



Ref. no.: Oi-K-SA-49/20

Date: 06th April 2020

The United Nations Committee on the Rights of Persons with Disabilities

Attn. Secretary of the Committee

Ms. Harumi Fuentes Furuya

Palais Wilson – 52

CH – 1201 Geneva

Switzerland

E-mail address: crpd@ohchr.org

Report of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina on the implementation of the UN Convention on the Rights of Persons with Disabilities

I. INTRODUCTION

1. The Institution of Human Rights Ombudsman of Bosnia and Herzegovina (hereinafter: the Institution) was established in 1996 under Annexes IV and VI of the General Framework Agreement on Peace for BiH.
2. Pursuant to Article 1 of the Law on Human Rights Ombudsman of BiH¹ the Ombudsman is an independent institution set up in order to promote good governance and the rule of law and to protect the rights and liberties of natural and legal persons, as enshrined in particular in the Constitution of BiH and the international treaties appended thereto.
3. The Institution considers cases involving the poor functioning of, or violations of human rights and liberties committed by any government body of BiH, its entities and the Brčko District and it acts within the Constitution, legislation and other regulation, rules and general documents, as well as ratified international treaties and generally accepted rules and international standards.
4. The Institution considers cases involving the poor functioning of, or violations of human rights and liberties committed by any government authority of BiH, its entities and Brčko District.
5. Any natural or legal person claiming a legitimate interest may complain to the Institution irrespective of their nationality, race, gender, ethnicity or religion.

¹ The Law on Human Rights Ombudsman of BiH (Official Gazette of BiH - OGBiH 32/00,19/02,35/04,32/06,38/06

6. Department for the Protection of Rights of Persons with Disabilities within the Ombudsman monitors harmonization of laws and other regulations applicable in Bosnia and Herzegovina relating to the protection of the rights and interests of persons with disabilities with provisions of the Constitution of BiH and international standards in this area and informs the public of violation of the rights of persons with disabilities.

7. The Department also processes individual complaints about alleged violations of rights and freedoms of persons with disabilities and acts *ex officio* in all cases involving infringement of the rights in order to provide respect for their human dignity and personal autonomy, including the right to free choice and independence, equal opportunities and protection from discrimination aiming at the full integration of persons with disabilities into community.

II. GENERAL COMMENTS

8. On 12 March 2010² BiH ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol. These documents lay down the obligation on the State to harmonize its legislation with the principles of the Convention.

9. According to the constitutions of BiH, the RS and the FBiH, the BiH Ministry of Civil Affairs has the mandate to carry out the activities and discharge the duties falling within the remit of BiH in respect of establishment of basic principles of co-ordination, aligning the plans of the entity authorities and defining a strategy at the international level in the fields of: health and social protection, pension, science and education, work and employment, culture and sports.³

10. Pursuant to Article III/3 of the Constitution of BiH, social policy and social protection fall within the exclusive competence of the entities and the Brčko District. In the Federation of BiH the competence in the field of social protection is divided between the Entity and the cantons.

III. POSITIVE ASPECTS

11. In 2018, the Guidelines for determination of the best interests of the child in Bosnia and Herzegovina were drafted by the Ministry of Human Rights of BiH⁴ to help ensure that the best interest of the child is a priority, in particular with regard to implementation of principles governing the accommodation of children in different forms of alternative assistance including the institutions.

12. Ombudspersons of BiH point out that a new Strategy 2016-2021 for the Promotion of the Rights and the Position of Persons with Disabilities in the FBiH was adopted, as well as the 2017-2026 Strategy for Improving the Social Position of Persons with Disabilities in the RS.

² Convention on the Rights of Persons with Disabilities and its Optional Protocol, "OG BiH – International Treaties" 11/09

³ Article 12 of the Law on Ministries and Other Administrative Authorities of BiH, "OG BiH" 5/03, 42/13, 26/04, 42/04, 45/06, 88/07, 35/09, 59/09, 103/09, 87/12, 6/13 and 19/16

⁴ Guidelines for determination of the best interests of the child in BiH, available at: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019020112314016eng.pdf

13. In the Federation of BiH, the 2012-2020 Mental Health Care and Improvement Policy and Strategy is in force, which is based on general principles and values that are an integral part of all policies and strategies adopted so far and is intended to enable the achievement of the defined vision.

14. A positive step forward is the adoption of the Law on Foster Care in the FBiH⁵ which took place in 2018. It comprises the principles of foster care, notion and types of foster care, conditions and terms of implementation of foster care and other important issues.

15. Ombudspersons welcome the adoption of amendments to the Law on Road Transport of the FBiH by the FBiH Parliament House of Representatives, which will enable the issuance of taxi licenses for specialized taxi vehicles for persons with disabilities.

16. In February 2020, the Draft Law on Support to Families with Children in the FBiH was adopted, which foresees the establishment of a more socially equitable and financially sustainable system for the protection of families with children, putting an end to discrimination based on place of residence and equalization of the rights of children in the Federation of Bosnia and Herzegovina, mitigation of consequences of poverty, and support to families in raising and caring for children in the FBiH.

17. In 2019 the RS Law on Social Protection was adopted⁶ bringing the extension of the rights and the scope of beneficiaries.

18. Ombudspersons welcome establishment of the Solidarity Fund for diagnosis and treatment of diseases, conditions and injuries of children abroad established in 2017 in RS aimed at raising additional funds to enable treatment of children abroad, when it is not possible in RS health institutions or other health institutions with which the RS Health Insurance Fund has a contract.⁷

19. In 2019 the Law on Amendments to the Law on Child Protection was adopted⁸ governing the entitlement to parent - career's allowance.

20. In 2018 the Law on Sign Language Use in RS was adopted⁹ governing the rights of hearing impaired persons to the use of sign language, and the scope and method of the engagement of sign language interpreters in RS.

21. Amendments to RS Bar Exam adopted in 2019¹⁰ in Article 11 paragraph 5 foresee that a person with disabilities irrespective of the cause and time of disability occurrence be exempted from fee payment.

IV. GENERAL CONCERNS

Purpose

⁵ Law on Foster Care in FBiH, „OG FBiH“ 19/17

⁶ RS Law on Social Protection, „OG RS“ 94/19

⁷ Available at: <https://www.zdravstvo-srpske.org/fond-solidarnosti/o-fondu-solidarnosti.html>

⁸ RS Law on Child Protection, „OG RS“, 107/19

⁹ Law on Sign Language Use in RS, „OG RS“ 62/18

¹⁰ Law on Bar Exam in RS, „OG RS“ 58/16 and 82/19

22. Strategies for promotion of rights and status of persons with disabilities in FBiH and RS foresee the establishment of a unique definition of disability in line with Article 1 para 2 of the Convention. However, such definition still does not exist in BiH. Currently different entity or cantonal legislation define the notion of a person with disabilities depending of the scope of that particular piece of legislation (laws on social protection, health care, pension insurance and employment).¹¹

General principles and obligations

23. At different levels of government involvement of civil society organizations is not adequate to enable the engagement persons with disabilities in the processes of adoption of legislative documents, policies and decisions concerning them. In some cases, civil society organizations of persons with disabilities are involved in the lawmaking process¹², but they have short deadlines to give their objections and complaints, which are often neglected and not included in final wording. For this reason, organizations of persons with disabilities advocate for the implementation of a principle "Nothing about us without us".

Equality and non-discrimination

24. Constitutions of BiH, its two entities and ten cantons along with international documents clearly define that all persons are equal before the law, but the prohibition of discrimination on grounds of disability in the constitutions in BiH is not explicitly mentioned, but is derived from some other social and personal properties. As already emphasized, the most important novelty is that the Law on Prohibition of Discrimination defines disability as ground of discrimination. Also, Article 5 of the Law on Prohibition of Discrimination provides for positive measures aimed at equalization of the rights of persons with disabilities will not be regarded as discrimination.

25. Despite positive developments brought up by the 2019 RS Law on Amendments to the Law on Social Protection¹³ there are still some provisions in that Law to which Ombudspersons have objections. Namely, there is a provision according to which the right to personal disability pay is granted to persons whose disability originates from the period up to their 18.¹⁴ This excludes all other persons whose disability originates from other periods of their life. Ombudspersons informed the RS Government of their opinion about this provision.

¹¹ In its 2018 Special report on situation of persons with intellectual and mental difficulties in BiH Ombudspersons emphasized the following: "in its Special report on situation of beneficiaries of the institutions providing care to persons with difficulties in their intellectual development in BiH, Ombudspersons recommended the relevant authorities „to establish clear definition of a mental disability to be consistently used in all legislative and policy documents in BiH in all areas of life. It is necessary to adopt documents for categorization and classification of persons with mental disability as a precondition for categorization of the institutions." This recommendation was not implemented and consequently there is an absolute confusion in this area. Instead of using the notion of persons with intellectual difficulties terms such as mentally retarded person or persons with mental retardation are used in public neglecting the fact that the notion „retarded” is insulting. Instead of using the term: persons with psycho-social disability terms such as: psychiatric patients, mental patients, mentally ill persons. Designation of somebody as a person with intellectual and mental difficulties is a basis for their entitlement to certain rights, thus this definition is very important for the enjoyment of their human rights..." Available at: https://www.ombudsmen.gov.ba/documents/ombudsmen_doc2018051809032286bos.pdf

¹² A positive example is the adoption of the RS Law on Social Protection in drafting of which representatives of persons with disabilities were involved

¹³ RS Law on Social Protection, „OG RS“ 37/2012 and 90/2016

¹⁴ RS Law on Amendments to the Law on Social Protection published in OG RS 94/19

26. Although the Law on the Prohibition of Discrimination in Bosnia and Herzegovina now recognizes disability as the ground of discrimination, in practice there is still discrimination against persons with disabilities depending on their place of residence or place of abode, especially when they want to change the place of residence and the rights, entitlements and benefits granted in entity/canton is not transferable to another entity/canton.

27. Disproportion in disability benefits between different cantons, since implementation of these rights takes place at cantonal level, is noticeable in the Federation of BiH. Discrimination in the FBiH is evident as only the persons with 100% and 90% disability degree can enjoy the rights guaranteed by the BiH Law on the Foundations of Social Protection and the Law on Protection of Families with Children¹⁵. Since the adoption of the amendments to the mentioned Law in 2009 all persons with disability degree below 90% seized to be entitled to benefits. Applicable legislation still governs the rights of persons with disabilities originating from war activities, civilian victims of war and persons with disabilities originating from peace times in different ways, where the amounts of payments for war veterans with disabilities are considerably higher than amounts for persons with disabilities unrelated to war.

Women with disabilities

28. Non-discrimination is defined in the constitutions of BiH¹⁶, the FBiH¹⁷, the RS¹⁸, the BiH Law on Prohibition of Discrimination and the Law on Gender Equality in BiH¹⁹. For implementation of the Law on Gender Equality adopted was Gender Action Plan. Also, in order to ensure gender mainstreaming in legislation and policies in various areas of life, specific institutional mechanisms have been established to implement and monitor gender issues: on BiH level - Agency for Gender Equality, on RS level and the level of FBiH their respective gender centers.

29. In their Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities in BiH²⁰ Ombudspersons have indicated that legislation in BiH does not govern specifically health care of women with disabilities. Namely, health institutions in BiH are not sufficiently equipped so, for example, women with paraplegia cannot be checked up by a gynecologist.

Children with disabilities

30. Cantons in FBiH have the authority to regulate issues related to child protection, which often leads to discrimination against children with disabilities and their families based on place of residence, due to different legal framework and disproportionate benefits.

¹⁵ FBiH Law on the Foundations of Social Protection and the Law on Protection of Families with Children OG FBiH 36/99, 54/04, 39/06, 14/09 and 45/16.

¹⁶ Article II paragraph 4 of BiH Constitution

¹⁷ Article 2 paragraph 1 Item c) and d) of Constitution of FBiH

¹⁸ Article 10 of RS Constitution

¹⁹ Law on Gender Equality in BiH, OG BiH“ 16/03 and 102/09

²⁰ 2016 Report on the implementation of the UN Convention on the Rights of Persons with Disabilities in BiH, available at: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2017050312330714bos.pdf

31. When it comes to social welfare centers, Ombudspersons constantly emphasize that employees of these centers are exposed to many professional risks, a wide range of legal responsibilities and authorities while dealing with a large number of beneficiaries with different profiles. Ombudspersons continuously advocate for capacity strengthening of social welfare centers²¹, which cannot efficiently perform all tasks entrusted to them due to insufficient human resources, bad conditions for work, large scope of responsibilities and their vulnerability and exposure to professional stress.

Awareness-raising

32. Written and oral complaints received by the Ombudsman indicate to low awareness level of persons with disabilities on their rights and needs. Due to nature of their disability they are often isolated and not aware of their rights, and consequently not seeking its protection.²²

33. Media campaigns aimed at awareness raising on needs of persons with disabilities and necessity of their inclusion into social life are not carried out in a systematic manner and are rare in BiH. In the entities and Brčko District it is necessary to organize a systematic and continuous capacity building for public servants on treatment of persons with disabilities.

Accessibility

34. For many years Ombudspersons indicate in their annual and special reports to accessibility which is still not resolved in all public buildings, transportation means, services and communications which are not adjusted to persons with disabilities²³. Although relevant legislation in cantons and Brčko district comprises the obligation of removal of all architectural barriers to enable unimpeded movement of persons with disabilities, its implementation is not consistent.

35. Public and private broadcasters and electronic media programs are not adjusted to persons with disabilities (absence of translation to sign language, audio translation for visually impaired persons, and lack of easily readable formats adjusted to persons with intellectual disabilities or those unable to keep track of all information for other reason) which makes it impossible for them to participate in discussions relevant to their lives. Public discussions are not accessible for them also because working materials are not adjusted to them²⁴, neither are documents uploaded to web portals of public bodies.

36. Public transportation is one of accessibility segments. Legislation governing this area do not clearly define obligation of service providers to provide accessible means of transport, facilities and information for persons with disabilities, which in practice results in a significant restriction on freedom of movement, especially for persons with severe disabilities. In major towns in BiH, a certain number of public transport means accessible for transportation of persons with disabilities is available, but due to inadequacy of bus stops, non trained drivers, and other transport users it does not produce expected effects.

²¹ Special Report of the Ombudsman "The role of Social Welfare Centers in Protection of Rights of Children", November 2013

²² Complaints Ž-BL-02-202/16, Ž-BL-02-766/15

²³ 2018 Annual Report, : https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019030109434379bos.pdf

²⁴ Complaint Ž-BL-02-289/16

Equality before the law

37. Ombudspersons continuously express their concerns related to stripping away the legal capacity. Stripping away of legal capacity should be an institute of a last resort in cases when all alternative methods to supported decision-making are exhausted. Particularly worrying is insufficiently developed institutional structure to provide support for persons with intellectual and mental difficulties in community. Capacities of social welfare centers are insufficient, their staff is not trained enough, and institutional linkage between social welfare centers and mental health centers is not developed sufficiently. On the other hand, the process of de-institutionalization in FBiH and RS is very slow.

38. In RS a Working group for drafting the Action plan aimed at prevention of future human rights violations in line with Article 5 of the Convention related to forced accommodation of persons with mental health difficulties pursuant to ECHR judgment of in a case Hadžimejlić and others v. Bosnia and Herzegovina was established.

39. The FBiH Government aimed at implementation of general measures for prevention of human rights violations according to ECHR judgment in a case Hadžimejlić and Others v. BiH decided to appoint the Working Group for drafting a proposal for amendments to relevant legislation with international standards in this area. However, this Working group had only a few meetings and no significant measures have been taken for implementation of mentioned ECHR judgment.

Access to justice

40. Persons with disabilities have access to justice, administrative and executive bodies if they enjoy legal capacity. However, access to justice for persons with disabilities cannot be effective as a number of premises of judicial institutions still have physical barriers preventing their access. Use of necessary contemporary aids would enable persons with disabilities to have more independent life and contribute to their better social inclusion.

41. In addition to that, in some cases persons with disabilities have limited and discriminatory access to justice (e.g. a visually impaired party to court proceedings does not have possibility to get relevant documentation in Braille script or to use modern assistive technologies). In this way their access to justice is violated, therefore they cannot use regular legal remedies or initiate court proceedings.²⁵

Freedom and security of the person

42. In the area of freedom and security of persons, persons with mental disabilities and persons placed in social care institutions and psychiatric hospitals are at highest risk. In addition to supervision of work of these institutions by competent ministries, monitoring is carried out by the inspections. Standards set out by entity legislation governing protection of persons with mental disabilities²⁶ demand establishment of committees for protection of persons with intellectual difficulties within

²⁵ 2018 Annual Report Omb: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019030109434379bos.pdf

²⁶ RS Law on Protection of Persons with Mental Disabilities („OG RS“ 46/04 and FBiH Law on Protection of Persons with Mental Disabilities („OG FBiH“, 37/01, 40/02, 52/11 and 14/13)

health care institutions specialized for their treatment²⁷. Under Article 52 of RS Law on Protection of Persons with Mental Disabilities - Committee for Protection of Persons with Mental Disabilities has to be established at regional level for health care institutions specialized for their treatment. Similarly, Article 51 of the FBiH Law on Protection of Persons with Mental Disabilities these committees have to be established within health institutions specialized for their treatment. Social welfare centers also have possibility to monitor conditions of their accommodation.

43. European Court of Human Rights in a case Hadžimejlić and Others v. BiH²⁸ found that rights of persons stripped from legal capacity and placed in social care institutions were violated.²⁹

Freedom from torture or cruel, inhuman or degrading treatment or punishment and freedom from exploitation, violence and abuse

44. A national preventive mechanism has not yet been established in BiH. However, through the Project of Capacity Building of BiH Ombudsman implemented with support of Embassy of Republic of Bulgaria in 2018 and 2019, appropriate training on mandate and functioning of National Preventive Mechanism was carried out.

45. Visits to places where persons whose freedom of movement is restricted are an effective way to prevent and combat torture. Places where persons are deprived of their liberty, due to its nature, are places where potential torture can occur, and regular monitoring of these establishments along with presentation of findings from these visits to the public is a prerequisite for prevention of torture and other forms of their degrading treatment. Constitutions of BiH, RS, FBiH, and all four criminal laws applicable in BiH specifically prohibit all forms of abuse, violence and exploitation of all citizens.

Independent life and inclusion in community

46. All BiH citizens have right to independent life, to enjoy full legal capacity and to be involved in the community, as equal society members.

47. FBiH adopted Strategy for Deinstitutionalization and Transformation of Social Welfare Institutions in FBiH for Period 2014-2020, while RS has Strategy for Advancement of Social Status of Persons with Disabilities in RS 2017-2026 which tackles issue of deinstitutionalization.

48. In process of deinstitutionalization it is necessary to provide support and protection in order to facilitate independent life.

49. In FBiH one of challenges is procurement of clothes, shoes and other personal items for beneficiaries of social welfare institutions. Namely, these institutions must follow public procurement

²⁷ 2018 Special report on situation of persons with intellectual and mental difficulties in BiH

²⁸ ECHR judgment:

http://www.mhrr.gov.ba/ured_zastupnika/odluke/PRESUDA%20HADZIMEJLIC%20I%20DRUGI%20protiv%20BIH.pdf

²⁹ This judgment found that BiH violated Article 5 of ECHR as the applicants had been placed in social welfare institution Institute for Care of Mentally Disabled Persons “Drin” in Fojnica, without valid legal grounds, or without a court decision, as continuous judicial control of justification and expediency of the applicants' detention in that and similar social care institutions had not been provided

rules, while Ordinance on Cash Payments³⁰ does not recognize their specific circumstances. For this reason their right to choice is limited as only product procured following conducted public competition procedure are bought, which do not necessarily much their choice. As a consequence, they are rather „unified” in their appearance, sometimes not able to find appropriate sizes of shoes and clothes. Individual approach is neglected, which is detrimental for their personal development and dignity and constitutes violation of their rights. Also, allowance for personal spending is solved in a different way in different cantons.³¹

Personal mobility

50. Although relevant entity legislation (specifically Law on Zoning and Construction) provides that collective housing facilities, facilities or parts of facilities earmarked for public use or used for provision of public services and economic activities must be designed and constructed as to provide persons with disabilities with unimpeded access, movement, work and residence, in practice all public and private facilities are not fully accessible to this population.

51. Inaccessibility of the physical environment, along with inadequate or missing orthopedic and other aids, non-adjustment of public transportation to persons with disabilities, and absence of information adapted to persons with visual, hearing and intellectual impairment contributes to their social exclusion and inability to participate in socio-economic activities in BiH.

52. There are pieces of legislation in the entities/cantons and Brčko District that facilitate and ensure personal mobility of persons with disabilities, primarily legislation in area of social protection, legislation governing entitlements of war time disabled persons (carer's allowance and allowance for orthopedic aids), health care legislation (aids and medical rehabilitation) and legislation related to zoning and construction (setting out the designing and construction standards without architectural barriers).

Freedom of expression and thought, and access to information

53. Freedom of expression and thought is guaranteed by the BiH, entity and cantonal constitutions while the implementation of the right to access to information to all physical and legal persons is governed by free access to information legislation³² in both entities and Brčko District of BiH.

54. Persons with disabilities are often lacking access to information, TV programs or other audio-visual contents for non-adjustment of their formats or formats of public bodies web portals to their needs. They are also often unaware of methods and conditions of their rights enjoyment.

55. Frequent amendments to legislation governing procedures for enjoyment of some rights and entitlements are not followed by adequate informing and publication of these documents on publically available *fora*³³ (e.g. on methods of referral to spa treatment, reimbursement of treatment costs,

³⁰ Ordinance on Terms and Methods of Cash Payments „OG FBiH”48/15 and 82/15

³¹ Special Report of Omb BiH on Situation of Persons with Intellectual and Mental Difficulties:
https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2018051809032286bos.pdf

³² Laws on free access to information in BiH („OG BiH”45/06, 62/11 and 100/13), F BiH („OG FBiH”32/01 and 48/11) and RS („OG RS”20/01)

³³ Ž-BL-02-822/17, Ž-BL-04-218/18, Ž-BL-04-217/18, Ž-BL-02-218/18

participation in costs of health services for persons with 100% disability, access to gynecological and dental services, determination of disability degree, discrimination of persons with disabilities due to the cause of their disability etc.) which causes dissatisfaction of persons with disabilities.

56. BiH has not ratified Marrakesh Treaty which requires introduction of a standard set of limitations and exceptions to copyright rules in order to permit reproduction, distribution and making available of published works in formats designed to be accessible to visually impaired persons. An initiative for ratification of the above Treaty was sent to the BiH Council of Ministers, but the Treaty has not yet been ratified.³⁴

Respect of privacy, home and family

57. Law on Personal Data Protection provides protection to all natural persons in BiH regardless of their citizenship or residence of their right to lawful personal data processing.

58. Constitutions of BiH, FBiH and RS enshrine to all citizens the rights to home and family. In FBiH two cantons adopted legislation on social housing: Law on Social Non-Profit Housing in Bosna-Drina Canton³⁵, Law on Social Non-Profit Housing in Zenica-Doboj Canton³⁶. In Sarajevo Canton draft Law on Social Non Profit Housing was adopted in 2018³⁷. In 2019 RS adopted Law on Social Housing.³⁸

Education

59. Framework Law on Pre-School Education and Upbringing³⁹ is in force at the level of BiH, Framework Law on Primary and Secondary Education⁴⁰ and Framework Law on Higher Education in BiH⁴¹ setting out the main principles and standards of education in BiH.

60. In FBiH education is decentralized so that cantons are responsible for establishing educational policies. The cantons, for almost all levels of education, have passed their own legislation. In RS education is centralized at entity level. Education is governed by Law on Primary Education⁴², Law on Secondary Education⁴³ and Law on Higher Education⁴⁴. In Brčko District education is governed by Law on Education in Primary and Secondary Schools Brčko District BiH.

61. Framework laws on primary and secondary education in BiH foresee inclusion of persons with special needs pursuant to their age, abilities, mental and physical aptitude (Article 3 paragraph 1 Item b)). Inclusive education is provided for also in Article 4 paragraph 1 Item 9) of the RS Law on Primary Education and Upbringing.

³⁴ <https://www.ipr.gov.ba/bs/novost/10005/pokrenuta-inicijativa-za-ratifikaciju-ugovora-iz-marakesa>

³⁵ „OG of BD Canton Goražde” 9/13

³⁶ „OG of Zenica-Doboj Canton 13/13”

³⁷ <http://skupstina.ks.gov.ba/zakon-o-socijalnom-neprofitnom-stanovanju-u-kantonu-sarajevo>

³⁸ „OG RS” 54/19

³⁹ „OG BiH” 88/07

⁴⁰ „OG BiH” 18/03

⁴¹ „OG BiH” 59/07

⁴² „OG RS” 44/17, 31/18 and 84/19

⁴³ „OG RS” 41/18

⁴⁴ „OG RS” 73/2010, 104/2011, 84/2012, 108/2013, 44/2015, 90/2016, 5/2017 - CC decision 31/2018 and 26/2019

62. Children from rural areas are in even harder position when it comes to inclusion absence of which is justified mostly by economic reasons and lack of funds for transportation to schools, kindergartens, day care centers, health institutions etc.

63. BiH Framework Law on Primary and Secondary Education, Articles 4 and 19 provide guarantees as to attendance of regular education to children with difficulties. Article 10 of RS Law on Primary Education and Upbringing prohibits discrimination on grounds of disability. Legislation on primary and secondary education at cantonal level also prohibit any form of discrimination on grounds of disability. Cancellation of special schools is not an option currently, since regular schools did not develop infrastructure (neither architectural nor staff related capacity), so that transition from special to regular schools will be a long process⁴⁵.

Health care

64. Health care in BiH is falling within competence of entities, cantons and Brčko District and is governed by legislation of entities and the Brčko District.

65. Health policies of entities and Brčko District must fit needs of citizens. All programs aimed at health care provision should be tailored according to purpose they serve, therefore participation of persons with disabilities in their drafting, either directly or indirectly, is very important.

66. One of key problems in BiH is difference in enjoyment of right to health care depending on place of residence⁴⁶. For instance, children with diabetes in some cantons are not entitled to free insulin pumps and there are cantons where dental services for children with intellectual difficulties are not free of charge.⁴⁷

Labor and employment

67. Even when employed persons with disabilities face many obstacles during hiring process and access to working place.

68. Complaints to Ombudsman lodged by persons with disabilities also indicate to impossibility to monitor legal obligation of employers to pay certain fee if they do not employ persons with disabilities under relevant legislation in FBiH and RS.

69. Applicable legislation on professional rehabilitation and employment of persons with disabilities⁴⁸ set up a quota system as a measure of boosting employment of persons with disabilities at open labor market. However, certain problems occur in implementation of these measures due to absence of clear definition of a person with disabilities, precise records on employed persons with

⁴⁵ <https://eu-monitoring.ba/inkluzivno-obrazovanja-stanje-u-bih-i-praksa-i-direktive-eu/>

⁴⁶ 2018 Omb Annual Report: www.ombudsmen.gov.ba;

⁴⁷ Ibidem

⁴⁸ FBiH Law on Professional Rehabilitation, Empowerment and Employment of Persons with Disabilities (OG FBiH 09/10) and RS Law on Professional Rehabilitation, Empowerment and Employment of Persons with Disabilities (OG RS 37/12 and 82/15)

disabilities and ambiguities as to institution in charge of monitoring implementation of quota system and charging fees from the employers. In addition to that, neither entity has established vocational job training centers for persons with disabilities.

Adequate standard of living and social protection

70. There are three categories of persons with disabilities in BiH, namely war veterans, civilian victims of war and civilian persons with disabilities unrelated to war. Although they suffer the same or similar difficulties as a consequence of their disability, their rights, benefits and entitlements are not the same. For instance, under FBiH Law on the Rights of War Veterans and Member of Their Families⁴⁹ and RS Law on Rights of Veterans, Disabled War Veterans and Families of Killed Soldiers of Defensive Liberation War⁵⁰, a completely blind person who is a war veteran has the right to disability payment, carer's allowance, orthopedic aid allowance, priority in employment, housing, free parking lot, subsidies in car import, priority in waiting lines, while a person who was born blind has only the right to carer's allowance.

71. Legislation in area of social protection in both entities⁵¹ prohibits discrimination in enjoyment of right to social protection on grounds of disability. However, having in mind the joint powers of the Federation and cantons, in practical enjoyment of individual rights in area of social protection, persons with disabilities are facing different forms of discrimination, mostly on territorial grounds (depending on place of residence rights and scope of their implementation is different).

Participation in political and public life

72. Accessibility of official premises of legislative bodies to persons with disabilities has a direct impact to their enjoyment of right to freedom of expression, political rights including right to vote and stand for election, social inclusion and creation of the legal and political framework in which persons with disabilities can live free of discrimination.

73. Positive regulations in BiH provide for accessibility of polling stations to persons with disabilities. However, persons with disabilities emphasize that many polling stations are not adjusted for them, which means are inaccessible, or that ballots are not adjusted to blind persons (no ballots in Braille script or sound instructions on how to vote and no possibility of telephone voting).

Participation in cultural life, recreation, leisure and sport

74. Amendments to BiH Law on Sports⁵² and RS Law on Sports⁵³ comprise provisions about support to athletes with disabilities so they are not discriminated against. In FBiH such legislation has not been adopted.

⁴⁹ "OG FBiH" 33/04, 56/05, 70/07, 9/10 and 90/17

⁵⁰ "OG RS" 134/11

⁵¹ FBiH Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children, "OG FBiH" 36/99, 54/04, 39/06 and 14/09 and RS Law on Social Protection "OG RS" 37/2012, 90/2016 and 94/2019

⁵² „OG BiH“ 27/08 and 102/09

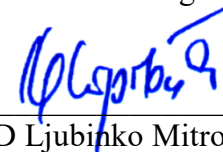
⁵³ "OGRS" 4/2002, 66/2003, 73/2008 and 102/2008 - corr.

Statistics and statistic data collection

75. Federal Statistic Institute⁵⁴ and RS Republic Statistic Institute⁵⁵ collect statistic data for areas “social protection” and “population”, inter alia, but these parameters do not comprise data on number of persons with disabilities, type of their disability and its origin. Statistic data on persons placed in social welfare institutions and beneficiaries of social protection benefits are collected, but persons are not placed in such institutions, but have disabilities, or those who do not enjoy benefits, are not comprised with statistic data.



Human Rights Ombudsmen of
Bosnia and Herzegovina:


PhD Ljubinko Mitrović


PhD Jasminka Džumhur

⁵⁴ Department of Population Statistics and the Federal Bureau of Statistics include: vital statistics, population estimates and internal migration. Administrative data sources such as the registries of local administrative units (births, deaths and marriages), FBiH municipal courts responsible for divorces, BiH Agency for Identification Documents, Records and Data Exchange (IDDEEA) are used as a source for population statistics. Vital statistics include data on characteristics: births and deaths, marriages and divorces. These data are classified by following characteristics: age, gender, born by vitality, died by place and cause of death, legal marital status and other. Following indicators are calculated on the basis of vital statistics collected: absolute indicators on number of live births and stillbirths, birth rates, natural birth rates, average maternal age at birth, general mortality rate, average deaths, infant mortality rates, average groom and bride age at conclusion of marriage for total number of marriages and for first marriages, the rate of divorces, average age of husband and wife at divorce, average duration of marriage prior divorce, etc. (information taken over from: <http://fzs.ba/index.php/statisticke-oblasti/stanovnistvo-i-drustvene-statistike/stanovnistvo-i-registar/>)

⁵⁵ RS Republic Institute of Statistics collects and presents data on beneficiaries of all forms, measures and services of social welfare and data on social welfare institutions. Data are given by age and gender of beneficiaries, type of social need, extent of disadvantage and by kind of protection rendered and institutions, annually. Population Statistics Division, within the Sector of Population and Education Statistics, Social Statistics and Crime Statistics covers vital statistics, population estimate and internal migrations. For population statistics, following sources of data are used: Registers of births, deaths and marriages, Basic courts competent for divorces and RS Ministry of Internal Affairs. Vital statistics covers data on characteristics of: births, deaths, marriages, divorces. These data are classified by different attributes, such as age, sex, legal marital status, cause of death, etc. Based on vital statistics data, various indicators are calculated, including general birth rate, general mortality rate, average age of mother at birth, average age of deceased persons, average age of bride and groom at marriage, average age of husband and wife at divorce... (source https://www.rzs.rs.ba/front/category/22/?up_mi=12&left_mi=35&add=35)



Nives Jukić