here that the spirit of the CPA is to provide a guarantee and protect the interests of children by ensuring the state protection of children left without the care of their parents. The parents have certain rights and obligations defined in the Child Protection Act, from which it follows that they are not excluded in any way from the child protection policy, which, inevitably, is the main purpose of the Act.

Moreover, the proposed reasons for the bill - insofar as the 3 (three) paragraphs set out in the text can be considered as such - do not answer the question of how exactly the biological parents will ensure the protection of the rights of the child and why only they should have said powers (if it can be assumed at all that they have a place in the regulation of the CPA).

The proposed amendment in Art. 1, para. 2 of the AIS of the CPA, taking into account our critical remarks on the concept of biological parents, corresponds to the principle of the law that the best environment of the child is the family from which it originates. This is a basic obligation of the state, guaranteed by a number of norms of the law. The meaning of paragraph 2 is broader - to oblige the state to ensure the rights of the child in all areas of life. Parents would only benefit from fulfilling this obligation. Moreover, specific support for parents in the form of financial assistance and services is not subject to this law. It is a constitutional obligation for the institutions of the state, regulated in the Law on Family Benefits for Children, the Law on Social Services, the Law on People with Disabilities and others.



НАЦИОНАЛНА МРЕЖА ЗА ДЕЦАТА

Therefore, we believe that the adoption of provisions and the creation of legal terms, without specifying their meaning and in circumstances in which they directly contradict the Constitution and the obligations of our country under international conventions, should not be supported.

Regarding the amendments and supplements to Art. 3 of the Amendments and Addenda to the Child Protection Act in the principles of child protection for preferential upbringing of the child in biological and kinship environment and ensuring the rights and legitimate interests of his biological parents, etc .:

In the spirit of the above considerations, we consider that the proposals for amendment of Art. 3, item 2 of the Law on Child Protection, so that those for the upbringing of the child in a biological and kinship environment should be applied to the principles of child protection. We remind you that such concepts as "biological" or "related" when applied to the home environment are not enshrined in our national legislation and it remains completely unclear what is genuinely meant by them, what is their relationship and scope. Raising a child in his birth family is not something to which the CPA has to do or regulate. On the contrary, the purpose of the CPA is to protect children from cases when their rights are violated precisely in the context of this most common and natural environment for them, such as the family. Due to the latter and the proposal for amendment in Art. 3, item 3 of the AIS of the CPA, which declares the securing of the rights and obligations of the biological parents. We remind you again that the biological parents and their powers are regulated in a number of other regulations (Family Code, Family Benefits for Children Act, Social Services Act, etc.) and have no place in the CPA, which is designed to protect the interests of children, and not those of their parents.

Moreover, in Art. 3, item 2 of the AIS of the CPA, the introduction of a combination of other terms is proposed, adding a text again in the provision regarding the principles of the law, in which instead of ensuring the best interest of the child, in Art. 3 item 3 of the CPA after the word "insurance" is inserted - "ensuring the rights and legitimate interests of the child, his biological parents, guardians, trustees, legal representatives, in compliance with morals, traditions and common decencies in the State." In this proposal, we understand that the best interests of the child have been replaced by traditions and "common decency in the state" - abstract concepts without a clear definition. This combination and content are not used to date in the context of child protection and are not even used in general legal terminology. This can only hinder the implementation of the law and, accordingly, the protection of children.

We remind you that the best interests of the child cannot be determined in connection with traditions and common decency, but only in connection with the specific circumstances related to the child - such as his / her views, age, gender and parental capacity for the development and maintenance of the child. , the prospects for the child, his achievements and talents, providing education and protection of his health, his development as an autonomous, contributor in a complex society, with many new challenges, which do not always correspond to the traditions and morals understood by some communities .



НАЦИОНАЛНА МРЕЖА ЗА ДЕЦАТА

Regarding the proposal for repeal of Art. 3, item 5 of the AIS of the Child Protection Act to encourage voluntary participation in child protection activities:

The voluntary participation of individuals or organizations in child protection has always been present in Bulgarian society, a number of examples can be given. The Constitutional Court explicitly recognized the importance of this principle in **Decision № 9 of 14 July 2020 in Constitutional Case № 3 of 2020**.

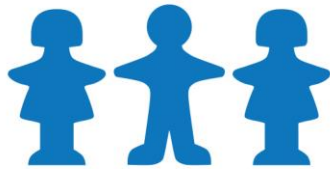
The proposed amendment contradicts the Constitution and other existing laws. Dropping it would increase the pressure on the state to offer services, which will worsen the quality of life of children, as well as their protection in the absence of parental care and in situations of violence. Detailed arguments are set out in the reasons for the Decision of the Constitutional Court and the legislator owes them respect.

It should be borne in mind that the voluntary participation is a basic principle in the provision of social services, whose main postulate is respect for the opinion and choice of persons - direct users of a service and avoidance of situations in which the latter have to decide alone and without their right to participate in the process of making such a decision. Therefore, and given the lack of justification for excluding this principle from child protection, we consider that the proposed amendment is completely unjustified and would in practice make it more difficult for the authorities implementing the protection measures to further involve representatives of the various institutions, whose timely intervention is in the best interests of the child. For its part, such a denial of the existing ban can in practice be equated with a ban on the participation of volunteers and civil society organizations, which the protection system needs. Again, this is unfounded and the purpose is unclear in the absence of explicit reasoning and without clear assessment of how the proposal will affect the protection system.

In addition, the proposal would have an undesirable effect on petitioners - coercive measures will take precedence, usually involving the removal of the child. This means instead of strengthening the dialogue between family and child protection, bodies offering cooperation and support, priority is given to coercive measures, which, in normal circumstances, should be a last resort;

Regarding the proposal for amendment of art. 3, item 6 of the AIS of the CPA for supplementing the selection of the persons directly engaged in the activities for protection of the child, in compliance with normatively established criteria and requirements for moral, personal and social qualities, as well as appropriate professional qualification:

Art. 3, item 6 of the CPA proposes a change in the principle of selection of persons directly involved in child protection activities, adding a text stating that this should be "in accordance with statutory criteria and requirements for moral, personal and social qualities as well as appropriate professional qualifications" (instead of the current wording: 'according to their personal and social qualities and care for their professional qualifications;'). This proposal is manipulative and based on erroneous assumptions. Once the requirements have been established by law, it cannot be assumed that they will not be met. The same applies to their professional qualifications, which is the responsibility of the appointing authority.



НАЦИОНАЛНА МРЕЖА ЗА ДЕЦАТА

Regarding the proposal for amendment of art. 3, item 10 of the AIS of the CPA for replacement of the “insurance” with “encouragement” of a gifted child:

In Art. 3, item 10 of the CPA, which currently stipulates the principle of ensuring the development of a gifted child, it is proposed to replace the term "insurance" with the word "encouragement" - In essence, it is proposed another replacement of an existing obligation of the state and its replacement with one involving significantly less engagement. Inevitably, Bulgaria's gifted children need the state to take action in accordance with its obligations to ensure the development of their true potential, and not just to be "encouraged" - a term that can be interpreted in many ways and not necessarily leading to actual actions to fulfill the obligation.

Regarding the proposal to add Art. 3, item 16 of the AIS of the CPA for temporary suspension of the license or revocation of the license of the non-governmental organizations - providers of social services, upon initiation of a procedure or trial before the court for committed violations related to the rights of children, their legal representatives or current legislation:

A new item 16 is added in Art. 3 of the CPA, inserted among the principles under which the protection of a child is carried out, is added the possibility for "temporary suspension of the licence or revocation of the licence of the non-governmental organizations - providers of social services, upon initiation of a procedure or trial before the court for violations related to the rights of children, their legal representatives or current legislation ". We believe that through the proposal there is a danger that any complaint against an NGO, and entailing a very wide range of alleged violations, will become grounds for suspending or revoking a licence, regardless of whether this complaint is substantial or well-founded, the jurisdiction of the agency to whom it is filed or without clarity as to what the outcome of the administrative proceedings or the trial will be. Again, the criteria for the proposed imposition of sanctions and the detailed procedure for their application are unclear. We remind you that such a legal concept as "instituting proceedings before the court for violations of children's rights, their legal representatives or current legislation" does not exist and it is not clear exactly what violations should be present in which legal provisions and by which institution, the identity of which should be established in order to accept that the proposed preconditions for suspension or revocation of the licence of the social service providers.

Moreover, such an amendment violates in practice the principle of "innocence", the application of which, transferred to the level of administrative prosecution, means the imposition of substantial sanctions, such as the suspension of a social service provider without the existence of a "court and sentence" which is completely contrary to the obligations of our country under the European Convention for the Protection of Human Rights and Fundamental Freedoms. To this should be added a number of questions that such a legislative change raises, such as: Who will be responsible for the civil damages incurred by the social service provider, suffered during the period of suspension of its activities? What will happen to all beneficiaries of the social services of the provider in question? And finally: Why is such a sanction applicable only to non-profit legal entities as service providers within the meaning of the Social Services Act? Such a discriminatory approach, which is completely unjustified and whose place is not in the CPA, should be completely rejected given the detrimental effect that the latter would have on both children and a number of other persons - beneficiaries of social services. For the sake of completeness only, it should be noted that the preliminary impact



НАЦИОНАЛНА МРЕЖА ЗА ДЕЦАТА

assessment attached to the AIS of the CPA has completely neglected this aspect of impact that the proposals may have, which on its own grounds demonstrates the lack of in-depth consideration of the proposed amendments - grounds for rejection of the AIS.

In view of this, we consider the proposed proposals not only meaningless, but also in practice restricting the child's right to protection, which is exactly what the law aims at.

Regarding the proposal for repeal of Art. 5, para. 1 of the AIS of the CPA regarding the special protection of a child at risk:

The proposed text of the Amendments Act stipulates the complete repeal of the provision of Art. 5, para. 1 of the CPA, according to which "Special protection is provided to a child at risk". Moreover, no alternative is even offered for the protection of children at risk after the abolition of the norm in its current annex. The proposal contradicts the Constitution and the Convention, according to which children at risk are entitled to special protection.

For us, the reasons that led to the need to drop the cited provision remain completely unclear, much less the reasons for such a legislative change. Not only is there no legal reasoning or any kind of basic logic by which a normative act designed to protect the interests of children functions to actually revoke their protection, but we also believe that the latter essentially compromises the meaning and spirit of the law. Therefore, the proposal for dropping Art. 5, para. 1 of the CPA should not be accepted.

Regarding the proposals for innovations in art. 6a, para. 4, items "d" and "e" in the AIS of the CPA regarding the adoption as a last measure after all other measures for protection and control over the adoption procedures in the person of the Minister of Labour

In the newly created item "d" in Art. 6a, para. 4, the draft explicitly places adoption as the last alternative to protection - after all other measures. The proposal does not correspond to the interests of the child to grow up in a family environment that offers him / her long-term and permanent care and legal status of a natural child. It dooms children for whom there are no other alternatives - to be raised in unstable, changeable and unpredictable circumstances. Adoption is a traditional institute of Bulgarian family law and after the amendments to the Family Code of 2003 there are no problems in the application of the law. The ideas that the petitioners have heard or been suggested have nothing to do with the Bulgarian traditions, which they respect very much. We find this explicit placement of adoption as a last resort to be detrimental to the interests of children, for whom the specific assessment of interests indicates adoption as the best alternative. The grading of the measures in the law follows the logic of the interests of the child - to seek accommodation first in the natural family and when this is not possible - adoption is a measure providing a new family for the child. Therefore, we believe that the proposal in the AIS of the CPA contradicts Art. 3 of the UN Convention on the Rights of the Child.



НАЦИОНАЛНА МРЕЖА ЗА ДЕЦАТА

Regarding the proposals for amendments to Art. 7a of the CPA, representing a change in the system for submitting signals to children at risk

The bill proposes an amendment to Art. 7a, para. 1 of the CPA, the provision that enshrines the obligation of Bulgarian citizens to assist the child protection system. According to the current wording, this obligation is expressed as follows: "A person who becomes aware that a child needs protection must immediately notify the Social Assistance Directorate, the State Agency for Child Protection or the Ministry of Interior." The proposed amendments to the CPA introduce the possibility for this notification to be made both orally and in writing, but also introduces the obligation for each signal to be accompanied by a written declaration signed by the person certifying the truth of his statement and circumstances in connection with the responsibility under art. 313 NK.

The proposal is a dangerous violation of the child's right to protection from violence and, in this sense, is contrary to the Constitution and the Convention.

Requiring a declaration of authenticity will essentially stop all signals from citizens about violence and a child at risk. It represents an unnecessary aggravation of the obligation of the Bulgarian citizens for assistance by submitting signals about a child at risk. This new requirement would lead to a delay in the reporting process, would have a deterrent effect on those who have become aware that a child is at risk, as the requirement complicates the procedure and acts to their detriment. In addition, if the signal is given orally by telephone, this would lead to the additional need to visit an institution in the locality solely for the purpose of completing the said declaration. This means the signal involves both oral and written means of submission, which we find not only inexpedient and time-consuming for the sender, but also illogical. This will be a message to the parents that they are not limited in their behavior towards the child, any act of violence is allowed, and the citizens will have to endure it. This normalizes domestic and social violence. Normalizes it in the minds and behavior of children.

Regarding the proposals for amendments to Art. 8 of the CPA, representing changes in the regulation of the rights and obligations of parents, guardians, trustees or other persons who care for a child and the introduction of the possibility to provide "parental rights" to others through a notarized declaration

In Art. 8 of the CPA - rights and obligations of parents, guardians, trustees or other persons caring for a child, several language changes are proposed which cannot in any way be categorized as useful or favourable.

Art. 8, para. 1 of the CPA provides for the legal possibility of any parent, guardian, trustee or other person caring for a child to request and receive assistance from the authorities under this law as reformulated, as the term "may request" in the current version of the provision is replaced by "entitled to receive". Therefore, the text of the provision would read: "every parent ... has the right to receive and receive assistance from the authorities". This amendment is not only unnecessary, as the expressions "may request", "receives" and "has the right to receive" express an equal right of the



НАЦИОНАЛНА МРЕЖА ЗА ДЕЦАТА

parent and a corresponding obligation on the part of the assistance authorities, but also a tautology is created through the proposal.

Currently in Art. 8, para. 10 of the CPA contains an obligation of parents and guardians and caregivers not to allow children to participate in programs when they are "unfavourable" for him / her but, through amendments to the CPA, this standard is lowered, and the bill proposes that participation should not be allowed when the broadcasts are "harmful or contrary to public morality". This would make it more difficult to define a program as "harmful" and would increase children's participation in the media in inappropriate programs, which often has an adverse effect on their psyche. A similar proposal for substitution of terms has been introduced for Art. 11 of the CPA - protection against violence and by the stated logic, should not be accepted and applied in this provision as well.

The introduction of new items 11 and 12 in Art. 8 of the CPA - in the provision on the rights and obligations of parents, guardians, custodians or other persons caring for a child, the possibility is added only during the life of the "parents" to appoint persons to whom in case of death, illness, disability or other inability to exercise parental rights and responsibilities, to entrust the care of children and in which children to be placed.

According to the draft law (§8, item 3 of the Law on Copyright and Related Rights) this should be done with a notarized declaration in which the parents indicate the details of the persons who "will exercise parental rights and obligations".

It is obvious that these amendments contradict the rules of adoption and other procedures contained in the Family Code, Chapter 8, effectively bypassing them. The mentioned chapter "adoption" in the Civil Code contains provisions governing the consent of persons, the possibility of opinion on the adoption by the child in court, regulates the statutory difference in the age of adoptive parent and adoptive parent, sets a number of criteria, registers and many others. Regarding the proposal, there is no possibility for a court decision and control over this choice and many of the mentioned permits have not been considered or are directly ignored, and even turn out to be in contradiction with the regulation in the SC. Simply allowing a parent to place a child with someone who is expected to go about "exercising parental rights" without even registering the consent of the persons named in the notarized declaration, let alone the child, should not have an effect without the discretion of the court and without monitoring by a state body or institution to determine whether the mentioned persons are fit to take care of the child, whether there are obstacles, requisite conditions, etc.

The legislative proposal is not only absurd, it also violates the rights of children and also the persons mentioned in the declaration. It contradicts our national legislation and as such - should be rejected.

Regarding the changes in the legal definitions and definitions of “best interests of the child” and “child at risk” in the Additional Provisions of the CPA.

§ 20 of the Child Protection Act proposes an amendment to the definition of “the best interest of the child” in § 1, item 5 of the Child Protection Act, as the assessment is limited by the proposed consideration of seven different factors (the child's desires and feelings; the child's mental and emotional needs; the child's age, gender, past and other characteristics; the danger or harm that the



НАЦИОНАЛНА МРЕЖА ЗА ДЕЦАТА

child has experienced or is likely to experience; the parents' ability to care for the child; the consequences that will occur for the child in the event of a change in circumstances; other circumstances relevant to the child) up to three more general principles. We believe that the best interests of the child cannot be determined by principles and general expressions, but by providing the body with an indicative list of criteria - the proposal in this form with the ambiguity of the definition would make the individual assessment of the needs of the child meaningless. the child and thus make his protection inadequate and ineffective.

According to the petitioners, legal action to protect the rights of the child should entail taking into account the rights of his parents, and this is also part of the new definition of "best interests of the child". We believe that in a provision that should provide opportunities to respect the rights of the child, the focus should be solely on the rights of the child. The rights of the parents are regulated in our national legislation - in the Family Code. **According to Art. 3 of the UN Convention on the Rights of the Child**, "in all activities concerning children, the best interests of the child shall be a primary consideration". We believe that so defined, the provision is in contradiction with Art. 3 of the Convention.

Amendments are also proposed that impact on another fundamental concept of the law - the definition of "child at risk". In determining "danger" and "risk" the need is introduced for the assessing body to take into account the primary role of the biological parents, legal and special representatives, the biological family and their participation as subjects in all processes and procedures for protection of the rights and legitimate interests of the child and the implementation of measures for this protection. It remains unclear what will happen in the hypothetical situation in which the danger and risk is created by the biological parents. How can the child's safety be successfully balanced with the prominent participatory role of the biological parents as proposed? We find the proposal unclear and we do not think that it offers specific criteria for risk assessment, again contradicting Art. 3 of the UN Convention on the Rights of the Child. We remind you that the proposed text of the Law on Amendments and Supplements sets out the complete abolition of the protection of children at risk in the provision of Art. 5, para. 1 of the CPA, according to which "Special protection is provided to a child at risk". In combination, the two provisions do not in any way presuppose the protection of the child.

In summary, we believe that these amendments are completely contrary to the interests of children and have no place in our legislation as contrary to the spirit and principles enshrined in the UN Convention on the Protection of the Rights of the Child and European law. We believe that the Child Protection Act should maintain its purpose - to protect the most vulnerable part of society, namely - children, and not to seek to put the interest of the biological family above that of the child, nor to follow the "traditions and good manners in the country. "

In view of this from the [Legal Aid Network to the National Network for Children and the National Network for Children](#), **we are of the opinion that the Bill for amendment and supplement of the Child Protection Act № 0054-01-111 from 04.12.2020. should be rejected in its entirety and its subsequent consideration (if any) should take into account the considerations we have set out herein.**



НАЦИОНАЛНА МРЕЖА ЗА ДЕЦАТА

National Network for Children

Legal Aid Network at the National Network for Children



С уважение,

Георги Богданов,
Изпълнителен директор
Национална мрежа за децата