

European Union EIDHR Program for Bosnia and Herzegovina

Report on Compliance of Legislative and Institutional Framework in Bosnia and Herzegovina, Serbia and Montenegro with UN Convention on the Rights of Persons with Disabilities and Recommendations for Harmonization

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Banja Luka, August 2014th year

**REPORT ON COMPLIANCE
OF LEGISLATIVE AND INSTITUTIONAL FRAMEWORK
IN BOSNIA AND HERZEGOVINA WITH
UN CONVENTION ON THE RIGHTS OF PERSONS
WITH DISABILITIES
AND RECOMMENDATIONS FOR HARMONIZATION**

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1. INTRODUCTION

„The Report on Compliance of Legislative and Institutional Framework in Bosnia and Herzegovina with the United Nations Convention on the Rights of Persons with Disabilities including Recommendations for Harmonization” was developed as a result of implementation of the regional project **„Establishing the Balkans Independent Disability Framework”**, funded by the European Commission, the European Instrument for Democracy and Human Rights office in Brussels. The regional project is jointly implemented by the Agency for Cooperation, Education and Development (ACED), as a project activities leader and project partner for Bosnia and Herzegovina, Centre for Independent Living of Persons with Disabilities of Serbia (CIL) as a partner for Serbia, the Union of Associations of Paraplegics of Montenegro (UAPM), as a partner for Montenegro, and Croatian Alliance of Muscular Dystrophy Associations and Movement against disability - POLIO PLUS, as associated project partners for Croatia and Macedonia.

The report on compliance of legislative and institutional framework with the United Nations Convention on the Rights of Persons with Disabilities (the UN Convention) was produced to determine the degree of Bosnia and Herzegovina's (BiH) and its entities' normative and institutional framework compliance with the provisions of the UN Convention referring to the observed fields and it is supposed to demonstrate the feasibility level of the Convention. Also, the purpose of the Report is to propose recommendations for the harmonisation of the normative and institutional

framework in the part that has not been sufficiently harmonised with the provision of the UN Convention.

The Report was compiled based on joint methodology agreed by the project partners and the analysis covered the situation in five fields recognised by disabled people's organisations as the ones of the highest importance for their members: accessibility, education system, healthcare protection, social protection and employment. Joint methodology defined within the project aimed at facilitating performance of analysis over the status of normative and institutional framework in a uniform manner, conducting necessary research and compiling a Report on the UN Convention provisions' implementation. Uniform project methodology was applied to obtain a uniform assessment of the situation and create assumptions for joint approach of disabled people's organisations in the project region; hence a combined national report consisting of the entity reports of the Republic of Srpska and BIH Federation will be comparable with the legislation of the project countries – Serbia and Monte Negro.

Research on the status of implementation and application of the provisions of the UN Convention in the legislation of the analysed fields in both entities of Bosnia and Herzegovina was carried out by the Working Groups² consisting of over 40 professionals, prominent experts and representatives of the disability sector. In the research process a survey was conducted among persons with disabilities and their organisations with a range of questions referring to the implementation and enforcement of the standards defined by the relevant provisions of the UN Convention. Surveys in the form of questionnaires and focus groups gathered information from over 450 respondents that are incorporated in the report. In the process of producing sectorial reports, 10 informative round tables were organised where the people with disabilities presented their views, comments and opinions on harmonisation of legislation in the analysed fields.

Representatives from over 120 disabled people's organisations from both entities of Bosnia and Herzegovina participated in compiling the report through the use of participatory methodology for exchange of information and we wish to express our gratitude to all of them for this.

The report included analysis of conditions including statistical data on the persons with disabilities, the existing legislation framework and definition of disability within, anti-discrimination provisions with special emphasis on the legal acts regulating these areas, then strategies and other documents,

² The list of the Working Groups' member provided in Annex 1.

institutional framework, assessment of the regulatory and institutional framework compliance with the UN Convention, as well as the degree of the legislative and institutional framework compliance. A separate part of the report contains proposed measures for improvement and harmonisation of the existing legislative and institutional framework to the UN Convention for each of the analysed fields.

This report should contribute to improving the status of people with disabilities in BiH through harmonisation of the legal and institutional framework with the standards of the Convention on the Rights of Persons with Disabilities and elimination of all forms of discrimination. Proposals for harmonisation of the BiH legislation with the UN Convention on the Rights of Persons with Disabilities will be prepared based on the obtained results and recommendations.

This objective could be achieved through the three following steps:

- The first step has been made through working on the analysis and preparing the report on compliance of legislative and institutional framework to the UN Convention on the Rights of Persons with Disabilities, a clear picture has been obtained, conclusions and recommendations have been made crystal clear,
- The second step is preparation of the Report with recommendations and guidelines for harmonisation of legislative and institutional framework in Bosnia and Herzegovina with the UN Convention and informing the authorities and institutions responsible for these issues with specific findings, conclusions and proposals for harmonisation of legislation.
- The third step is lobbying in order to achieve certain changes that would gradually lead to better compliance with the UN Convention on the Rights of Persons with Disabilities.

The parties responsible for implementation of all three steps are authorities and institutions at all levels of the government, but also disabled people's organisations gathered in the **Balkans Independent Disability Network** who would apply continuous pressure on government institutions in order to achieve changes through joint approach. The road to these changes is long, but not impossible. It will be necessary to put in a lot of effort in order to achieve the above mentioned recommendations and all this in order to harmonize legislation with the UN Convention and the improvement of the status of the persons with disabilities.

2. BACKGROUND INFORMATION (CONTEXT)

Bosnia and Herzegovina is a complex country and the structure of its socio-political organisation was defined by the Dayton Peace Agreement with its Annex IV as the Constitution of Bosnia and Herzegovina. Under the Constitution, Bosnia and Herzegovina is territorially organised as a complex country, consisting of two entities: the Federation of Bosnia and Herzegovina and Republic of Srpska. The Brčko District was established through International Arbitration Decision having its own separate institutions and legislation.

Organisation of the BiH entities is asymmetrical. Republic of Srpska is rather centralised, with two levels of government, entity and municipal level (local level), and the Federation of Bosnia and Herzegovina is highly decentralised, with three levels of government, entity level, cantonal level (10 cantons) and municipal level (local level).

Article 3 of the Constitution of Bosnia and Herzegovina stipulates that only certain part of the responsibilities referring to the issues of international relations and economic policy and other assumed international commitments and coordination of their implementation throughout the country, falls under the jurisdiction of BiH, which means that all the key areas for persons with disabilities, including fields that are subject of this report (accessibility, education, healthcare protection, labour and employment, social security and appropriate standard of living), fall under the original jurisdiction of the BiH entities, and in the FBiH they fall under divided jurisdiction between the Federation and the cantons.

Constitution of Bosnia and Herzegovina does not identify elements of the entities internal organisation and lower units of government in the entities. The entities were given the option to arrange their independent model of government organisation and management, so that the government

institutions and internal organisation forms vary to a great extent between the two entities of Bosnia and Herzegovina, but the Constitution, laws and regulations of the authorities of Bosnia and Herzegovina, within its constitutional rights and authorisations, are binding for the entities.

Regardless of the country's complex structure and organisation, divided responsibilities and a possibility to legally regulate certain issues at different levels and in different ways, by accepting and signing the international conventions on human rights, Bosnia and Herzegovina has made a commitment to provide social support and protection to all living on its territory, without discrimination on any grounds whatsoever. Bosnia and Herzegovina has an obligation to meet the standards of human rights following from the signed and ratified international documents, and the persons with disabilities are entitled to the right to claim protection against discrimination and the right to the full enjoyment and exercising of all human rights as defined by the international documents.

Bosnia and Herzegovina, its entities and the Brčko District have an obligation to harmonise its legislation with European standards in the EU accession process which also includes harmonisation of regulations within the five observed specific fields. In addition, Bosnia and Herzegovina and its entities have signed a number of international instruments that, among others, address the rights of persons with disabilities and they constitute an integral part of the BiH's legislation and have the legal force of the Constitutional provisions. Among them, we shall mention only a few regulating the analysed fields, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and other. By signing, and thus accepting the international conventions on human rights, BiH assumed an obligation to provide social support and protection to all living on its territory, without discrimination on any grounds whatsoever.

Constitutions of Bosnia and Herzegovina and its entities, the Federation of Bosnia and Herzegovina and Republic of Srpska guarantee the highest level of internationally recognized human rights, as well as the right to protection against discrimination on any grounds whatsoever.

BiH ratified the Convention on the Rights of Persons with Disabilities and the Optional Protocol in March 2010 without making any reservations or declarations.³ By ratifying the Convention BiH committed to application of

³ BiH Official Gazette – International Treaties, edition 11/09

its provisions throughout the country and thus expressed its intention to actively work and contribute to improvement of the position of persons with disabilities. The fact that the Convention has become an integral part of the internal legal system through this act of ratification is particularly important. For Bosnia and Herzegovina the Convention became effective on 11th April 2010.

By ratifying the Convention on the Rights of Persons with Disabilities, Bosnia and Herzegovina has committed itself to perform adaptation of the existing legislation which will ensure full participation in the society and prohibition of all forms of discrimination against people with disabilities.

The Council of Ministers of Bosnia and Herzegovina Adopted the document "Disability Policy in Bosnia and Herzegovina" (published on 22nd Sep 2008, BiH Official Gazette, edition 76) on 8th May 2008.

By adopting a Uniform policy in the field of disability in Bosnia and Herzegovina and prior to accession to the Convention, Bosnia and Herzegovina has created a political framework for full compliance with the principles and provisions of the Convention and opted for a new approach in the field of disability based on human rights, which largely provides and ensures social integration of persons with disabilities. Within their constitutional jurisdictions Bosnia and Herzegovina and its entities, Republic of Srpska and the Federation of BiH, as well as the Brčko District, committed themselves to enforcement of the defined policy objectives, which among other things involved creation of Strategies and Action plans for improvement of the social status of persons with disabilities. In both entities there were strategies made, "Strategy for improvement of the social status of persons with disabilities in Republic of Srpska 2010-2015" and "Strategy for equalisation of possibilities for persons with disabilities in the Federation of Bosnia and Herzegovina 2011 - 2015", and the Council of Ministers adopted a decision on establishing the Council for Persons with Disabilities in 2010. The significance of the Council is to maintain partnership relations between the persons with disabilities and organisations bringing the persons with disabilities together.

By adopting the entities strategies for application of the Uniform policy in the field of disability, in principle, the entities themselves have committed to harmonise and create their legal framework in the future pursuant to the principles proclaimed in the Convention on the Rights of Persons with Disabilities.

The social sector in Bosnia and Herzegovina has been governed by the

following: the BiH Constitution, the FBiH Constitution, the RS Constitution, the Brčko District Statute, applicable legislation at the entities level, but we should bear in mind that there is not a single regulation which would govern fundamental rights of persons with disabilities in one place and in a uniform way, neither in Bosnia and Herzegovina nor the entities. There are no systemic solutions that ought to enable any group of persons with disabilities to form, express and materialise their basic development needs and special interests, to have equal possibilities as the healthy people, and above all to have the right to be different. Policies in this field are enforced by a few competent authorities through individual policies in the fields of healthcare protection, labour, employment, war veterans-disabled persons' protection, protection of civilian victims of war and social protection. Thus divided jurisdiction results in ununiformed rights of persons with disabilities with respect to the cause of disability occurrence, place of residence and absence of common criteria under which the rights are exercised. Therefore, there are large differences in rights with respect to the status of certain categories of persons with disabilities.

There are no precise or reliable data on persons with disabilities, especially on the nature, types and levels of damages, and there are neither comprehensive statistic data on persons with disabilities at the state level. The authorities and institutions providing certain types of services to persons with disabilities, keep partial records on their services users, but these are only the data on specialised services for persons with disabilities, which do not provide a complete picture on their status due to their incompleteness. It is clear that the entire population is not covered and there are no data either on the number of persons with disabilities using general systems and services intended for the entire population, or information about their availability to persons with disabilities. Also, up to now disability issues have not been included into the general research performed on various grounds on the state level.

Although the exact number of persons with disabilities in BiH is unknown, it is known without a doubt that this population falls in one of the poorest and the most marginalised social groups.

Data from the Census performed in 2013 show that the total population number was 3,791,622⁴. (out of which 2,371,603 people was registered in the Federation of Bosnia and Herzegovina, 1,326,991 people was registered

⁴ source: www.bhas.ba printed on 8th June 2014

in Republic of Srpska, and 93,028 people was registered in the Brčko District).

Taking the latest research of the World Health Organisation as a starting point, according to which 15%⁵ of the population of a country is living with certain form of disability, we can conclude that there are approximately 569,000⁶ persons with disabilities living in BiH (about 199,000 persons with disabilities live in Republic of Srpska, about 356,000 live in the Federation and about 14,000 persons with disabilities live in the Brčko District).

The total gross domestic product in 2012 was 25,734,000,000 BAM⁷, which comes down to 6,709 BAM or 3,430 Euro per capita. (GDP for the Federation was 16,554,000,000 BAM; GDP for Republic of Srpska 8,668,712,000 BAM; GDP for the BiH Brčko District was 595,000,000 BAM).

According to the Federal Statistics Institute the Gross domestic product in 2011 was 16,401,821,000 BAM, and Gross domestic product per capita in the same year was 5,723.00 BAM, i.e. 2,926.12 Euro, and according to the data used for Republic of Srpska from the Republic of Srpska Institute of Statistics⁸ the GDP for the year 2012 was 8,668,712,000 BAM, i.e. GDP per capita was 6,063.00 BAM, that is 3,100 Euro.

Bosnia and Herzegovina spends about 4% of GDP⁹ for financing social benefits, which is more than any of the countries in Europe (except Croatia), but financing social security measures in the field of disability is significantly below the European average in the region, and the systems do not guarantee minimum income necessary for survival. According to the data from the study, "Budget financial benefits for social protection in BiH - What works and what does not (I)"¹⁰ for social protection rights of persons with disabilities in war veterans-disabled persons category in 2011 approximately 56,000,000.00 BAM was spent, in social protection about 10,000,000.00 BAM, and child protection about 4,105,500.00 BAM, and in the pension-disability system for disability pensions about 144,000,000.00

⁵ http://www.who.int/disabilities/world_report/2011/report/en/index.html

⁶ Own figures calculation

⁷ source: www.bhas.ba printed on 8th June 2014

⁸ the Republic Institute of Statistics, Republic of Srpska: Statistical Yearbook of Republic of Srpska for 2012, page 12

⁹ See: the World Bank, Record on the policy Social benefits in Bosnia and Herzegovina: Creating sustainable system of social protection based on real needs (April 2009), pages 6-9

¹⁰ IBHI (2013), Budget financial benefits for social protection in BiH - What works and what does not (I) – unpublished materials

BAM was paid. Total on all grounds about 214,205,000.00 BAM or 109,470,000.00 Euros was paid.

It is important to emphasize that, despite the fact that there is a uniform Disability Policy in BiH, and strategic documents in the entities that proclaim adoption of uniform definition of disability, which should be consistent with the definition contained in the Convention on the Rights of Persons with Disabilities, individual policies enforced by different competent authorities in the areas in which persons with disabilities have certain rights, have resulted in different definitions of disability and the persons with disabilities. In each of these areas, the status is acquired and a disability is defined under different conditions and criteria, and such definition is used only for the purpose of enforcing these rights characterised by certain elements referring to the time and circumstances of disability occurrence. This means that there is no uniform definition and uniform criteria for acquiring the status of a person with disability.

Neither the Constitution of Bosnia and Herzegovina nor the constitutions of the entities, as the highest legal documents, contain special definition of a person with disability.

It is a general opinion that the protection of persons with disabilities is mainly dominated by measures directed at financial support and institutional care.

In Bosnia and Herzegovina, as stated by the Centre for Human Rights of Sarajevo University in their research, the rights of persons with disabilities are most frequently and most severely violated in the fields of social protection, healthcare, education, rights for accessing information, labour and employment.

2.1. General characteristics of the legislative and institutional framework in five specific fields

2.1.1. General conditions in the FBiH

Constitutional arrangement presented certain difficulties in the analysis of the overall system in five specific fields in the FBiH, according to which these fields are under the jurisdiction of the cantons or joint jurisdiction of the Federation and the cantons, thus specific solutions by the cantons are significantly different.

The field of accessibility is under divided responsibility of the Federation of BiH and the cantons, therefore legal framework also differs by cantons and it is not harmonised with Federal regulations. Coordination between various institutions responsible for accessibility issues is rather low.

Education field is in the exclusive jurisdiction of the cantons, whereas the Ministry of Education of the FBiH has only a coordinating role, thus, due to uneven solutions, resulting in the consequence of existence of identical rights for persons with disabilities in the educational process only formally.

In the field of healthcare in the Federation of BiH, there are various forms of discrimination in practice against persons with disabilities in comparison to other citizens of BiH as well as among the very persons with disabilities, by type, cause of disability occurrence and place of residence. Therefore, harmonisation of regulations in the field of healthcare in the Federation of BiH with obligations under the UN Convention on the Rights of Persons with Disabilities is of crucial importance.

In the Federation of BiH a social minimum has not established, not even for persons with disabilities, which can easily lead to conclusion that people with disabilities are not granted social security.

Formally observed, in the Federation of BiH there is a relatively good legal framework regulating the issues of labour and employment of persons with disabilities. Very evident problems manifest through application, i.e. lack of application of specific statutory provisions. Adequate by-laws are missing, and they are too generalised, if any, mostly copying statutory provisions, which do not offer concrete solutions and they do not have any binding effect in their application.

It can be concluded that there are different forms of discrimination against persons with disabilities in the analysed fields in the Federation of BiH in comparison to other citizens of BiH as well as among the very persons with disabilities, by type, cause of disability occurrence and place of residence.

Therefore, harmonisation of regulations in the analysed fields in the Federation of BiH with obligations under the UN Convention on the Rights of Persons with Disabilities is of crucial importance.

2.1.2. General conditions in Republic of Srpska

At the level of Republic of Srpska, the Constitution guarantees rights in these fields and laws and by-laws govern them.

The current state of the system in the fields of accessibility, education, healthcare, labour and employment and social protection in Republic of Srpska is characterised by normative and institutional framework that is the result of adjustment and harmonisation with international and European standards and the impact of certain international actors and partnership between public and non-governmental sectors. Cooperation with non-governmental sector in the process of creating a normative framework for implementation of reforms in these fields was an important factor and it significantly strengthened the overall process characterised by a multisectoral approach for addressing these issues considered as the ones of the most important issues for persons with disabilities.

Policies trends in protection of the persons with disabilities have been defined by the Strategy for improvement of the social status of persons with disabilities in Republic of Srpska 2010-2015 envisaging a number of measures aiming at establishing uniform standards and systematic approach to addressing the issue of the rights established by the UN Convention. In addition to the legal regulation of these fields in certain systems of social security, the RS Constitution regulates these fields in the context of human rights established in the Universal Declaration of Human Rights and other international documents. The Constitution guarantees exercising of all rights without discrimination on any grounds whatsoever.

Republic of Srpska did not adopt any specific laws on equality and non-discrimination, but has incorporated these issues into certain areas laws in terms of the principles underlying the legal systems.

Through adoption of the Strategy for improvement of the social status of persons with disabilities in Republic of Srpska 2010-2015, changes in the law, development and implementation of a number of projects dealing with the improvement of living conditions and status of persons with disabilities and protection of human rights in Republic of Srpska, conditions were laid down for regulating many issues in a more appropriate manner.

However, regardless of all the activities, the system capacities for ensuring social security still do not match the needs, they are not based on human rights and they don't eliminate discrimination.

3. ANALYSIS OF LEGISLATIVE AND INSTITUTIONAL FRAMEWORK AND PRACTICAL APPLICATIONS IN FIVE SPECIFIC FIELDS

3.1. Accessibility (Article 9 of the UN Convention)

Accessibility of the environment, services and information is a prerequisite for achievement of social contacts, independence and inclusion of persons with disabilities in everyday life. The term implies that the built environment really must be such that it can be used by all.¹¹

The current situation with its tendency to last is that the authorities have been insufficiently engaged in removal of architectural obstacles and adapting of signalling, as well as in increasing the mobility of persons with disabilities, they do not allocate sufficient funds for providing customised housing, including social housing. Laws and by-laws on elimination of architectural obstacles did make certain progress, but the needs are not resolved without the analytical approach and defined technical design and rehabilitation. Housing conditions are generally not adjusted for people with disabilities.

The most vulnerable groups of persons with disabilities in terms of physical accessibility are the persons with physical disability, i.e. those using wheelchairs. The problem underlying all of their difficulties is movement, more precisely inability to move and this is not by their own feet, but in a wheelchair, which is something that can neither be accepted or should be accepted, by them or the society.

The persons with disabilities rights have become the subject of resolutions of the United Nations, the World Health Organisation, the International Labour Organisation and similar institutions protected to the fullest possible extent and at the highest possible level. Modern legislation in most countries around the world relies on them, and treats the above mentioned issues in a similar way. The actual results depend on development of awareness about this problem in each country individually, as well as its economic power.

¹¹ Jones M P, 1975, Accessibility, Mobility and Travel Need: „Some Problems of Definition and Measurement“

3.1.1. Analysis of legislative and institutional framework in the field of accessibility

Instructions for security and interoperability of the railway system at the BiH level, as well as the Regulations on the method of marking the vehicles operated by people with damaged limbs, have been defined in the field of accessibility for movement of persons with disabilities.

To some extent, accessibility to information has been regulated by Item f - People with special needs, Strategies for introducing digital television in Bosnia and Herzegovina and the Law on Public Broadcasting System of BiH.

Accessibility for movement of persons with disabilities, i.e. public transport, is one of the fundamental requirements for achieving equal possibilities. There are individual positive examples in Bosnia and Herzegovina, but it is still evident that the majority of existing urban transport is inaccessible as well as the railway transport, whereas it can be said that the airline traffic achieved an adequate level of accessibility to persons with disabilities.

At the BiH level Instructions for security and interoperability of the railway system were defined ("BiH Official Gazette", edition 11/12) stipulating that access paths to passenger trains must be provided at the stations and stops, in order to allow the easiest possible access for passengers and persons with limited movement ability and the adequate funding for this should be provided by the RS Railways. Also, based on the Law on baselines of traffic safety on roads in Bosnia and Herzegovina, Regulations on the method of marking the vehicles operated by people with damaged limbs (BiH Official Gazette, edition 13/07, dated 27th Feb 2007) governing the procedure of obtaining the sign for marking the vehicle operated by a person with damaged limb.

LEGISLATIVE FRAMEWORK

1. Constitution of Bosnia and Herzegovina
2. Constitution of the Federation of Bosnia and Herzegovina with amendments¹²
3. Law on Prohibition of Discrimination¹³

¹² Federation of BiH Official Gazette, editions 1/94, 13/97, 16/02, 22/02, 52/02, 63/03, 9/04, 20/04, 33/04, 71/05, 72/05 and 88/08

¹³ Official Gazette, edition 59/09

Some of the issues referring to accessibility at the state level can be found in the following laws:

1. Law on Communications¹⁴
2. Law on Sign Language Use in Bosnia and Herzegovina¹⁵
3. Law on Principles of Traffic Safety on the roads in Bosnia and Herzegovina¹⁶
4. Law on Public Broadcasting System of Bosnia and Herzegovina¹⁷
5. Law on Amendments to the Law on the Public Broadcasting System of Bosnia and Herzegovina¹⁸ regulates the change in that "a new Article 17a. is added after the Article 17, which reads: "Exemption from obligation of payment for radio and television licence fee for the blind and deaf persons."
6. Law on Railways of BiH ("BiH Official Gazette", 52/05)
7. Law on Air Traffic of BiH ("BiH Official Gazette", edition 33/09)
8. Law on International and Inter-Entity Road Transport ("BiH Official Gazette", 01/02 and 14/03).

The right to communicate without discrimination in Bosnia and Herzegovina is ensured by the Law on Communications of BiH, which defined that regulatory broadcast principles include the following: protection of freedom of expression and diversity of opinion respecting generally accepted standards of behaviour, non-discrimination, fairness, accuracy and impartiality.

Regulatory telecommunications principles include the following: access to public telecommunications services for all users, on transparent, objective and non-discriminatory grounds, which can be provided by a telecommunications operator with reasonable profit.

"Disability Policy in BiH" also addresses accessibility issues.¹⁹

However, despite this, there are no laws governing the issue of accessibility at the state level. There are entity laws other and by-laws.

¹⁴ BiH Official Gazette, edition 31/2003

¹⁵ BiH Official Gazette, edition 75/09

¹⁶ BiH Official Gazette, edition 13/07, dated 27th Feb 2007

¹⁷ BiH Official Gazette, edition 78/05

¹⁸ BiH Official Gazette, edition 35/09, dated 5th May 2009

¹⁹ „BiH Official Gazette“, edition 76/08

Federation of BiH

In the Federation, the cantons and some municipalities also address issues of accessibility and communications.

At the level of the Federation of Bosnia and Herzegovina there are the following:

- Law on Physical Planning and Land Use²⁰
- Law on Public Transport of the Federation of Bosnia and Herzegovina²¹
- Law on the Sign Language Use in Sarajevo Canton was brought in Sarajevo Canton²².

Key documents in the accessibility of the Federation of Bosnia and Herzegovina are:

- "Decree on spatial standards, urban planning-technical requirements and standards for prevention of creating architectural-urban planning obstacles for persons with reduced physical abilities"
- REGULATIONS on marking the vehicles operated by people with damaged limbs²³ (based on Article 29, section 3 of the Law on Principles of Traffic Safety on the roads in Bosnia and Herzegovina)
- REGULATIONS on the system for toll collection on highways, expressways and toll facilities in the Federation of Bosnia and Herzegovina²⁴

The very document "Decree ...", made specifically for equalisation of possibilities for persons with disabilities, defines spatial standards, urban planning-technical requirements and standards for prevention of creating architectural-urban planning obstacles that could obstruct or prevent movement, stay and work of the persons with reduced physical abilities while they are meeting their basic living, working and other needs.

Accordingly, the Decree as the highest legal document of the Federation addressing the issue of accessibility has no provisions on discrimination.

In the Federation of Bosnia and Herzegovina the following was adopted in 2002:

- Law on Physical Planning²⁵ and

²⁰ „Official Journal of the BiH Federation, edition 2/2006 dated 18th Jan 2006

²¹ „Official Journal of the BiH Federation, edition 28/06 and 2/10

²² „Official Journal of Sarajevo Canton, edition 11 dated 27th April 2011

²³ „Official Gazette“, edition 13/2007

²⁴ „Official Journal of the BiH Federation, edition 69/10, dated 25th Oct 2010

²⁵ „Official Journal of the BiH Federation, edition 52/2002, dated 28th Oct 2002

- Law on Construction²⁶.

These laws equalised the rights of persons with disabilities with the rights of healthy people for the first time, thus bringing this part of the country at the same level with developed countries of the West. The law that replaced these two derogated laws is

- "The Law on Physical Planning and Land Use at the Level of the Federation of Bosnia and Herzegovina"²⁷.

It explicitly mentions and protects rights of the persons with disabilities through its many articles (Art. 8, Art. 20, Art. 22, Art. 41, Art. 56, Art. 57, Art. 59 and Art. 112).

- Decree - brought in 2009.

- Law on Physical Planning²⁸ - valid in Sarajevo Canton.

- "Decree on urban planning-technical requirements, spatial standards and standards for removal and prevention of creating architectural-urban planning obstacles for movement of persons with disabilities who use technical and orthopaedic aids"²⁹

- "Law on Construction"³⁰ - valid in Tuzla Canton

In the BiH Federation, physical accessibility standards are stipulated by:

- "Law on Physical Planning and Land Use at the level of the BiH Federation
- "DECREE"

The "Strategy for equalisation of possibilities for persons with disabilities in the Federation of Bosnia and Herzegovina 2011 - 2015"³¹ also addresses the accessibility issues.

The sphere of communication within the " Strategy for equalisation of possibilities for persons with disabilities in the Federation of Bosnia and Herzegovina 2011 - 2015" includes information, communication and awareness raising aimed at ensuring the availability of receiving and

²⁶ „Official Journal of the BiH Federation, edition 55/2002, dated 6th Nov 2002

²⁷ „Official Journal of the BiH Federation, edition 2/2006, dated 18th Jan 2006

²⁸ „Official Journal of Sarajevo Canton, edition 7/2005, dated 10th March 2005

²⁹ „Official Journal of Sarajevo Canton, edition 5/2000, dated 11th April 2000

³⁰ „Official Journal of Tuzla Canton, edition 3/2005,

³¹ Adopted on the 2nd regular session of the House of Representatives of the Federation of Bosnia and Herzegovina on 22nd June 2011, i.e. on

sending information in accordance with the specifics of the needs and abilities of persons with disabilities.

With reference to accessibility in the BiH Federation, when it comes to physical environment, people with disabilities are in an extremely unequal position in comparison to other citizens, and the obstacles are present in all areas of life. A satisfactory system of regulation and access to public or residential buildings, as well as means of transportation, has not yet been established.

The Federal Ministry of Physical Planning has issued the "Decree ..." but the obstacles are still significantly present, not only in the previously constructed buildings and public spaces, but also new facilities that are being built do not meet stipulated norms and standards.

In most cities and other places in the Federation there are no stops, platforms, public pedestrian areas, pedestrian crossings, traffic lights, crossroads and parking spaces adapted to the PWDs.

With reference to information and communication, including public television broadcasting services and the Internet, people with impaired hearing and eyesight have limited access to information in different communications. Government agencies do not employ sign language interpreters, whereas people with visual impairments cannot receive any information in writing due to the fact that Braille printers are not used anywhere.

The media in Bosnia and Herzegovina show disability issues in an unacceptable manner, often as a tragedy or a sensation, thus maintaining stereotypes about people with disabilities.

In the fields of culture and art there are no specific programmes intended for persons with disabilities and there is no adequate accessibility to facilities and information in regular programmes.

People with visual impairments have no access to cultural and artistic heritage due to its unfitness and inability to use the Braille alphabet, information contained within audio technology or large print publications.

Publishing and libraries activities have not been regulated by special regulations.

The Law on Postal Traffic of the Federation of Bosnia and Herzegovina defined that postal services must be accessible to all the BiH citizens, without any discrimination. Freedom of communication through postal and

other postal items must be guaranteed to all natural and legal persons in BiH, without any limitations. The interest of all users of postal services must be protected through availability and quality of services. People with disabilities have various forms of benefits in the telecommunications system in terms of subscription fee for the land lines, mobile phones and similar.³²

It can be concluded that public facilities such as shopping centres or banks, and those facilities visited by all citizens, including persons with disabilities, as customers/consumers (e.g. banks or pharmacies), have adapted entrances, interior spaces, elevators, ramps, etc. Unfortunately, the public facilities of state agencies, municipalities, social welfare centres, or other institutions are not adapted properly or they are not adapted at all. And what is hardest of all, the health care institutions have not yet reached the level of required norms and standards. Larger clinical centres have been adapted, especially with entrances, but not with the interior organisation... etc.

In accordance with Article 10 of the Law on Public Transport of the Federation of BiH³³ the Cantons Parliament governs the organisation method and the number of public transport vehicles to be equipped with devices for easier entrance and exit for persons with disabilities through their provisions.

Regulations on the method of marking the vehicles operated by people with damaged limbs regulate the procedure for obtaining a sign to mark the vehicle operated by a person with limb impairments.

Institutional Framework

The authorities responsible for ensuring accessibility compliance with reference to physical environment at the Federation level are as follows:

1. The Federation Parliament - House of Representatives and House of Peoples
2. Government of the Federation
3. Federal Ministry of Justice
4. Federal Ministry of Physical Planning
5. Federal Ministry of Environment and Tourism
6. Federal Ministry of Transport and Communications

³² „Official Journal of the BiH Federation, edition 76/04 – Article 4.

³³ „Official Journal of the BiH Federation, edition 28/06 and 2/10

The authorities responsible for ensuring accessibility compliance with reference to physical environment at the cantonal level are as follows:

1. Ministry of Physical Planning and Environmental Protection, and in particular the Ministry of housing policy - in Sarajevo and Tuzla Canton
2. Cantonal Urbanism Institute
3. Competent cantonal ministries
4. Relevant municipal services

The authorities responsible for ensuring accessibility compliance with reference to public transport are as follows:

1. The Federation Parliament - House of Representatives and House of Peoples
2. Government of the Federation
3. Federal Ministry of Justice
4. Federal Ministry of Transport and Communications
5. Cantonal Level
 - 5.1. Sarajevo-The Ministry of Transport and Communications of Sarajevo Canton

The activities and tasks within the scope of the Ministry are performed within the basic organisational units (sectors and departments)

5.2. Tuzla

5.2.1. Ministry of Trade, Tourism and Transport

1. Line cantonal ministries and
2. Relevant municipal authorities

The authorities responsible for ensuring accessibility compliance with reference to **information and communication, including public television broadcasting services and the Internet**, are as follows:

1. Communications Regulatory Agency (CRA)
2. Federation Parliament - House of Representatives and House of Peoples
3. Government of the Federation
4. Federal Ministry of Justice
5. Federal Ministry of Transport and Communications
6. Federal Ministry of Labour and Social Policy
7. Federal Ministry of Education and Science
8. Federal Ministry of Environment and Tourism

The authorities responsible for ensuring accessibility compliance with reference to **information and communication, including public television broadcasting services and the Internet** at the cantonal level, are as follows:

1. Ministry of Transport and Communications of the Sarajevo Canton (with the Sector of Communications as one of its fundamental units)
2. Line cantonal ministries
3. Competent municipal services

The authorities responsible for ensuring accessibility compliance with reference to **the services for public use**, are as follows:

1. The Federation Parliament - House of Representatives and House of Peoples
2. Government of the Federation
3. Federal Ministry of Justice
4. Federal Ministry of Labour and Social Policy
5. Federal Ministry of Health
6. Federal Ministry of Physical Planning
7. Federal Ministry of Environment and Tourism
8. Line cantonal ministries and
9. Relevant municipal services
10. Library for the blind and partially sighted persons in BiH - a cultural institution of national importance

Note:

- There are 10 cantons in the Federation.
- Competence in certain fields is divided between the Federation and the cantons.
- Each canton has a Ministry dealing with urban planning, physical planning, housing activity, communications and transport.
- It should be noted that the names of these ministries vary from canton to canton, that they have been listed in the organisational chart in two or three sectors together or they are separated or listed in other forms.

All legal documents state who performs supervising over application of the provisions of the said act. Supervising the implementation of "Decree ..." is defined in Chapter V, Article 59 and it reads as follows: "Supervision of implementation of this Decree provisions is performed by competent Federal and Cantonal administration for inspection affairs". Analogous to this, supervision is performed by the Federal and Cantonal

administrations/inspections for inspection affairs. When the PWD are concerned, it can be concluded that in practice such supervision is not performed properly or not performed at all.

Republic of Srpska

With reference to **legal framework**, we can conclude that there is a whole set of laws and by-laws:

- Law on Spatial Planning and Construction (The RS Official Gazette, edition 55/10);
- Law on Transport in Road Traffic ("The RS Official Gazette", editions 111/08 and 50/10);
- Law on Inland Navigation of Republic of Srpska ("The RS Official Gazette", editions 58/03, 33/06, 1/08, 100/11);
- Law on the Republic of Srpska Railways ("The RS Official Gazette", editions 58/01, 110/03, 59/08, 24/12);
- Law on Contracts in Railway Transportation ("Official Gazette of Republic of Srpska", 50/10);
- Law on Telecommunications ("The RS Official Gazette", edition 19/96);
- Law on Amendments and Supplements to the Law on Telecommunications of Republic of Srpska ("The RS Official Gazette", edition 71/02);
- Law on Postal Services of Republic of Srpska ("Official Gazette of Republic of Srpska", 30/10);
- Law on Post Services of BiH ("Official Gazette of Republic of Srpska", 33/05);
- Law on Radio-Television of Republic of Srpska ("Official Gazette of Republic of Srpska", 49/06);
- Law on Administrative Taxes and Fees ("Official Gazette of Republic of Srpska", 8/09);
- Law on Public Roads - Revised text ("Official Gazette of Republic of Srpska", 16/10);
- Law on Principles of Road Traffic Safety in Bosnia and Herzegovina ("Official Gazette of Republic of Srpska", 96/06, 57/07, 97/09, 62/10);
- Law on Road Traffic Safety in Republic of Srpska ("Official Gazette of Republic of Srpska", edition 63/11);
- Law on Librarian Activity (The RS Official Gazette, edition 52/01, 39/03, 112/08);
- Law on Publishing Activity;

- Law on Information,
- Regulations on Conditions for Planning and Designing Facilities for Unimpeded Movement of Children and Persons with Reduced Physical Abilities (The RS Official Gazette, edition 44/11);
- Regulations on Conditions for Establishment and Start of Libraries Operation (The RS Official Gazette, edition 56/02);
- Strategy for Improving the Position of Persons With disabilities in RS 2010-2015.

The Law on Physical Planning and Construction governs the field of accessibility, in particular in architectural terms, which was adopted in 2010. This law was adopted in 2013 in the new form at the RS National Assembly. In addition to the Law, Regulations on Conditions for Planning and Designing Facilities for Unimpeded Movement of Children and Persons with Reduced Physical Abilities was also adopted.

The Law on Public Transport governs the method of organisation and number of public transport vehicles to be equipped with devices for easier entry and exit for persons with disabilities. Accessibility in the RS has been regulated by the Regulations on Conditions for Planning and Designing Facilities for Unimpeded Movement of Children and Persons with Reduced Physical Abilities. It is also a fact that significant obstacles are still present to a significant degree in many constructed buildings and that there are upcoming activities for eliminating these obstacles in all public buildings and areas in the coming period.

With reference to accessing sports facilities standards were introduced that all newly constructed buildings or buildings where reconstruction is performed must be accessible to users of all ages, regardless of their physical and medical condition. It should be noted that the Strategy for Sports Development in Republic of Srpska 2008-2012 also listed and highlighted this standard which stipulates that unrestricted access to sports fields and all related areas shall be facilitated for athletes with disabilities, as well as that these persons shall be enabled to attend sporting events as audience or as participants in sports competitions themselves.

Upon proposal of the RS Government and the Ministry of Physical Planning, Civil Engineering and Ecology, the National Assembly of RS adopted **the Law on Spatial Planning and Construction** ("Official Gazette of Republic of Srpska", Edition 55/10) which stipulates that facilities for collective housing, facilities or parts of a facility in public use or used for service providing and business activities, must be designed and constructed in such way that

unimpeded access, movement, work and stay is ensured for persons with reduced physical abilities. The same law stipulates possibility of performing certain works without obtaining building permits such as works on stairways, hallways, etc., in order to change access to the facility and inside the facility for allowing unhindered access and movement within the facility for persons with reduced physical abilities with prior consent of all the flats' owners. Pursuant to the Article 124 of the said Law, **Regulations on Conditions for Planning and Designing Facilities for Unimpeded Movement of Children and Persons with Reduced Physical Abilities** ("Official Gazette of Republic of Srpska", edition 44/11).

Ministry of Transport and Communications is planning incorporation of provisions for persons with disabilities through amendments and supplements to the Law on Transport in Road Traffic. In Article 4 of the Draft Law on Amendments and Supplements to the Law on Transport in Road Traffic it is stipulated that taxi transport can also be performed by a specially designed passenger motor vehicle manufactured for transport of persons with disabilities. The Draft was adopted and drafting the Bill is in the process at the moment.

3.1.2. Analysis of legislative framework application in the field of accessibility

On the basis of the existing legislation that complies with international standards a good institutional framework has been established, especially at the Entity level. However, despite this fact we are facing a number of difficulties in practical application of existing regulations. In practice, there are still many architectural obstacles, access to public facilities and institutions is difficult, many service providing activities are not tailored to the specific needs of persons with disabilities, movement and communication for the PWD is difficult, application of new IT technologies is difficult due to lack of adjustments. Many buildings in public and private sectors are unavailable in the country. Public traffic and public transport are not adapted to the needs of persons with disabilities, equally for persons with physical, sensory and intellectual disabilities.

The BiH Federation

Although the answers to the questionnaires vary in comparison to the development of city and rural areas development, it can be concluded that normative documents or the institutional framework in the field of

accessibility do not comply with the UN Convention, i.e. that the physical environment, public transport, public services, and communication and information are not in compliance with the provisions of the UN Convention.

The most accessible public institutions are banking services, services for issuance of identity documents, sports and catering facilities in the percentage from 45% to 70%, that is, where consumers with disabilities are less discriminated.

However, significantly lower percentages of accessibility are in medical institutions, educational, administrative, postal services, from 30% to 45%

The lowest percentages of accessibility are in public, judicial and advisory, and cultural institutions - from 20% to 30%.

Republic of Srpska

Republic of Srpska still has no Law on movement with the help of a guide dog, which deprives one group of persons with disabilities of possibility of this mode of movement.

Law on Libraries Activity (The RS Official Gazette, editions 52/01, 39/03, 112/08) as well as the Regulations on Requirements for Establishing and Commencing Libraries Operation (the RS Official Gazette, edition 56/02) regulates this field well. However, it is evident that the Law on Publishing Activities (the RS Official Gazette, edition 46/04) and the Law on Information do not define specific needs of persons with disabilities.

It can be concluded that the legislation regulates legal framework quite well, but there is a need to modernise and finalise the Regulations following from the laws through amendments and supplements.

In practice, there is a need to work on improving legislative framework, to make amendments and supplements to laws and by-laws that define some of the issues that will enhance the rights of persons with disabilities, their safety and unimpeded movement. It is particularly important to establish mechanisms for enhancement of supervision and control of legislation application, because it is obvious that many of the existing and harmonized ones are not applied in practice.

The Law on Health Insurance and Health Care provides Persons with disabilities, as well as all the other citizens, unrestricted access to all healthcare institutions in terms of using the right legally, but there are still obstacles in terms of architecture and information.

3.2. Education - Article 24 of the UN Convention

Ratifying the Convention on the Rights of Persons with Disabilities and opting for accession to the European Union, Bosnia and Herzegovina committed to facilitate application of the highest standards in order to provide access for all persons with disabilities to the programmes of education and upbringing, which implies inclusion in regular educational-upbringing programmes, individualisation of programmes, ensuring adequate human and technical aspects of support and adjusting the environment and information to be accessible to persons with disabilities.

Given the organisation of Bosnia and Herzegovina and shared responsibility between the country, the entities, and in the Federation entities and cantons, it is very difficult and often impossible to provide equal conditions for access to educational programmes for people with disabilities throughout the country.

3.2.1. Analysis of legislative and institutional framework in the field of education

Bosnia and Herzegovina

The BiH Constitution (the Article II. 3. 1.) defines that all persons within the territory of Bosnia and Herzegovina shall enjoy the right to education. Defining this right, in accordance with the Article III 3.a) of the Constitution of Bosnia and Herzegovina belongs to the entities, that is, the Federation of Bosnia and Herzegovina, Republic of Srpska and Brcko District of Bosnia and Herzegovina since its establishment.

At the state level of Bosnia and Herzegovina **framework laws** on all levels of education were adopted, and education sector has been established within the **Ministry of Civil Affairs with its** function to coordinate activities in this area.

Bosnia and Herzegovina has begun to institutionalise its educational reform on the 27th of June 2001 when an agreement on modalities and timeframe for development and implementation of the Joint Strategy for Modernisation of Primary and General Secondary Education in BiH was reached between the Federal Minister for Education, Science, Culture and Sport and the Minister of Education of Republic of Srpska, and in the presence of representatives of the international community. The objective of the concerted strategy is bringing general education in BiH to the level of general education standards already developed in Europe.

The legal basis for integration in Bosnia and Herzegovina at the state level is regulated by the **Framework Law on Primary and Secondary Education in Bosnia and Herzegovina** adopted in 2003. This Law regulates the principles of preschool, primary and secondary education and upbringing, adult education, establishing and functioning of institutions for provision of education services in Bosnia and Herzegovina. The law is important for education of persons with disabilities in terms that there is a possibility for educating individuals in accordance with their abilities and skills (Education Purpose, Article 2.), and the Law stipulates "ensuring optimal development for every person, including those with special needs, in accordance with their age, abilities and mental and physical abilities" and "ensuring equal possibilities for education" of all children (General Education Objectives, Article 3; Child's Right to Education, Article 4.) without discrimination on any grounds whatsoever.

In 2011, the Council of Ministers of Bosnia and Herzegovina brought the Decision on Adoption of **the Action Plan for Children of Bosnia and Herzegovina (2011-2014)** which aims to provide special protection measures, in accordance with the UN Convention on the Rights of the Child, referring to the following categories: children and young people with disabilities, children belonging to ethnic minorities, particularly Roma, refugee and returnee children and the children of foreigners. The specific objective of this action plan is to raise the level of social care for children and the young with special needs, with special emphasis on the provision of support services in accordance with individual needs of each child, in order to reduce the level of social exclusion.

Education for people with disabilities has been provided in the normal course of educational process, which is regulated by general laws on education at all levels of education, and training in specialised educational institutions, which is regulated by the laws on operation of these educational institutions.

Given the transition in relation of the society towards people with disabilities, inclusive education system is given an increasing importance, and without acquiring not even minimum requirements for education of persons with disabilities in regular educational institutions.

Existing regulations clearly prohibit all forms of discrimination based on disability, emphasizing the right of every child to upbringing and education under equal conditions.

In spite of all this, the accumulated issues from the previous system still further complicate things, and enormous budget funds are spent for the wrong model of care for this population. During this period it is very important to establish organisational, functional and financially cost-effective model of inclusive education of children with special needs, which will not require any additional funds, but the existing resources would be redirected properly.

The Organisation for Economic Cooperation and Development (OECD, 1999) created a national report "Education policies for students at risk and those with disabilities in South Eastern Europe" for Bosnia and Herzegovina which describes the situation at the time in connection with special needs and inclusive education as well as processes of the reform being implemented. The report highlights specific situation in the field of special needs and inclusive education in society, and it identified problems in establishing valid standards for the entire country due to the highly decentralized and imbalanced education system.

The BiH Federation

In the BiH Federation education is regulated by legislation at the cantonal level. Each of the ten cantons has its own legislation on pre-school, primary and secondary education, and the cantons with universities have legislation on higher education.

According to the laws of the BiH Federation primary education is compulsory and free. Unfortunately, in practice the situation is completely different, so that neither it is free, nor all those who should be attending it, do so.

The biggest problem for children with special needs is the lack of qualified personnel (special education teachers, speech therapists, teaching assistants) and inadequate physical facilities for the implementation of inclusive education. No adequate mechanisms and conditions for application of legal provisions relating to the inclusion of disabled persons with special needs in the education system tailored to individual needs have been made, due to the fact that introduction of inclusive education has not been followed by preparation of teachers and adapting the curriculum, nor the mechanisms for involving local community in providing support. The issue of education of persons with physical disabilities is not even close to systemic solution. Hundreds of children have no access to schools across BiH for their inability to physically access school facilities and school

premises and their inability to have an affordable and appropriate transport.

Children with severe and profound disabilities, especially in rural areas, are completely excluded from primary education, and there are no legal solutions and mechanisms that will allow access to schools and using the right to education and access to school facilities. The attitude of the government towards the education of children with disabilities is passive, given that schools are mainly not adapted in architectural terms. These children attend school only with the engagement of their parents and some help from the organisations of persons with disabilities, centres for social work, or they attend school with some sort of "agreement" with the school to study at home and take their exams. Many children who are deprived of even these small opportunities, do not attend school at all.

Republic of Srpska

In Republic of Srpska right to education is guaranteed by the Constitution and it is governed by the laws and by-laws. There are separate laws for each of the four levels of education, pre-school, primary, secondary and college or higher education.

Persons with disabilities use the right to education under general conditions and under special conditions stipulated by law.

The Article 38 of the Constitution stipulates that "everyone has the right to education under equal conditions."

Education in Republic of Srpska is governed by the laws and by-laws.

The laws governing the field of education:

- Law on Preschool Upbringing and Education, (OG 19/08 and 1/12)
- Law on Primary Upbringing and Education, (OG 74/08, 71/09 and 104/11)
- Law on Secondary Upbringing and Education (OG 74/8, 106/09 and 104/11)
- The Law on Higher Education. (OG 73/10, 104/11, 84/12 and 108/13)

By-laws

- Regulations on curriculum for education and upbringing of students with mild mental retardation,
- Regulations on curriculum for upbringing-education for children and adolescents with moderate mental retardation,

- Regulations on curriculum for secondary education of students with hearing impairment,
- Regulations on amendments to the Regulations on curriculum for education and upbringing of students with mild mental retardation,
- Regulations on upbringing and education of children with special educational needs in primary and secondary schools,
- Regulations on curriculum for primary school education and upbringing of students with visual impairment,
- Regulations on curriculum for primary school education and upbringing of students with mild mental retardation,
- Regulations on curriculum for primary school education and upbringing of students with hearing impairment,
- Regulations on curriculum of upbringing-education of students with moderate and profound mental retardation,
- Curriculum for secondary schools for students with special educational needs with visual impairment,
- Curriculum for secondary schools for students with special educational needs with mild mental retardation,
- Curriculum for secondary schools for students with special educational needs with hearing impairment.

Republic of Srpska adopted the Strategy for improving social status of persons with disabilities from 2010 to 2015. Objectives 6.1. to 6.9. refer to education.

The Law on Pre-School Upbringing and Education emphasizes that the pre-school upbringing and education runs in accordance with the law and ratified international conventions. Upbringing-educational work with children with disabilities in mental and physical development is achieved by accustomed or specialised programme, depending on the needs and abilities of the children.

During enrolment in a preschool institution for children with special needs, the institution is required to initiate a procedure for developing individualised upbringing-educational programme (deadline for making the first IP is three months from the date of enrolment the latest). The law stipulates who is considered a child with special needs in terms of this Law.

The Law also stipulates that educational group attended by a child with special needs has an assistant for inclusion.

The Law on Primary Education and Upbringing also specifies who is considered a child with disabilities in mental and physical development. Chapter V of the Law regulates education and upbringing of students with disabilities in mental and physical development in special classes and special schools.

The Law on Secondary Education and Upbringing has regulated the position of students with special needs.

The Law on Higher Education emphasizes that access to higher education cannot be restricted, directly or indirectly, on the basis of sex, race, sexual orientation, physical handicap ...

The children with special needs in Republic of Srpska are educated in:

- special schools/institutions/institutes for children with mental, physical or sensory impairments,
- special classes in regular schools based on solutions which also define the type and degree of developmental disability.
- regular primary and secondary schools according to individually tailored programmes pursuant to their needs and solutions on classification

Medical and social institutions have great importance for education of children with special educational needs. In healthcare institutions identification of the problem is started, diagnostics, then therapy and medical treatment, and sometimes also accommodation and education.

Special institutions/schools-institutes-centres in Republic of Srpska are institutions involved in education, upbringing, habilitation/rehabilitation, accommodation and vocational training for the children and youth with developmental disabilities.

There are four institutions of this type in Republic of Srpska:

- Centre "Zaštiti me" („Protect me") Banja Luka
- SOS school "Đorđe Natošević" Prijedor
- The Centre for Education, Upbringing and Rehabilitation of Hearing and Speech Banja Luka
- Institute for the blind and partially sighted "Budućnost" ("The Future") Derventa

Children with disabilities in physical and mental development go to school in these institutions in accordance with the Regulations on Classification, based on the decision on classification issued by the competent first

instance expert committee. Besides the right to education these persons (in compliance with the Regulations) also exercise adequate social and health protection measures. They employ special education teachers of different profiles according to the category-type and degree of the deficiency that a student has.

3.2.2. Analysis of the legal framework application in the field of education

The BiH Federation

Questionnaires that were distributed to organisations of persons with disabilities were used in order to analyse the current state of law enforcement on the territory of the Federation of Bosnia and Herzegovina in the field of education.

Data from the completed questionnaires lead to the conclusion that people with disabilities from involved organisation were not sufficiently familiar with the laws pertaining to education, their rights, possibilities and responsibilities, and the reason that the people with disabilities stated was the lack of accessibility to information and lack of interest.

These figures speak towards the need to allow people with disabilities access to information about passing laws which affect their rights and interests and to express their opinions to legislative authorities, for example, to include the people with disabilities in the operation of ministries as external members. On the other hand, the need is emphasized for the persons with disabilities themselves to raise awareness on the significance of self-activity and knowledge of the laws from different fields in order to enable themselves to apply pressure in an organised and constant manner on the legislative authorities in the direction of creating laws and relevant supporting documents that will ensure realisation of their basic human rights guaranteed by the UN Convention on the Rights of Persons with Disabilities.

Equally, 69.4% of the respondents believe that special classes in regular schools are discriminatory in relation to the children with disabilities, and as the reasons for this they stated that children with disabilities are automatically marked and as such separated from other children. However, 30.6% of them believe that special classes in regular schools are not discriminatory because the school programmes are of different scopes and

complexity, and some forms of disability require special approach and additional support in education.

Although inclusive education has been included in the laws on pre-school, primary and secondary upbringing and education in most cantons of the FBiH to a greater or lesser extent, the actual support for education of students with developmental disabilities in general education system, which, in broader sense, involves different forms - appropriate programmes, supplies and teaching resources, access to schools, trained teachers, personal assistants and education-rehabilitation experts - professional associates, practically almost does not exist. The result of this situation is realistic mistrust and different opinions of persons with disabilities from the tested sample on effectiveness of inclusive education and its ability to respond to abilities and needs of children with disabilities.

Almost all the respondents agreed that people with disabilities are disadvantaged in the field of vocational training and employment, and due to inadequate number and types of jobs for which they are educated and their non-compliance with labour market needs.

The respondents' opinion was that all the questions covered by this application should be analysed and inform the relevant authorities in the education system in order to facilitate accessibility for children with disabilities, and which has been guaranteed by the UN Convention on the Rights of Persons with Disabilities.

Republic of Srpska

There are no discriminatory provisions in the regulations in the field of education.

The Constitution of Republic of Srpska in the part relating to education is in accordance with the UN Convention on the Rights of Persons with Disabilities.

During the research 14 questions were asked and the respondents gave their answers, and analysis of the survey conducted among persons with disabilities and their organisations notes that the question whether they were familiar with the laws in the field of education – was answered only by 28% of the respondents saying yes, and 45 % partially, and the question whether they were familiar with the regulations governing educational process of children and persons with disabilities - only 12% said yes, and 51% partially. More information on the regulations is necessary in this field, especially through the public media.

Particularly important is the observation that the opinions are different when talking about special classes in regular schools, and one of the comments was that the children should not be separated, unless necessary. The children must be together in order to help each other and build the future like that. Half of the respondents thought that special schools are not segregating and discriminatory in relation to children with disabilities, and almost all the respondents believed that there were not enough of these schools, and that regular schools in Republic of Srpska are not adapted for children and people with disabilities (accessibility, assistive aids). Teachers in regular schools are not sufficiently educated for inclusive education process, and the question of teaching assistants has not been regulated in a proper way.

Almost all of the respondents are of the opinion that each school should have a professional team to work with children with special needs.

3.3. Healthcare protection - Article 25 of the UN Convention

Exercising the highest possible health standard is one of the fundamental rights of every human being disregarding race, religion, political belief, economic and social conditions (WHO -1948.). The World Health Organisation defines health as physical, mental and social wellbeing and not merely the absence of disease. The term "health" goes significantly beyond the health sector boundaries.

Its main determinants such as age, sex and inheritance correlate with living conditions, environmental factors, lifestyles, socio-economic factors, factors related to upbringing, education and culture, as well as the functioning of the health and social care systems.

In Bosnia and Herzegovina, health insurance falls within responsibility of the entities and the Brcko District.

Constitution of Bosnia and Herzegovina, Article II (1) stipulates that "Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms". The same Article of the Constitution of Bosnia and Herzegovina, section (2) stipulates: "the rights and freedoms set forth in the European Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These documents shall have priority over all other laws."

3.3.1. Analysis of legislative and institutional framework in the field of health care

The BiH Federation

Based on the Constitution of the BiH Federation³⁴ healthcare jurisdiction has been divided between the BiH Federation and the cantons. Federal government defines policies and makes laws, and the cantons have the right to enforce laws and define policies.

The Constitution of the Federation of Bosnia and Herzegovina defined that all the persons in the Federation of Bosnia and Herzegovina are entitled to healthcare without discrimination based on race, skin colour, sex, language, religion or belief, political or other beliefs, national or social origin. In addition, the Constitutions of the Federation of BiH and BiH stipulate that many international documents that BiH signed and ratified have the legal force of constitutional provisions. At this point, we mention only some of the instruments for the protection of human rights, which, among other things, also treat the issues in the field of healthcare: the UN Universal Declaration; European Convention on the Protection of Human Rights and Fundamental Freedoms, and additional protocols; European Social Charter; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; The Convention on the Rights of the Child. Starting from the Constitutional principle of equality of citizens before the law, and bearing in mind the above stated, the persons with disabilities are also guaranteed the same rights under the same conditions without discrimination, and thus the right to healthcare.

Within its jurisdiction the Federation stimulates and develops healthy living habits among the population and the cantons are responsible for organisation and providing health care (ensuring the right from the healthcare insurance, funds for construction and equipment, establishing medical institutions for delivery of primary and specialist-consultative and hospital healthcare etc.). The field of healthcare insurance, which is a part of social security, the principles, type of organisation and delivery of healthcare is governed by the BiH Federation **Law on Healthcare Insurance**³⁵ and the **Law on Health Protection**³⁶.

³⁴ („Official Journal of the BiH Federation”, editions 1/94, 13/97, 16/02, 22/02, 52/02, 60/02, 18/03 and 63/03)

³⁵ („Official Journal of the BiH Federation”, edition 30/97, 7/02 and 70/08)

³⁶ („Official Journal of the BiH Federation”, edition 29/97)

These laws guarantee the right to exercise healthcare to all the citizens of the Federation of Bosnia and Herzegovina, including persons with disabilities are without discrimination on any grounds whatsoever. However, due to the high degree of decentralization of healthcare in the BiH Federation, i.e. different economic power of the cantons, stipulated rights are of declarative nature because there is inequality of citizens before the law, which particularly applies to persons with disabilities, because due to their disability they use healthcare services more often, and discrimination also exists among the persons with disabilities themselves by the cause of disability occurrence and by the place of their residence.

The BiH Federation Law on Healthcare Insurance stipulates that the Federation citizens shall be entitled to healthcare insurance covering the following:

1. Compulsory healthcare insurance;
2. Expanded healthcare insurance;
3. Voluntary healthcare insurance.

The insured are entitled to healthcare, salary compensation and reimbursement of travel expenses in connection with the use of healthcare within the compulsory healthcare insurance.

In addition, the insured persons are entitled to orthopaedic and other aids use, dental-prosthetic care and dental-prosthetic substitutes as well as the right to use drugs. The scope of those rights is defined by cantonal regulations. Healthcare is conducted as primary, specialist-consultative and hospital care. This law stipulates that the insured persons also include the persons residing on the territory of the Federation of Bosnia and Herzegovina, who were recognized the status of war veteran, peacetime and civilian war invalids, that is, the status of family disability allowance users in accordance with positive regulations if they are not covered by healthcare insurance on other grounds.

The Law stipulates that all the insured persons have equal status in terms of exercising the right from compulsory healthcare insurance. However, this right is of declarative nature since the cantons define the terms and scope of the right to orthopaedic and other aids and positive drug lists through their regulations. In exercising the right to aids there is discrimination by cause of occurrence and type of disability, as well as the place of residence. The aids that are available through healthcare insurance funds are most often inadequate because they do not keep up with technical developments, the conditions for their realisation differ by cantons in terms

of personal participation of the insured, timeframe of use and in terms of the aids types.

There is no definition of persons with disabilities within the healthcare insurance, but they have all been classified by the cause of disability occurrence in the war veteran, peacetime and civilian war invalids, which opposes the Article 25 of the UN Convention on the Prohibition of all Forms of Discrimination in Exercising the right to healthcare. The Federal Law on Health Protection governs the principles, type of organisation and delivery of healthcare.

Healthcare for the citizens in the BiH Federation is delivered based on the principles of comprehensiveness, continuity, availability and an integrated approach in the primary, and specialised approach in specialist-consultative and hospital healthcare. These principles are multiply violated due to split responsibilities between the Federation and the cantons in regulating and enforcement of the rights to healthcare, as for the citizens of the Federation of Bosnia and Herzegovina and equally for the persons with disabilities due to uneven economic development of cantons, unevenly distributed network of healthcare institutions and facilities (rural areas - city) and there is also discrimination among the persons with disabilities themselves by cause of occurrence and type of disability.

In addition to those listed above, there is a number of other laws in the Federation that regulate healthcare field, as follows:

- Law on the Rights, Obligations and Responsibilities of Patients,
- Law on Pharmacy Activity,
- Law on Blood and Blood Components,
- Law on Transplantation of Organs and Tissues for Therapeutic Purposes,
- Law on Protection of the Population from Infectious Diseases,
- Law on Protection of Persons with Mental Illness,
- Law on the Quality and Safety Improvement System and on Accreditation in Healthcare Services,
- Law on Medicines and Medical Devices,
- Law on Radiation and Nuclear Safety in Bosnia and Herzegovina,
- Law on Waste Management,
- Law on Prevention and Suppression of Drug Abuse,
- Law on Records in the Field of Healthcare Services,
- Law on Stomatology,
- Law on Limited Use of Tobacco Products,

- The BiH Federation Law on Medicines.³⁷

Medical rehabilitation in the Federation of Bosnia and Herzegovina is regulated by Regulations on organisation, detailed space conditions, medical-technical equipment, qualified personnel, that mental healthcare centres must meet in the community as well as in the education on psychoactive substances abuse³⁸ and the Regulation on detailed conditions that a physical rehabilitation centre must meet.³⁹

In the BiH Federation at the level of the Federation and the cantons in the field of healthcare, there are numerous strategic documents and policies, and here we will only list some of them:

- Policy for improvement of children nutrition in the FBiH,
- Policy and Strategy for protection and promotion of mental health in the Federation of Bosnia and Herzegovina (2012-2020.),
- Strategy for prevention, treatment and control of malignant neoplasms in the FBiH 2012-2020,
- Action Plan for the fight against narcotics abuse in the Federation of Bosnia and Herzegovina 2012-2013,
- Strategy for improvement of sexual and reproductive health and rights in the FBiH,
- Strategy for development of primary healthcare,
- Policy for the youth and health in the Federation of BiH,
- Strategic plan for health development in the Federation of BiH.⁴⁰

The Strategy for equalisation of opportunities for persons with disabilities in the Federation of Bosnia and Herzegovina 2011-2015 and the Disability Policy in Bosnia and Herzegovina from 2008 are important for improvement of the rights of persons with disabilities in the field of healthcare.

Analysis of institutional framework in the Federation of Bosnia and Herzegovina

In order to eliminate differences in exercising the right to healthcare for all the insured persons in the Federation of Bosnia and Herzegovina within the

³⁷ Source: <http://www.fmoh.gov.ba/index.php/zakoni-i-strategije/strategije-i-politike?start=5>, 23rd April 2013

³⁸ („Official Journal of the BiH Federation”, edition 73/11.)

³⁹ („Official Journal of the BiH Federation”, edition 29/12.)

⁴⁰ Source: <http://www.fmoh.gov.ba/index.php/zakoni-i-strategije/strategije-i-politike?start=5>, 23rd April 2013

Institute for Insurance and Reinsurance of the Federation of BiH, a Solidarity Fund has been established, and the Fund's resources are used for financing a limited number of expensive and complex healthcare services. In addition, in order to ensure implementation of the equality principle before the law, i.e. elimination of existing forms of discrimination, a Decision on defining the basic package of healthcare rights has been brought⁴¹ which guarantees the minimum scope of rights under the compulsory healthcare insurance to all the citizens of the Federation of BiH.

Due to decentralization of healthcare in the Federation of Bosnia and Herzegovina (the Federation, cantons, municipalities) there are a number of institutions (ministries, public health institutes, insurance institutes, various agencies, institutions, institutes, etc.) that have different capacities most often depending on economic resources.

The Federal Ministry of Health is responsible for performing administrative, professional and other affairs defined by law referring to the competence of the Federation of BiH in the field of healthcare.

At the cantonal level (10) there are cantonal ministries of health that are responsible for performing administrative and technical affairs defined by the Constitution, law and other regulations referring to exercising the responsibilities of the cantons in the healthcare field. Funding for the operation of the Federal and cantonal ministries of health are provided from the Federal and cantonal budgets.

The funds required for operation of the Federal Bureau of Insurance and Reinsurance are provided from the cantonal institutes of insurance and reinsurance funds in proportion to the type and scope of work and personnel structure and number of employees required for high-quality and timely performance of the planned work. The Federal Bureau of Insurance and Reinsurance receives funds under the agreement with cantonal institutes of insurance on the basis of the decision of the Government of the Federation on performance of the work in connection with compulsory healthcare reinsurance.

Healthcare services are provided by healthcare institutions established by the Federation, canton, i.e. municipality, as well as domestic and foreign natural and legal persons.

1. Primary healthcare health institutions are:
 - Healthcare centre

⁴¹ („Official Journal of the BiH Federation”, edition 21/09)

- Regional clinic
- Institutions for home healthcare

A healthcare centre is a medical institution with organised healthcare in the area for which it has been established. Activity of the health centre includes: general medicine, healthcare protection of women and children, school medicine, healthcare for non-specific and specific lung diseases and dental healthcare activity and other.

2. Pharmacies
3. Specialist-consultative and hospital healthcare medical institutions are:
 - Polyclinics
 - Hospitals
 - Spas
 - Institutes
 - Healthcare institutions where teaching is conducted
4. Federal and cantonal healthcare institutes are:
 - Public Health Institute of the Federation of Bosnia and Herzegovina
 - Drug Control Institute of the Federation of Bosnia and Herzegovina
 - Transfusion Medicine Institute
 - Transfusion Medicine Institute of the Federation of Bosnia and Herzegovina
 - Cantonal Transfusion Medicine Institute
 - Cantonal Public Health Institute
 - Cantonal Institute for Occupational Medicine
 - Cantonal Institute for Sports Medicine

Within the compulsory healthcare insurance the above listed institutions are funded from the contributions, cantons and municipalities budgets, personal participation of the insured means persons in terms of covering healthcare costs and donations revenues, aid, taxes, interests, dividends and other income.

The founders of the healthcare institutions in the Federation are the Federation, cantons and municipalities. This approach results in the consequence of establishing a multitude of healthcare institutions and institutions that are unevenly distributed on the territory of the Federation of BiH. Their equipment is outdated and most often it does not meet the needs of citizens and persons with disabilities. Training of medical and

paramedical staff in healthcare institutions does not meet the needs of persons with disabilities. A large number of healthcare institutions is inaccessible to people with disabilities, and due to the irrational many of them are financially unsustainable.

Republic of Srpska

General situation

In Republic of Srpska the right to healthcare is a constitutional category for all citizens, and healthcare protection is organised as an activity of general interest for the Republic and its citizens. All citizens of the Republic of Srpska, and thus persons with disabilities, are covered with compulsory healthcare insurance. The right to healthcare protection is exercised based on the principles of equal access to services, availability, comprehensiveness, continuity and coordination.

Persons with disabilities, as users of the compulsory healthcare insurance, exercise healthcare services that include the right to all forms of healthcare, adequate diagnostics, treatment and rehabilitation with the provision of orthopaedic aids, medical instruments and other equipment.

Persons with disabilities, as well as all the other persons, are entitled to the highest possible level of healthcare protection, in accordance with the law.

Providing healthcare services organisation is based on the principle of an integrated approach to primary health care, whereas specialised approaches are performed in specialist/hospital healthcare protection, while respecting the subsidiarity principle, i.e. resolving a health problem at the lowest level of healthcare protection possible.

Availability to healthcare protection is achieved through such distribution of healthcare institutions and healthcare workers providing citizens with equal conditions of healthcare protection, especially primary healthcare protection.

The primary level of health care protection is provided through:

- family medicine clinics,
- dental clinics,
- healthcare centres,
- healthcare services centres and
- pharmacies.

There are 53 healthcare centres with accompanying family medicine clinics in Republic of Srpska. As part of the **primary healthcare protection level 22** mental healthcare centres were organised, as major providers of outpatient care and mental healthcare protection in local communities. Multidisciplinary teams work in the centres, and they include psychiatrists, psychologists, social workers and nurses, whereas some centres have occupational therapists, special education teachers, speech therapists, child psychiatrists among their staff, too.⁴²

The secondary level of healthcare protection provides specialised healthcare protection including complex methods and procedures for diagnostics, treatment and rehabilitation. The secondary level of healthcare protection is provided through specialist clinics, specialist centres, hospitals and institutes. Republic of Srpska has eight general healthcare hospitals.

The tertiary level of healthcare protection provides highly specialised healthcare that involves the most complex methods and procedures for diagnostics, treatment and rehabilitation. The tertiary level of healthcare protection in Republic of Srpska consists of two clinical centres.⁴³

Two safe houses were also opened in Republic of Srpska (in Doboj within the CMHC, an apartment for 4 users, and in Modriča - as part of the Institute "Jakeš", a house for 12 users), as well as one cooperative and three associations of users were also formed.

Two years ago, social welfare centres in local communities have begun to open day care centres for persons with mental health problems, and day care centres for the elderly, which completes the system of mental healthcare services in the community. Coordination Centre for Mental Health has been established within the Ministry of Health and Social Protection of Republic of Srpska, with its primary objective to coordinate activities in mental health, promote cooperation with the WHO and other relevant organisations.⁴⁴

Analysis of legislative framework in the field of healthcare

Legal sources for the healthcare field and defining the rights to healthcare protection and healthcare insurance

⁴² BiH Mental Healthcare Project, Project Document Draft, Phase I, June 2010 – May 2013

⁴³ <http://www.investsrpska.net/>

⁴⁴ Ibidem, footnote 2.

Legal acts addressing the healthcare field and defining the rights to healthcare protection and healthcare insurance for persons with disabilities are:

THE CONSTITUTION

In accordance with the Constitution of the Republic healthcare for all citizens is under the jurisdiction of the Republic of Srpska entity, a part of the measures and organisation of healthcare is also transferred to municipalities. **The Constitution of Republic of Srpska** guarantees the right to healthcare protection to all the citizens in accordance with the law, and the youth, women and the disabled have special protection.

Laws

- **Law on Healthcare Protection**⁴⁵ regulates the system of compulsory and extended healthcare insurance, healthcare insurance right and the principle of private healthcare insurance.

- **Law on Healthcare Insurance**⁴⁶. Persons with disabilities in Republic of Srpska are covered by compulsory healthcare insurance, as well as the other citizens of the Republic, without discrimination on the grounds of disability, thus exercising the rights from the healthcare insurance of the same scope, quality and standards of healthcare services as all the other citizens.

- **Law on Social Protection**⁴⁷, persons with disabilities are entitled to healthcare protection in the social protection institutions that accommodate children without parents, children without parents' care, socially neglected children, physically and mentally disabled children, adult persons, and the incapable and elderly.

- **Law on Protection of Persons with Mental Disorders**⁴⁸ lays down the basic principles, type of organisation and exercising health protection and improvement, as well as the assumptions for application of measures and treatment of persons with mental disorders.

⁴⁵ Republic of Srpska Official Gazette, edition 106/09

⁴⁶ Republic of Srpska Official Gazette, editions 18/99, 51/01, 70/01, 51/03, 57/03, 17/08, 01/09, 01/09, 106/09

⁴⁷ Republic of Srpska Official Gazette, edition 37/12

⁴⁸ Republic of Srpska Official Gazette, edition 46/04

- **Law on Mediation in Employment and the Rights during Unemployment**⁴⁹ guarantees the right to healthcare insurance for all unemployed persons registered in the records of the Employment Institute.

- **Law on the Rights of War Veterans, Disabled War Veterans and Families of the Soldiers Fallen in the Republic of Srpska Homeland War**⁵⁰ entitles the persons with disability or illness that occurred during performing their official duty during the war, with the right to healthcare.

- **Law on Pension and Disability Insurance**⁵¹

- **Law on the Public Services System**⁵²

- **the Family Law**⁵³ requires parents to protect their minor children and to take care of their lives and health.

By-laws (regulations, decisions)

- Regulations on the needs assessment and directing the children and the youth with developmental disabilities⁵⁴
- Regulations on Protection of the Insured Persons Rights⁵⁵
- Regulations on organisation, operation and financing of committees for protection of persons with mental disorders⁵⁶
- Regulations on the needs assessment and directing the children and the youth with developmental disabilities⁵⁷
- Regulations on the contents, scope and manner of exercising the rights to healthcare protection⁵⁸
- Regulations on the right to medical devices⁵⁹
- Regulations on the conditions and manner of exercising the right to extended medical rehabilitation in specialised institutions for rehabilitation⁶⁰

⁴⁹ Republic of Srpska Official Gazette, editions 30/10 and 102/12

⁵⁰ Republic of Srpska Official Gazette, editions 134/11, 09/12, 40/12

⁵¹ Republic of Srpska Official Gazette, edition 134/11

⁵² Republic of Srpska Official Gazette, edition 68/07

⁵³ Republic of Srpska Official Gazette, editions 54/02, 41/08

⁵⁴ Republic of Srpska Official Gazette, edition 117/12

⁵⁵ Republic of Srpska Official Gazette, edition 06/11

⁵⁶ Republic of Srpska Official Gazette, edition 65/11

⁵⁷ Republic of Srpska Official Gazette, edition 117/12

⁵⁸ Republic of Srpska Official Gazette, editions 102/11, 117/11, 128/11, 101/12

⁵⁹ Republic of Srpska Official Gazette, edition 114/12

⁶⁰ Republic of Srpska Official Gazette, edition 63/10

- Guidelines on implementation of the Regulations on the conditions and manner of exercising the right to extended medical rehabilitation in specialised institutions for rehabilitation⁶¹
- Regulations on establishing people's abilities in the process of exercising social protection rights and defining the functional condition of the user⁶²
- Decision on participation fees⁶³

Strategies and other documents

- Strategy for improvement of the social status of persons with disabilities in Republic of Srpska 2010-2015⁶⁴
- Primary Healthcare Protection Strategy in Republic of Srpska⁶⁵
- The Republic of Srpska Policy and Strategy of the Youth Health⁶⁶
- Strategy for Mental Health Development in Republic of Srpska 2009-2015⁶⁷
- Strategy for Family Development in Republic of Srpska for the period 2009-2014⁶⁸

Institutional Framework

The institutions responsible for the healthcare in Republic of Srpska are as follows:

- **The Republic of Srpska National Assembly**, authorised to enact laws governing labour and employment field.
- **The Republic of Srpska Government**, the executive authority which proposes laws to the parliament and ensures their enforcement.
- **Ministry of Health and Social Welfare** conducts systemic and permanent measures for preservation and improvement of public health and monitoring health state and health needs of the population.

⁶¹ Republic of Srpska Official Gazette, edition 68/10

⁶² Republic of Srpska Official Gazette, edition 116/12

⁶³ Republic of Srpska Official Gazette, editions 63/10, 73/10, 101/10, 42/11, 70/11, 102/11, 13/12, 28/12, 40/12, 87/12, 18/13)

⁶⁴ Republic of Srpska Official Gazette, edition 83/10

⁶⁵ <http://www.vladars.net/sr-SP->

Cyrl/Vlada/Ministarstva/MZSZ/PAO/Documents/Primarna%20zastita%20Brosura.pdf

⁶⁶ <http://www.vladars.net/sr-SP->

Cyrl/Vlada/Ministarstva/MZSZ/PAO/Documents/Zdravlje%20mladih.pdf

⁶⁷ <http://www.vladars.net/>

⁶⁸ Republic of Srpska Official Gazette, edition 15/09

- The right to healthcare protection and climatic spa treatment for war veterans with disabilities is exercised through **the Ministry of Labour, War Veterans and Disabled Persons' Protection**.

- **The Republic of Srpska Health Insurance Fund** implements compulsory healthcare insurance and finances healthcare protection of the insured persons in Republic of Srpska. The founders of the Health Insurance Fund are Republic of Srpska, city, municipality and other natural and legal persons. The Health Insurance Fund has eight branch offices.

- **Healthcare Inspection** supervises enforcement of laws, other regulations and general acts, as well as implementation of the measures stipulated in the field of healthcare.

In accordance with the Article 41 of the Law on Healthcare Protection, **healthcare institutions** in Republic of Srpska are as follows:

- family medicine clinic;
- dental clinic;
- healthcare centre;
- pharmacy;
- specialist clinic;
- specialist centre;
- hospital;
- institute;
- public health institute;
- healthcare services centre;
- laboratory;
- biological materials bank and
- stem cells bank.

In Republic of Srpska there are **53 healthcare centres** with accompanying family medicine clinics. As a part of the **primary healthcare protection level** 22 mental healthcare centres were organised, as major providers of outpatient care and mental healthcare protection in local communities.⁶⁹

At the secondary and tertiary levels, services from the field of mental healthcare are provided in the following institutions:

- Banja Luka Clinical Centre Psychiatry Clinic,
- Sokolac Psychiatric Clinic,
- Eastern Sarajevo Clinical Centre

⁶⁹ <http://www.investsrpska.net/>

- The Institute for treatment, rehabilitation and social protection of chronic mental patients "Jakeš" and
- Four (neuro) psychiatric wards with general healthcare hospitals (Gradiška, Prijedor, Doboj, Trebinje).
- The total bed-capacity is: 269 for acute treatment, 100 for forensic patients (within Sokolac Psychiatric Clinic) and 154 for chronic users at the Institute "Jakeš".

In accordance with their health needs the persons with disabilities are entitled to extended medical rehabilitation in specialised institutions for rehabilitation. The right to rehabilitation is exercised in accordance with the Regulations on the conditions and manner of exercising the right to extended medical rehabilitation in specialised institutions for rehabilitation and Guidelines on implementation of the Regulations on the conditions and manner of exercising the right to extended medical rehabilitation in specialised institutions for rehabilitation:

Institute for Occupational Medicine and Sports is a healthcare institution that operates in the field of occupational medicine and sports.

Institute for Orthopaedics, Physical Medicine and Rehabilitation is a healthcare institution that operates in the field of orthopaedics, physical medicine, habilitation and rehabilitation.

Institute for Stomatology is a healthcare institution that operates in the field of dental healthcare that includes preventive, diagnostic, therapeutic and rehabilitation health services.

Public Health Institute is a public healthcare institution for the field of public health.

Healthcare services centre is a healthcare institution that provides continued health and palliative care in stationary conditions.

Laboratory is a healthcare institution that performs specialised diagnostic services in the field of haematology, biochemistry, immunology, histopathology and stomatology, in accordance with applicable ISO standards.

The RS Agency for certification, accreditation and healthcare quality improvement is a public institution whose role is implementation of certification and accreditation processes for public and private healthcare institutions at all levels of healthcare, as well as monitoring and improving the healthcare quality.

Healthcare protection is organised as an activity of general interest for the Republic and its citizens. The healthcare system as a range of services and activities is aimed at promoting and preserving health of people, preventing

diseases and injuries, early detection of diseases, timely treatment and rehabilitation, and it is performed in public and private health institutions.

Healthcare is achieved through the system of compulsory and extended healthcare insurance. Persons with disabilities, as well as the other citizens of Republic of Srpska, are covered by compulsory healthcare insurance and based on the principles of equal access to services, availability, comprehensiveness, continuity and coordination they are entitled to healthcare.

Healthcare protection services used by persons with disabilities as compulsory insurance users imply the right to all forms of healthcare protection, adequate diagnostics, treatment and rehabilitation with the provision of orthopaedic aids, medical instruments and other equipment. Persons with disabilities, as well as all the other persons, have the right to realise the highest possible levels of healthcare protection, in accordance with the law. The organisation of healthcare protection provision is based on the principle of an integrated approach in the primary healthcare and specialised access to specialist and inpatient healthcare protection, while respecting the subsidiarity principle, i.e. resolving a health problem at the lowest level of healthcare protection possible. Access to healthcare is achieved through such distribution of healthcare institutions and healthcare workers who provide citizens with equal conditions of healthcare protection, and especially the primary healthcare protection.

The analysis showed that, under the Republic of Srpska legal system, there is no uniform and comprehensive definition of disability, and that the term is defined depending on the area that is under legal regulating.

In the healthcare field there are no provisions that contain any form of discrimination; under the law from compulsory healthcare insurance the persons with disabilities have the same healthcare protection as the other insured persons; in exercising the right to healthcare protection the persons with disabilities are entitled to receive healthcare protection with full respect of physical and mental integrity and security of a person, with respect to the highest possible standards of human rights and values.

General healthcare system is accessible to persons with disabilities, but it can be concluded that the healthcare sector is quite weak and with inadequate funding. Many persons with disabilities are not covered by healthcare insurance, and those who are covered, this cover is unreliable.

3.3.2. Analysis of legislative framework application in field of healthcare protection

The BiH Federation

Based on the analysis of the answers obtained from the questionnaire it can be concluded that there are issues in application of regulations in healthcare field in the Federation, but also there are deficiencies in terms of specific legal solutions.

Most respondents are united in their assessment that there is discrimination against persons with disabilities in the field of healthcare in the Federation, that there are no preventive measures in terms of early detection and identification of disability, that there are no measures and programmes and other activities referring to sexual and reproductive health of the persons with disabilities, that there are no programmes for education and training of medical and paramedical staff in the procedures and work with persons with disabilities and that persons with disabilities are not satisfied with the institutional and legislative framework for the healthcare field in the BiH Federation.

In addition, there are difficulties in exercising their right to orthopaedic and other aids, the rights to drugs that are on the essential drugs lists, as well as the accessibility to facilities in the healthcare domain. Certain forms of discrimination exist among persons with disabilities and other citizens in different treatment. Availability of medical rehabilitation and mental health centres' services to all persons with disabilities has not been adequately resolved.

Republic of Srpska

Through analysis of the survey conducted among persons with disabilities and their organisations (during which 101 person with disabilities was surveyed) and its processing it is evident that over 90% of persons with disabilities exercises their right to healthcare through compulsory healthcare insurance guaranteed by the Constitution. In terms of discrimination, the results of a survey conducted among persons with disabilities indicate that 56% of the respondents believe that there is no discrimination in the healthcare protection system, whereas 31% think that there is some form of discrimination.

The survey results show that 50% of the respondents were satisfied with the legislative and institutional framework in the field of healthcare

protection in Republic of Srpska, whereas 47% of the respondents were not satisfied.

The problems reported in this field, and which have been confirmed through the survey results, refer to insufficient existence of the following: measures, programmes and activities referring to sexual and reproductive health of persons with disabilities; programmes for education and training of medical and paramedical staff in the procedure and work with persons with disabilities; programmes/projects for organisation and membership of the person with disabilities, and that address improvement of health of persons with disabilities.

3.4. Labour and employment - Article 27 of the UN Convention

Article 27 of the UN Convention on the Rights of the Persons with Disabilities addresses the issue of labour and employment of persons with disabilities where the State Parties recognize the right of persons with disabilities to work, on an equal basis with other persons; which includes the right to possibility to provide for living by work freely chosen or accepted at a labour market and working environment that is open, inclusive and available for persons with disabilities. The State Parties shall take appropriate steps in order to guarantee and promote realisation of the right to work, including those who acquire a disability during the course of employment by taking appropriate steps including legislation.

The general picture in BiH

Normative framework for labour and employment does not exist at the state level, but at the entities level, and it is based on international regulations, which become part of domestic legislation upon their signing, accession to, that is ratification.

The right of persons with disabilities to employment and Professional rehabilitation is guaranteed by the constitutions and regulated by laws and other regulations.

Accordingly, constitutions of BiH and its entities guarantee the highest level of internationally recognized human rights and they have committed themselves to ensure that all citizens equally and fully enjoy and exercise all human rights, including the right to work, employment and protection against discrimination on any grounds, thus including the disability basis.

In the last few years, both entities of Bosnia and Herzegovina have been trying to improve and reform their programmes and legislation in the field

of employment in general. Parts of policies referring to the employment of people with disabilities indicate that there is a determination to undertake measures which give priority to the employment of persons with disabilities and promote employment of these persons.

Although the right to work has been guaranteed by the highest legal acts of the country of Bosnia and Herzegovina and its entities, and given the fact that a lot has been done in the field of employment and professional rehabilitation of disabled persons in Bosnia and Herzegovina, and in particular through adoption of **the Disability Policy at the BiH state level, the Strategy for this field in both entities and the Law on Professional Rehabilitation, Qualification and Employment of Persons with Disabilities**, the situation in this field in Bosnia and Herzegovina has not been resolved in an adequate manner.

3.4.1. Analysis of legislative and institutional framework in the field of labour and employment

The BiH Federation

With reference to the BiH Federation, the issue of labour and employment of the persons with disabilities has been addressed by the following legal acts:

The Constitution of the Federation of BiH

It guarantees freedom of work and the highest accomplished level of rights and freedoms in the world.

Laws and other documents defining the frameworks in the employment field in the Federation of BiH are:

- The BiH Federation Law on Labour,
- The BiH Federation Law on Mediation in Employment and Social Security of the Unemployed,
- Law on Professional Rehabilitation, Qualification and Employment of Persons with Disabilities,
- Law on Protection at Work,
- Law on Pension and Disability Insurance,
- Disability Policy in BiH
- The BiH Federation Strategy for equalisation of opportunities for persons with disabilities 2010-2014

The BiH Law on Prohibition of Discrimination

It establishes a framework for realisation of equal rights and opportunities for all persons in Bosnia and Herzegovina and it governs the system of protection against discrimination.

The BiH Federation Law on Labour

It regulates signing of employment contracts, working hours, wages, termination of employment contracts, realisation of the rights and obligations arising from an employment, signing collective contracts, amicable resolution of collective labour disputes and other employment issues, unless otherwise stipulated by another law.

The BiH Federation Law on Mediation in Employment and Social Security of the Unemployed

It regulates the rights and obligations of the Federation of Bosnia and Herzegovina in formulation and implementation of all measures, which enhance and improve employment conditions, basic principles in employment mediation, material and social security of the unemployed persons during temporary unemployment, establishing organisations and operation of the Federal Employment Institute, Public employment services of the cantons, financing overall employment activity and other issues, while respecting competences of the cantons and their differences.

Law on Professional Rehabilitation, Qualification and Employment of Persons with Disabilities in the Federation of BiH

It regulates professional rehabilitation, qualification and employment of disabled persons with reduced working ability, establishing and operation of institutions, business companies and other legal entities engaged in professional rehabilitation and employment of persons with disabilities, establishing and operation of the Fund for Professional Rehabilitation and Employment of Persons with Disabilities.

Formally observed, in the Federation of Bosnia and Herzegovina there is a relatively good legal framework regulating the issues of labour and employment of persons with disabilities. The problems manifest through application or the lack of application of specific statutory provisions. Adequate by-laws are missing, and if they do exist they are too general, mostly stipulating statutory provisions due to which they do not offer specific solutions and do not have binding force in their application which poses the main problem regarding the existing legislation.

Generally observed, **the Constitution of the Federation of BiH** complies with the Article 27 of the UN Convention on the Rights of Persons with Disabilities since the Amendment number XVIII to the Constitution of the

Federation of BiH defined that international treaties and other agreements that are in force in BiH and the general rules of international law shall form a part of the Federation of BiH legislation and that in the event of disagreement between the international treaty, i.e. agreement, and the legislation, the international treaty, i.e. agreement, shall prevail, thus ensuring compliance with the UN Convention on the Rights of Persons with Disabilities.

The BiH Law on Prohibition of Discrimination is partially compliant with the Article 27 of the UN Convention on the Rights of Persons with Disabilities because it does not emphasise the issue of persons with disabilities enough.

The BiH Federation Law on Labour is partially compliant with the Article 27 of the UN Convention on the Rights of Persons with Disabilities also because it does not emphasise the issue of persons with disabilities enough and the provisions dealing with the issue of persons with disabilities do not address certain sections from the Article 27.

The BiH Federation Law on Mediation in Employment and Social Security of the Unemployed is partially compliant with the UN Convention on the Rights of Persons with Disabilities. It is true that the Law stipulates prohibition of discrimination on the grounds of disability which is fully in compliance with the Article 27 of the UN Convention, but in the part referring to the Federal Employment Institute, there are no specified methods of ensuring and fulfilment of employment conditions for the persons with disabilities and their career enhancement at the labour market or providing assistance in maintaining and returning to their job. Also, the Law does not precisely define which measures provide benefits to persons with disabilities at employment.

The Law on Professional Rehabilitation and Employment of Persons with Disabilities of the BiH Federation, among the group of analysed laws is the only so-called *lex specialis* and it solely addresses the problems of persons with disabilities. The law in question is the most important in the field of labour and employment of persons with disabilities in the Federation of BiH and persons with disabilities participated actively in preparation of this Law, which is why the most of the provisions contained therein, in essence comply with the Article 27 of the UN Convention on the Rights of Persons with Disabilities.

General problem is that the existing solutions in the legislation have not been applied in an adequate manner and that since the establishment of the Fund for professional rehabilitation and employment of persons with

disabilities, it is the only one that deals with the issue of labour and employment of persons with disabilities to the fullest extent. If any, employments happen within specific projects for a year and after that, in the end persons with disabilities end up with the employment offices again. Employers do not have much hearing for employment of persons with disabilities and they will rather pay special contribution fee for employment of persons with disabilities than hire a person with disabilities.

In terms of the above listed laws there are numerous authorities at the level of the Federation of Bosnia and Herzegovina who are directly or indirectly involved in stimulation of employment of persons with disabilities. Certainly the most significant one is the Fund for Professional Rehabilitation and Employment of Persons with Disabilities of the Federation of Bosnia and Herzegovina.

In the Federation of Bosnia and Herzegovina there is a discrepancy between formally registered unemployment number (366,705), with the rate of about 47%, and unemployment number determined by the survey based on the ILO standards⁷⁰, which ranges between 16% and 20%. This discrepancy is approximately 180,000 of registered unemployed persons who are not actively seeking work and they do not need to be registered with the employment services records.

The number and percentage of the qualified and unemployed persons with disabilities cannot be precisely defined due to non-existence of consolidated databases since during registration of an unemployed person the employment services responsible for that very rarely or almost never make a record that registered person is a person with disabilities. They do this only upon explicit request of the person with a disability or if the disability is evident.

Institutional Framework for Professional Rehabilitation and Employment of Persons with Disabilities in the BiH Federation

The Fund for Professional Rehabilitation and Employment of Persons with Disabilities Federation

⁷⁰ According to the International Labour Organisation guidelines (ILO), the international standard definition of unemployment includes all people above the age specified for measuring the economically active population, who were (1.) without work during the reference period, (2.) currently available for work at all times, and (3.) seeking work (taking specific steps in order to find a job).

The Fund was founded by the Parliament of the Federation of Bosnia and Herzegovina, and it has the status of a public institution. The Fund performs the following tasks:

- Implements the policy of development and improvement of professional rehabilitation and employment of persons with disabilities, beside the educational institutions whose primary activity is acquisition of primary and secondary education.
- Finances and co-finances development programmes of companies for employment of persons with disabilities and sheltered workshops,
- Performs payments of financial fees and stimulus payments
- Finances and co-finances programmes for maintenance of employment of persons with disabilities
- Supervises exercising of the right to financial fee for stimulus payments through the use of resources of the Fund

The BiH Federation Ministry of Labour and Social Policy

The Ministry performs administrative, professional and other tasks specified by the law referring to the jurisdiction of the Federation in the field of social policy, labour, pension and disability insurance, as follows:

- labour and employment policy,
- labour relations and employment rights;
- occupational health and safety;
- pension and disability insurance;
- international conventions in accordance with the Constitution of Bosnia and Herzegovina,
- contracts and bilateral agreements in the field of labour and employment;
- social security and solidarity,
- protection of civilian victims of war;
- protection of persons with disabilities;
- protection of family, adoption and guardianship;
- social security and other tasks defined by the law.

Federal Employment Institute

The Federal Employment Institute was founded by the Federation of BiH Law on Mediation in Employment and Social Security of the Unemployed, as a public institution established in order to implement the policies and measures in the field of labour and employment, social security of the unemployed, employment improvement, professional guidance, training and retraining, and integrating records in the field of labour and employment, and other activities in this sector.

Here we find that the institutional framework has been formally conformed with the article 27 of the Convention, but in essence partnerships of the institutions with the disabled persons organisations have not been developed and this is one of the key problems, simply there is not enough cooperation and coordination.

Republic of Srpska

Work and employment of persons with disabilities has been guaranteed by the Constitution of Republic of Srpska and governed by the laws, by-laws and collective agreements.

The laws and other documents defining the frameworks in the employment field in the RS are as follows:

- The RS Law on Labour,
- Law on Mediation and Exercising the Right of the Unemployed Persons,
- The RS Law on Professional Rehabilitation, Qualification and Employment of Persons with Disabilities
- Law on Protection at Work,
- Law on Pension and Disability Insurance

The RS Strategy of improving the social status of people with disabilities 2010-2015 also addresses the issue of professional rehabilitation and employment of persons with disabilities in one of its parts.

Provisions of the above listed laws defined the right of disabled people to employment and the manner in which this right is exercised. Persons with disabilities are entitled to employment under general conditions on the open labour market and under special conditions stipulated by law.

The resources for employment of persons with disabilities shall be provided through a special contribution defined by the Law on Professional Rehabilitation, Qualification and Employment of Persons with Disabilities. The contribution is paid by all employers, who are not obliged to employ, in the amount of 0.1% of the gross salaries of all employees on a monthly basis, and employers who are obliged to employ in the amount of 0.2% on the gross salary of all employees on a monthly basis, only in the event that they are not performing the obligation of employment according to the established quota. Allocation of funds for employment of the persons with disabilities from the budget of the Republic started for the first time since 2013 (700,000.00 BAM).

With reference to percentage of the disability and degree of physical disability as a condition for employment of persons with disabilities, most

countries determine lower limit above certain benefits are realised at employment. Usually it is at least 40% of disability and at least 70% of physical damage as defined in the Article 21, Section 3 of this Law. Among the disabled who are entitled to employment under special conditions are persons with mild and moderate mental retardation which do not require defining the percentage of disability.

Persons with disabilities enjoy equal rights on the grounds of labour as well as the other persons. There is no discrimination with regard to duration of employment, promotion of persons with disabilities at their job because they are also provided with complete protection at work. The Law on Labour provides protection to all employees on an equal basis, as well as to the persons with disabilities regarding favourable conditions at work, including equal opportunities and equal pay for the work of the same value, safe working conditions that are not hazardous to health including protection against all forms of harassment. Persons with disabilities, as well as the other workers, can exercise their labour and trade union rights. As well as the other persons, persons with disabilities have equal access to general technical programmes as well as professional orientation programmes, the employment institute and employment agencies that provide employment mediation services.

Regarding promoting employment possibilities for the persons with disabilities in the RS there is a Fund for Professional Rehabilitation and Employment that is in charge of promoting employment and stimulating and financial support for employment and self-employment which is in line with the provisions of Article 27 of the UN Convention on the Rights of Persons with Disabilities.

The current state of the system of professional rehabilitation and employment of disabled people in Republic of Srpska is characterised by normative and institutional framework which is the result of conforming and harmonisation with international and European standards and the impact of certain international actors and partnership between the public and non-governmental sectors. Cooperation with the non-governmental sector in the process of creating normative framework for implementation of reforms in the areas of professional rehabilitation and employment of disabled people in Republic of Srpska was a very important factor and it significantly strengthened the overall process characterised by a multisectoral approach in addressing these issues, which are considered as the ones of the most important issues for persons with disabilities.

In Republic of Srpska there is no uniform definition of disability. Defining disability is conducted in several areas in which the person with disability is exercising their rights.

The Constitution of Republic of Srpska, in the Article 39, Section 3, which reads: "The young people, women and disabled persons shall enjoy special protection," mentions the word "disabled person", but it does not contain a definition of disability.

The Law on Professional Rehabilitation, Qualification and Employment of Persons with Disabilities⁷¹ in the Articles 2 and 3 contains definitions of disability for the purposes of employment and professional rehabilitation.

In the field of protection of war veterans and people with disabilities protection, disability has been defined in a similar manner as in all the countries of the region and the term disabled persons means persons who are considered as disabled war veterans and civilian victims of war.

In Republic of Srpska, as in the other countries, distinction is made between disabled war veterans and disabled civilian victims of war while defining which person a civilian victim of war is considered disabled, because there are persons who obtained the status of a civilian victim of war, but they are not disabled under this law.

There are cases when the type of disability and the term disabled person are defined given the age of the person.⁷²

In the field of pension and disability insurance there is a need for defining disability of the persons considered disabled persons, because in this instance they are disabled workers.

Disability and reduced work ability is determined by a number of competent authorities depending on the types and causes of disability, and the time of its occurrence.

There are anti-discrimination provisions in the Constitution and laws of Republic of Srpska. The Constitution of Republic of Srpska in Section II, Articles 10 to 49 speaks about human rights and freedoms in accordance with international standards.

With reference to the right to work, Article 39 of the Constitution stipulates that "Everyone has the right to work and to freedom of work. Forced labour

⁷¹ („Republic of Srpska Official Gazette“, edition 37/12)

⁷² The Law on Social Protection, „Republic of Srpska Official Gazette“, edition 37/12

is prohibited. Everyone is free to choose their occupation and employment, and job position and title are available to them under equal conditions. Employment of the employees may be terminated against their will in a manner and under conditions specified by law and collective agreements. Every employed person shall be entitled to remuneration on the grounds of work and in accordance with law and the collective agreement."

Normative and institutional framework for employment of persons with disabilities in Republic of Srpska is fully in accordance with the Article 27 of the UN Convention on the Rights of Persons with Disabilities, because persons with disabilities have been provided equal access to employment and the rights on the grounds of work with certain forms of stimulating employment, care and support by the Republic and local communities.

3.4.2. Analysis of the legislative and institutional framework application in the field of labour and employment

Analysis of the application in the BiH Federation

A total number of 53 questionnaires, that were delivered through the post and electronically, was analysed. It should be noted that a part of the questionnaires delivered through the post was filled out by hand and also delivered electronically. Hereinafter, the statistical analysis of completed questionnaires follows.

With reference to giving priority in employment of persons with disabilities the situation is generally alarmingly concerning, because according to the data obtained from the survey only 1.9% of the respondents believed that persons with disabilities were given priority in employment, whereas even 69.8% of the respondents answered that they were not. This is a direct equivalent to the statement that legal provisions generally do not apply and that employers will prefer to pay benefits rather than hire a person with disabilities. The statement related to this issue is further confirmed by the fact that only 3.8% of the respondents believed that the regulations on employment of persons with disabilities actually applied, whereas even 45.2% believed that they did not apply with 49.1% who said they applied partially.

Majority of the respondents believed that regulations did not ensure equal access to employment of persons with disabilities with respect to the type of disability which means that there is discrimination on the grounds of this issue in the percentage of even 77.4%. Regarding the role of the Fund for

professional rehabilitation and employment of persons with disabilities, the situation in practice shows that it does not fulfil its role fully. The following statistical indicators speak in support of this claim: even 60.3% believed that the Fund does not stimulate employment of persons with disabilities to a sufficient degree and in a proper manner at the open labour market, proposing that employers simply must be stimulated to a higher extent for indefinite period employment of persons with disabilities in particular with a higher rate of disability and reduced work ability. One additional argument is that even 54.7% of the respondents believed that financial stimulus for employment at the open labour market are not properly directed because it does not allow for the employment of persons with disabilities for a longer time period.

Another obvious problem is that 71.7% of the respondents believed that persons with disabilities do not affect creation of the Fund's policy, and the Fund should be at the service of persons with disabilities. One of the proposals that imposes itself is that the disabled companies and sheltered workshops should be able to participate in creating the Fund's policy and adopting appropriate tools with the possibility to evaluate the work of the Fund's bodies and thus prevent it from acting on its own behalf. In addition, 79.2% of the respondents did not know or did not believe that employment of the persons with disabilities was supervised by competent authorities.

Also a defeating fact is that 98.1% of the respondents believed that there was discrimination in employment of persons with disabilities where only one person said that there was not, which only additionally shows that the situation is extremely alarming and that the claims made in the analysis were only confirmed by the situation in reality. The most common excuse for non-employment of the persons with disabilities was that they did not meet the requirements from the invitation to apply.

With reference to the set of questions referring specifically to professional rehabilitation and employment, the interviewed people, 39.6% of them used some sort of professional rehabilitation and a large number of them in TMP, the Company for employment of the blind and partially sighted persons LLC Sarajevo. The percentage of those who were employed through specific projects is 30.2% in relation to the total number of respondents. 62.2% of the respondents is not currently registered with the employment institute, which means that they were employed at the time of completing the questionnaire. It would be very interesting to carry out a survey now with the same people, to see this indicator and whether the same respondents are still employed. Also, another very bad indicator is

that even 86.8% of the respondents believed that the public employment service was not an adequate service regarding employing people with disabilities, which means that contrary to the legislation and provisions of the law, they gave up resolving the issue of employment of persons with disabilities to the Fund for professional rehabilitation and employment of persons with disabilities to a larger degree.

As one of the best conclusions of the questionnaire is the comment that the existing legislation needs additional work and it needs to be improved to the benefit of persons with disabilities through certain by-laws and that the role of supervision and control of operation of the institutions primarily dealing with the issue of employment of persons with disabilities must be more clearly defined.

Analysis of the application in RS

Within the analysis of the application of regulations in the field of professional rehabilitation and employment of persons with disabilities, a survey was conducted among persons with disabilities and their organisations which included 97 people with disabilities.

The survey results undoubtedly showed that there were problems in the application of regulations in practice because, out of the 97 surveyed persons with disabilities, only 8% of them responded that there were no problems in applying the regulations in practice, whereas 92% of the respondents said that there were problems in their application. Nearly 45% of the respondents answered that the regulations practically did not apply, and 47% of the respondents answered that the regulations were partially adhered to and applied in practice.

Through practical application of the Law on Professional Rehabilitation, Qualification and Employment of Persons with Disabilities and analysis carried out by the working group a trend of requirements and the need to revise and increase the percentage of disability as a minimum for exercising the right to employment and rehabilitation and to reserve job positions for persons with disabilities, was observed.

Through compliance analysis the gaps that were identified in legislation in the field of labour and employment of persons with disabilities reflect in:

- the lack of implementation of the process of professional rehabilitation and training of persons with disabilities,
- non-reserved job positions for persons with disabilities, and

- irregular provision of additional resources for employment of persons with disabilities.

3.5. Social protection and appropriate standard of living - Article 28 of the UN Convention

Social protection is aimed at ensuring social security of citizens and their families in the state of need, among which there is a significant number of persons with disabilities. Social need is a permanent or temporary condition in which a citizen or a family finds themselves, and which is caused by war actions, natural disasters, general economic crisis, mental and physical condition of an individual or other causes that cannot be removed without the help of social community.

Exercising the right to social security and material social aid, according to the BiH Constitution, is governed by the entities' laws, and in the Federation of Bosnia and Herzegovina largely the laws adopted at the cantonal level, since this field, according to the BiH Federation Constitution, is under joint jurisdiction of the Federation and the cantons.

Rights in the field of social protection, the basics of organisation and funding of these activities, as well as other issues of importance for exercising social protection of citizens in Republic of Srpska is defined by the Law on Social Protection, and in the BiH Federation the Law on Principles of Social Protection, Civilian Victims of War Protection and Protection of Families with Children and the laws in this field made at the cantonal level.

This legislation deals with issues of social protection in general for all citizens, but certain issues relating to the rights and support of the persons with disabilities are also treated within them.

Bosnia and Herzegovina spends about 4% of GDP⁷³ to finance social welfare benefits⁷⁴ with a significant number of persons with disabilities as users. That is more than any other country in Europe (except Croatia). But the

⁷³ According to the records held with the RS Statistics Institute nominal gross domestic product in the RS for 2011 was 8.7 billion BAM (4.5 billion Euros), with a nominal growth rate of 0.8% for 2010 and 2011. GDP per capita in 2011 was 6063.00 BAM (3,100 Euros) or 4.312 \$.

⁷⁴ See: the World Bank. Record on Social Welfare Benefits Policy in Bosnia and Herzegovina: Creating a sustainable social protection system based on the actual needs (April 2009), p. 6-9

financing of social security measures in the field of disability is significantly below the European average in the region, and the systems do not guarantee minimum income necessary for survival. According to the data from the study „Budget financial benefits for social protection in BiH - What works and what does not (I)“⁷⁵ for social protection rights of persons with disabilities in war veterans disabilities category in 2011 approximately 56,000,000.00 BAM was spent, in social protection about 10,000,000.00 BAM, and child protection about 4,105,500.00 BAM, and in the pension - disability system for disability pensions about 144,000,000.00 BAM was paid. Total on all grounds about 214,205,000.00 BAM or 109,470,000.00 Euros was paid.

3.5.1. Analysis of legislative and institutional framework in the field of social protection and appropriate standard of living

The BiH Federation

Introduction

According to the Constitution of the Federation of BiH the social protection field is under the joint jurisdiction of the Federation and the cantons.

In the chapter human rights and fundamental freedoms of the Constitution of the Federation, Article 2 defines that citizens have the right to social security.

The Constitution defines that the implementation of social policies and establishing of social care services fall under the competence of the cantons.

The Federation has 10 cantons with their own constitutions and legal capacity to adopt laws, both in the fields under their exclusive jurisdiction, as well as in areas that are under joint jurisdiction of the Federation and the cantons.

⁷⁵ IBHI (2013), Budget financial benefits for social protection in BiH - What works and what does not (I) – unpublished materials

Regulations governing the field of social protection are:

CONSTITUTION:

The Constitution of the country of BiH, and not even the Constitution of the Federation of BiH in general do not address the rights of PWDs, more precisely, they do not even mention them at all in their terms.

The laws:

Federal level;

- Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children

Relevant legislation at the cantonal level;

By-laws (regulations, decisions, standards):

- Decrees and regulations at the levels of the Federation and the cantons, which regulate certain processes and procedures.
- At the level of the Federation two years ago the Federation Parliament adopted a Strategy for equalisation of opportunities for persons with disabilities.
- This document has been harmonized with the Convention on the Rights of PWDs, but its implementation has not yet started.

At the Federal level there is a Law on Principles of Social Protection, Protection of Civilian War Victims and Families with Children, adopted in 1999, after which it has repeatedly been changed. The final amendments and supplements were made in 2009 and they were related to defining the rights of persons with disabilities. This law is very complex, and it is easy to notice by its name that it regulates the rights in a few sectors, which should be separately regulated by separate laws, such as: social security, protection of families with children, the rights of persons with disabilities, the rights of civilian victims of war.

Social minimum has not been established in the Federation, not even for the people with disabilities which makes it is easy to conclude that people with disabilities are not granted social security.

Amendments to the Federal Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children in 2004, the PWDs rights were regulated by this law. Under the pressure of the PWDs organisations the earlier concept of the law was dismissed. The PWDs rights are regulated in detail and prescribed benefits are paid out from the Federal budget. This provided the PWDs throughout the Federation with equal rights and has eliminated or at least mitigated

the form of discrimination on the territorial grounds. The cantons were also given the option to expand the number of users, and to identify additional rights in accordance with the possibilities of the cantons. However, this has not removed discrimination against persons with disabilities on the grounds of the causes and circumstances of the disability occurrence, which will be discussed hereinafter in more detail. The civilian victims of war were not satisfied with these amendments because their rights have remained under the jurisdiction of the cantons, including financing.

Changes to the law in 2006 resolved the rights of civilian victims of war similarly as for the people with disabilities, provided that 70% of the rights is funded at the level of the Federation, and 30% of the rights is funded from the budget of the cantons. Other social protection rights are still retained at the cantonal level, which includes their full editing and providing funds for payment. A similar situation is with the field referring to the protection of families with children. The cantons deal with these issues in different ways, and the child allowance issue in 5 cantons has not been resolved at all, so we can say that this is discrimination on the grounds of territorial principle, for all children, thus including the children with disabilities.

Preparations for fundamental reform of the social sector are ongoing, which will have negative impact on the status and the rights of persons with disabilities with current prospect of things. One of the problems that is difficult to resolve is the issue of the weak capacities of organisations of the persons with disabilities in the field. For these reasons, organisations are not able to advocate the rights of persons with disabilities in an adequate way or to get actively involved in the persons with disabilities movement.

Article 16 of the Federal Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children defines persons with disabilities, and the same or similar formulations for persons with disabilities are also contained in the cantonal laws.

The above stated legal definition of persons with disabilities is not in accordance with the definition of persons with disabilities in the Article 1 of the Convention.

Assessment of disability in the Federation is carried out by the Institute for Medical Expertise, which was established by law. In evaluation of the operation of the Institute over 50% of the respondents answered the question: "In your opinion, is the disability assessment by the Institute for

disability assessment a correct assessment of disability?", negatively, which is a worrying percentage.

Article 18 of the Federal Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children, for the people with disabilities whose degree of damage to the body is 90 and 100%, defined the following as their basic rights:

1. personal disability allowance,
2. bonus for the care and assistance of another person,
3. orthopaedic allowance,
4. help towards treatment costs and procurement of orthopaedic aids,
5. vocational training (professional rehabilitation, retraining or additional training),
6. primary employment.

The rights under Sections 1, 2 and 3 are exercised under the conditions, in the manner and under the procedure set forth in the Federal Law;

The rights under Sections 4, 5 and 6 are exercised in accordance with the regulations on healthcare insurance, healthcare protection and employment;

A canton may define other rights and expand the scope of rights defined by the Federal Law on the basis of their own material possibilities and other needs of the people with disabilities.

A more detailed analysis showed that the rights are to be exercised by other laws, as a rule, are not adequately regulated. Also, there are not many cantons that use the possibility to extend and define these rights more favourably. In the text below we will analyse in detail certain rights, their quantities, jurisdiction of the institutions, discrimination and other issues of importance for this report.

Number of persons with disabilities in the Federation of BiH has increased enormously, which does not correspond to the actual situation on the ground, but it should be noted that the lack of a uniform definition of disability and uneven approach of medical profession in assessing the degree of disability had crucial impact on the fact that there are approximately 165,000 persons with disabilities who should exercise certain rights and benefits according to estimates of the competent institutions in the BiH Federation.

The number of recorded war veterans with disabilities, who exercise their rights under the Law on the Rights of War Veterans and Members of their Families, is about 45,000. The rights include the persons whose damage to the body is 20 to 100%.

The number of recorded civilian victims of war, who exercise their rights under the Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children, is around 8000. The rights include the persons whose damage to the body is 60 to 100%.

The number of recorded persons with disabilities, whose cause of occurrence is not a consequence of the war (the so-called, persons with non-war disability), who exercise their rights under the Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children, is approximately 42,000. The rights include the persons whose damage to the body is 90% and 100%. According to the estimates by the Federal Ministry of Labour and Social Policy the number of persons with non-war disability, whose damage to the body is 60% to 90%, is about 70,000.

The scope of the rights and amounts of certain benefits for support shall be determined on the basis of the causes of disability occurrence, which bring the persons with the same type and degree of disability in an uneven position which leads to discrimination.

The Federal Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children or some other act do not define the social minimum in the BiH Federation.

The Federal Law on Principles of Social Protection, Protection of Civilian Victims of War and Protection of Families with Children obliged cantons to define more favourable conditions for exercising the rights for the PWDs and to define higher amounts in their regulations. Not all the cantons complied with this obligation.

Funds for financing the rights of persons with disabilities do not exist at the level of Bosnia and Herzegovina and they are not planned in the budget of the central institutions. The funds for this purpose exist in the budgets of the cantons and the Federation, and only partially in the budgets of municipalities. With regard to the constitutional system of the Federation of BiH it is difficult to collect data from the cantons and municipalities, but approximate data planned in the budget of the Federation can be obtained. According to the Ministry of Labor and a Social Policies' data for the year 2012, the Ministry has allocated the total of 120 million KM or

approximately 60 million EUR for the financing of persons with disabilities including civilian victims of war.

BiH Federal level allocation for protection of rights of disabled war veterans was approximately 120 million or approximately 60 million EUR. Disabled war veterans are also eligible for significant benefits, as a part of extended – additional benefits, at Cantonal level where accurate data could not be obtained.

In accordance with the obligations arising from the document “Uniform policy in the field of disability”, the BiH Federation Parliament adopted a Strategy for equalisation of opportunities for persons with disabilities in the BiH Federation. The government institutions did not do almost anything for this strategy to be implemented.

In the last few years action plans for implementation of this Strategy in the cantons are being prepared, but so far no significant success has been accomplished because only one canton adopted an action plan. The reform of the social sector is ongoing in the Federation. Everything indicates that the reform processes will be to the detriment of the rights of persons with disabilities, and should this trend continue there could be a loss or reduction of certain rights for persons with disabilities.

Republic of Srpska

Introduction

According to the preliminary results of the 2013 Census, 1,326,991 residents⁷⁶ live in Republic of Srpska, out of which 130,000 to 150,000⁷⁷ are the people with disabilities. Not knowing the exact number of persons with disabilities is a consequence of the lack of a unified registration system, different definition and existence of still completely raw data from the census. Existing statistical evidence does not allow for obtaining the data on social protection users according to the types and forms of disability or observing other characteristics: gender, age, cause of disability and similar. Monitoring the number of persons with disabilities in social security

⁷⁶ The Republic Statistics Institute (2014), The 2013 Census. Preliminary results, printed 10th March 2014 at

http://www2.rzs.rs.ba/static/uploads/bilteni/popis/PreliminarniRezultati_Popis2013.pdf

⁷⁷ The assessment used by the Strategy for improving social status of persons with disabilities in Republic of Srpska 2010-2015, based on the World Health Organization data on the average percentage (10%) of persons with disabilities in the total population.

systems is performed according to the number of users of certain rights. From the estimated number of disabled people, about 100,000 are beneficiaries of social protection right in all the systems of social security.

Social protection in Republic of Srpska is understood in a narrow sense, that is, it is an activity that is focused on prevention and elimination of consequences of the social need situation in all areas of social life and work and providing support to the citizens and their families when they are in such a situation.

Social need is a situation in which a citizen or a family needs help in order to overcome social difficulties and satisfy their fundamental life needs.⁷⁸

Social protection defined and established this way, includes social welfare benefits and social services into a separate system.

Unlike Republic of Srpska, contemporary social protection systems in the world cover social security systems which are based on three pillars with three pillars of welfare benefits related to them. The first pillar consists of social insurance benefits and they include benefits awarded depending on the employment status and the contributions paid and they cover precisely defined risk circumstances (age, disability, unemployment, illness, maternity, etc.). The second pillar includes universal benefits. They are financed from taxes and they are allocated to all citizens who fall under specific categories. The benefits are not related to employment status or income. The third pillar consists of benefits based on the income control (means test). These benefits are also financed from taxes and the right to these benefits is conditioned by the resources available, but other criteria can also be used. In addition to benefits, social protection covers a wide area of social services for all citizens with disabilities who need support.

The Convention on the Rights of Persons with Disabilities represents the modern approach, so that the social protection in this report was comprehended in a broad sense, and social protection programmes include other social security systems: social protection system, child protection system, the system of war veterans disability protection (with protection of civilian victims of war) and pension and disability insurance system whose holders are the entity (Republic of Srpska) and local self-government units (cities and municipalities).

⁷⁸ Republic of Srpska Law on Social Protection (Official Gazette edition 37/12)

The linking thread of all the systems should be the Disability Policy in Bosnia and Herzegovina and the Strategy for improving social status of persons with disabilities in Republic of Srpska 2010-2015.⁷⁹

In all these systems of social security there was work done on the system reform and new laws were passed in the last three years. The biggest changes have occurred in the social protection system by adopting the new Law on Social Protection in the 2012, which defined the rights of persons with disabilities based on functional approach and significantly increased social welfare benefits amounts in comparison to the earlier legal solution.

While analysing the situation in order to develop disability policy, it is a general assessment that the social protection of persons with disabilities is dominated by the measures directed to financial support and institutional care, whereas facilities for providing social services are underdeveloped, they are not systemically organised in particular, and they are related to specific projects. In most cases, the existing staff and institutional mechanisms do not match the needs, they have stereotype tendency and they are difficult to open to new approaches. This area is based on the rights and statuses rather than on individual needs and it has the approach based on a system of determining categories of persons with disabilities.

"The current situation led the majority of people with disabilities to the state of extreme poverty, put additional burden on their families, and made it impossible for them to actively participate in private and public life and thereby significantly increased their social exclusion"⁸⁰

3.5.2. Analysis of legislative and institutional framework application in the field of social protection and appropriate standard of living

The BiH Federation

Under the Constitution, the field of social policy and social protection in the Federation of BiH is under the joint jurisdiction of the Federation and the cantons. This solution makes it difficult to maintain consistent policy in this field because the higher levels of government have no instruments that would ensure the implementation of agreed policies and even application

⁷⁹ The Policy was adopted by the BiH Council of Ministers at its 46th session, held on 8th May 2008, and the Strategy was adopted by the RS Government at its session held on 29th July 2010

⁸⁰ Disability policy of Bosnia and Herzegovina, BiH Official Gazette", edition 76/08

of laws and other regulations adopted at the Federal level. The cantons have significant competences in this field, but due to other priorities and lack of funds, persons with disabilities and their rights are on the margins of the relevant factors interests in the cantons and municipalities.

Completed questionnaires we received from the people with disabilities and their organisations most illustratively speak about the situation that the people with disabilities and their organisations are and what is the cantonal authorities' relationship towards this group of citizens. The Working Group was provided with 83 completed questionnaires, out of which 47 questionnaires were filled out by men, 56.62% in percentage, and 34 questionnaires were filled out by women, 40.96% in percentage. During the analysis of the questionnaires it was shown that two persons did not state their sex, which is 2.4% in percentage.

To the general question: "Do you know what law regulates the rights of persons with disabilities in the field of social protection?", affirmative answer was given by 77.10% of the respondents, while the rest answered negatively. Although major number is familiar with legislation there is still a big percentage of those who are not, and based on this it can be concluded that it is necessary to implement additional activity by the organisations of persons with disabilities, in order to inform people with disabilities on the laws and other regulations, which regulate their rights at the levels of the Federation and the cantons.

To the question: "Based on the Federal Law on Principles of Social Protection, Protection of Civilian Victims of War, Families with Children, do you exercise any rights?" 79% of the respondents answered YES, and the remaining 21% responded negatively. These responses lead to two conclusions at least: **the first one** is that the Federal law does not adequately regulate the rights of the PWDs, **the second one** that these people could not even exercise their rights in the cantons, because most cantons did not regulate the rights of PWDs in their regulations, which the cantonal authorities should or can regulate under the Federal law.

To the question: "Do you know that a canton/municipality may define a larger scope of rights for persons with disabilities?", 54% of the respondents answered affirmatively and 46% of respondents answered that they did not know. However, a significant percentage of people with disabilities is not sufficiently familiar with the competences of the cantons, thus an additional campaign should be implemented by the PWDs

organisations in that sense, which would further inform the PDWs with the competences of the cantons.

To the question: “Did your canton/municipality adopt/confirm the decision on extended rights in the field of social protection through its regulations?”, 28% of the respondents answered Yes, and 63% of the respondents answered No. About 10% of the respondents did not answer this question. These data most illustratively speak about the situation in the cantons. It can be concluded that the organisations of persons with disabilities in the cantons should reinforce the campaign on advocating the rights of the PWDs in local communities, and on the implementation of Federal regulation that gives the cantons possibility to define new and extend the existing rights.

All the deaf people that have filled out the questionnaire expressed dissatisfaction with their status.

To the question: “Do you exercise the rights under the Federal law?”, 80% of the respondents said that they were exercising the right to personal disability allowance, 60% of the respondents exercised the right to receive benefit for assistance and care of another person, and 60% of the respondents exercised the right to orthopaedic aids. Here we can also conclude that 20% of the respondents did not exercise any right, because the right to personal disability allowance is a prerequisite for exercising the other rights. The right to personal disability allowance is determined based on the degree of damage to the body, and other rights should be defined according to the actual needs of an individual.

To the question: “Can the right to increased child allowance be exercised in your canton?”, 60% of the respondents answered affirmatively. The others either responded negatively or they did not know.

Although majority of the respondents said that this right could be exercised, however this does not reflect the actual situation due to the fact that significant number of the respondents come from Sarajevo, where this issue has been resolved.

Respondents from the other cantons emphasizes the fact that the cantons scarcely provide funds for the minimum amount of child allowance. It should also be emphasized that in the 5 cantons right to child allowance has not been regulated at all, which can be considered as discrimination of children by the territorial principle.

To the question: “Do you know in which institution is the procedure for exercising the right to social protection initiated?”, 95% of the respondents answered affirmatively. Based on this we can conclude that persons with disabilities are well informed about the institutions in which the procedures are initiated. Just as well, this result is logical since social protection procedures are initiated at the social welfare centres, and in municipal services only in some cantons.

To the question: “Do you believe that there is discrimination against persons with disabilities in the fields of social protection?”, 70% of the respondents answered affirmatively. It can be seen that the vast majority of the respondents believed that there was discrimination against disabled persons, particularly in relation to the cause and circumstances of disability occurrence (disabled war veterans and civilian victims of war). Here as well, the deaf people pointed out that they were discriminated in comparison to other persons with disabilities.

To the question: “Do you believe that there is discrimination based on the territorial principle with regards to the rights of persons with disabilities in the field of social protection?”, over 70% of the respondents answered affirmatively. Such a high percentage of people with disabilities who believe that there was discrimination against PWDs based on the territorial principle, most illustratively speaks that the cantons and municipalities define the rights according to their economic possibilities, without taking into account the needs of PWDs. Here we can talk about the weaknesses of the constitutional organisation of the Federation because the cantons have wide powers, and the Federal authorities do not have adequate mechanisms to ensure equal basic rights for people with disabilities, which causes various forms of discrimination.

To the question: “In your opinion, is the disability assessment by the institutions for disability assessment a correct assessment of disability?”, more than 50% of the respondents answered negatively.

Such a high percentage of the respondents who evaluated the operation of the Institute for assessment of disability to be negative, can be considered troubling.

Some of the opinions of the respondents are:

- that only medical and personal documents are inspected, and not the actual condition of the person and their needs;
- illness is being assessed, and not the disability and the right is defined on the basis of such assessment;

- committees are usually not complete, but the decision is made by an individual;

Analysing the questionnaires, it can be generally concluded that the competence of the cantons and the Federation has not been organised in the best way, and that the Federal institutions do not have the instruments to oblige the cantons to the laws implementation.

Republic of Srpska

Analysing how this field was organised in Republic of Srpska, at the very onset a terminology problem appeared, and this is the use of different terms for designating persons with disabilities and the definition of disability in all the systems implementing social protection.

The Convention on the Rights of Persons with Disabilities defines persons with disabilities as "The persons with disabilities also include those persons who have a long-term physical, mental, intellectual or sensory defects that, in interaction with various obstacles, may obstruct their full and effective participation in the society on an equal basis with the others".

The social protection system uses terms such as a person with disability and a child with developmental disability. A person with disability is an adult person encountering occurrence of loss or restriction of ability to perform activities essential for everyday life in a manner or to the extent that would be considered normal for the people of same age, gender, culture and education, as a result of injury, illness or defects at birth.

A child with disabilities is a child with visual impairments, hearing impairments, vocal impairments, speech and language impairments, with physical disabilities and chronic diseases, with mental retardation, multiple disabilities or other impairments that lead to problems in psychomotor and sensory development.

There is inconsistency in the use of terms regarding a child with disability, and the definition for persons with disabilities is narrower and focused on the ability to perform essential activities in everyday life, whereas the Convention insists on full and effective participation in the society.

The term disabled war veteran is used in the war veterans-disabled persons protection and it defines that, as a member of the armed forces of SFR of Yugoslavia and the Republic of Srpska armed forces, while performing military and other duties in the war (disabled war veteran) or in peace (disabled peacetime veteran), by no guilt of their own, this person received a wound, injury, trauma or a disease causing occurrence of defect to his

body. This definition puts emphasis on the membership to the armed forces, the time of occurrence of the damage and on the damage itself due to specific cause. The definition does not speak about the types of damages or the full and effective participation in the society.

The Law on the Protection of Civilian Victims of War does not use a single term and by defining a civilian victim of war it indicates that this is a person with disability, because it speaks about the damage to the body.

As is the case with disabled veterans, the definition emphasizes the damage to the body of the defined degree because of the defined causes and not the consequences of the damage and the activities of the person.

The child protection uses the term "the child for whom the competent authority has issued an act on classification of developmental disability." This term closely restricts the status by setting the condition of official confirmation of the competent authority.

Pension and disability insurance uses the term disability defining it as a condition that exists when it has been determined that, due to permanent changes in the health status, that cannot be eliminated by treatment or medical rehabilitation, a reduction or loss of ability to work in the workplace occurred, that is, at the job position they performed on the day of working ability assessment or they performed prior to termination of insurance. It bonds with the status of the insured person and preservation of the ability to work, so that it limits the range of beneficiaries, and thus the access to the system, as well.

Based on the above examples, it can be concluded that different social security systems use different terms for persons with disabilities and define these people in a different way. In most definitions, the social aspect of disability of missing, which is viewed through interaction with the environment, which contains a variety of obstacles that obstruct the person in the full and effective participation in the society on an equal basis with the others. The existing legislation damage to the body prevails, and not the functional ability and the ability to interact with the society, so that the disability is traditionally viewed as a handicap, defect, inability and similar.

In a very close relation to the issue of disability definition there is also the disability assessment, which is performed at different institutions and with the use of mainly medical indicators that assess damage to certain organs, and not functions and abilities.

The social protection system assesses the need for assistance of another person in meeting the basic life needs and inability to work, without identifying the degree of damage, while the system of war veterans' disability protection determines the degree of damage to certain organs. In the system of pension and disability insurance the damage is observed and how it affects the ability to work. All the systems have their own expert committees that carry out assessments according to their own criteria, and the findings and opinions of individual committee are sporadically used in the other systems.

The behaviour of certain systems in the definition of persons with disabilities and terminological definition still remain with the existing solutions. The initial progress has been made only in the social protection system by using the term "persons with disabilities" and functional approach to disability assessment procedure for the needs of exercising the rights in this system.

The existing institutional and legislative solutions for appropriate living conditions (living standards) and social protection, are given separately by individual systems for the purposes of better visibility in the report, because they have also been legally regulated like that.

Analysis of the legislative and institutional framework for the social protection system

The social protection system in Republic of Srpska, as an activity of general interest for the Republic, has been regulated by **the Law on Social Protection** (RS Official Gazette, edition 37/12) and a series of by-laws, out of which the most important for the field of disability are **the Regulations on determining abilities of persons in the process of achieving the social protection right and determining functional condition of the right users** (Republic of Srpska Official Gazette, edition 116/12) and **the Regulations on assessment of needs in guiding the children and the youth with developmental disabilities** (Republic of Srpska Official Gazette, edition 117/12).

The Law on Social Protection also includes anti discriminatory provision (Article 3, Section 1) stipulating that the rights from the law belong to the persons who fulfil the stipulated conditions, regardless of differences in race, colour, sex, language, political, national and religious orientations, social and economic origin, place of birth, disability or any other status. In

this way, expression is given to the elementary orientations of the system having a man in its centre with social needs and based on the principles of solidarity and universality, using the society support in exercising human rights.

The rights organised by the Law on Social Protection and used by all the persons in the situation of social need are as follows:

1. financial support,
2. allowance for care and assistance by another person,
3. support for equalisation of opportunities for children and youth with developmental disabilities,
4. accommodation in an institution,
5. foster family care,
6. home support and care,
7. day care,
8. a one-off financial support,
9. counselling.

Persons with disabilities are beneficiaries of the above stated, and certain rights, in addition to social protection character, also serve for equalisation of opportunities, and their sole beneficiaries are persons with disabilities (allowance for care and assistance by another person and support for equalisation of opportunities for children and youth with developmental disabilities). Even the right to financial support serving to ensure minimum social security for persons that failed to provide social security through the work system, is mostly used by persons with disabilities, because it can only be exercised by the persons disabled for work.

In addition to these rights defined by the Law on Social Protection, local self-governments units can also set forth extended rights such as personal assistance for persons with disabilities, sheltered housing, supported housing, subsidized utility costs and similar. In Republic of Srpska majority of local self-government units developed extended social protection rights and majority of the rights refer to the very meeting of the needs of persons with disabilities.

Social protection of disabled persons is governed by a few systems of social security. Each system has developed its legislative and institutional framework that defines goals, users, rights and institutions working on exercising the rights set forth in certain legal systems. There are no records of any initiatives or efforts to organise the field of disability and the rights

of these individuals in separate legislation, nor has there been a separately codified field of the persons with disabilities rights in any system. There is no legal requirement for coordination or mutual consultation between the systems.

In the field of social protection there were changes and advancements made which show that there are exceptional examples of good practice and that the social protection of persons with disabilities has significantly improved. Such examples are adoption of the new Law on Social Protection which has introduced a functional approach to the assessment of disability and improved the rights of these persons, development of a day care service which is most usually provided through the public and civil sector partnership in local communities, inclusion of persons with disabilities and their organisations in the process of decision-making and planning measures, maintenance of the disabled war veterans-disability protection with a number of rights for persons with disabilities and similar.

Institutional framework

The rights in social protection are exercised through **social welfare institutions** that are established as public institutions, the founders of which are the Government of Republic of Srpska and local self-government units' assemblies, private institutions and institutions the founder of which may be a civil society organisation. The most important public institutions are **social welfare centres**. They are founded by the local self-government units. In Republic of Srpska there are 45 social welfare centres, and five are currently in the process of being founded. Another 11 local communities have not formed social welfare centres and it is a legal obligation for all the local self-government units to set up the centres, where intense work has been done this year.

In addition to the social welfare centres, **facilities for accommodation and day care** also provide services to persons with disabilities. Homes for accommodating persons with disabilities are founded as the institutions of the Republic.

There are the following institutions in the Republic of Srpska:

- Home for children and the youth with developmental difficulties in Prijedor
- Institute for female children and the youth with developmental difficulties in Višegrad,

- Institute for the blind and partially sighted persons "Budućnost" Derventa.

Other institutions also accommodate persons with disabilities. These are:

- Home for the elderly in Eastern Sarajevo,
- Home for the pensioners the elderly in Prijedor,
- Socio-geriatric centre in Banja Luka and
- Children's Home "Rada Vranješević" Banja Luka.

In addition to educational programmes, there are two educational institutions (Centre "Zaštiti me" in Banja Luka and the Centre for Hearing and Speech Rehabilitation in Banja Luka) that have social protection programmes (boarding accommodation, socialisation and similar) for the children with disabilities.

In the private sector there are a few institutions that are mostly managed by the elderly persons, and there are also people with disabilities. In the recent years, institutions for day care in local communities have been established. Most often these are day care centres for children with disabilities. About 15 municipalities established these institutions that are either in public ownership or in the ownership of non-governmental organisations.

It is evident that people with disabilities exercise their rights without discrimination on the basis of disability within the social protection system in Republic of Srpska and that the efforts are made in order to provide these people access to available services and resources.

However, the social protection system does not contain the right which would provide a safe source of their material security. It is not sure that the persons with disabilities and their families living in poverty will have access to social support which they use for life support, because they have been conditioned by a series of very strict and restrictive criteria for assessing the overall situation in a household and determines the obligation for support. Only the right to allowance for care and assistance by another person, assigned to persons with disabilities that require all-day or occasional help for meeting their existential needs (feeding, dressing, hygiene and movement), does not contain revenue, property and other criteria, but the criteria are related to the functional state.

Social minimum or minimum income is not a subject to discussions and it is not expected for it to be introduced soon.

Another serious problem that indicates non-compliance of the rights in this system with the provisions of the Convention is a very small range of social services that can be used by these persons. Day care centres exist in a small number of local communities and the services have not been developed at all. Beside day care service centres, a small number of developed local communities also developed personal assistance and some other services, which creates discrimination on the territorial principle. Social housing, as well as supportive housing have not been developed at all.

The legislation of this system does not separately address the status of women, girls and elderly people with disabilities, disabled persons access to clean water and ensuring availability of appropriate services. Also, the mechanisms allowing access to services and social protection services in terms of architectural and informational obstacles are not developed.

Positive trends in the social protection system that have an impact on the rights of persons with disabilities, and which are in accordance with the provisions of the Convention are: establishing social welfare centres in each local community, increasing the amount of financial benefits, introducing functional approach to the assessment of needs in the rights exercising, development and establishing day care centres that provide diagnostic, therapeutic, occupational and other services to people with disabilities, primarily to children and increasing coverage of persons with disabilities in the social protection system.

Analysis of the legislative and institutional framework in the war veterans-disabled persons protection system

Social protection of persons with disabilities who have the status of war and peacetime disabled veterans has been governed by a separate law:

- **“Law on the Rights of War Veterans, Disabled War Veterans and Families of the Soldiers Fallen in the Republic of Srpska Homeland War”** (Republic of Srpska Official Gazette, edition 134/11 with amendments and supplements in the Official Gazette, editions 9/12 and 40/12) as the activity of general interest.

In addition to statutory regulation, the social protection of disabled war veterans has also been regulated by **the by-laws**. The most important are as follows:

- Regulations on determining the disability of the veterans⁸¹,

⁸¹ RS Official Gazette, edition 100/12

- Regulations on the operation of medical committees for rating the veterans' disability⁸²,
- Regulations on the damage to the body based on which a disabled veteran is entitled to orthopaedic aid⁸³ and
- Regulations on the damage to the body based on which a disabled veteran is entitled to the allowance for care and assistance⁸⁴.

Responsibility for exercising the war veterans-disabled persons protection falls with the Republic and local self-government units. The Republic governs the war veterans-disabled persons protection system, delivers policies, laws and provides funds, defines the rights, criteria and users, and monitors the situation and exercising of the rights.

Through public services and authorities the local self-government units have an obligation to conduct first-instance procedures for exercising the right. In addition to this, they are resolving individual cases in the field of housing issues, priority in employment, vocational rehabilitation.

All the rights from the war veterans-disabled persons protection are determined based on allocated status of war or peacetime disabled veterans and the degree of disability expressed as a percentage which expresses the damage to the body caused as a consequence of a wound, injury, trauma or disease received under the circumstances defined by the law.

The Law on the Rights of War Veterans, Disabled War Veterans and Families of the Soldiers Fallen in the Republic of Srpska Homeland War defines a disabled war veteran. The Law makes a distinction between the disabled war veterans as a product of different status and conditions for acquisition of disability, in such way that it defines a disabled war veteran as a person who received a wound, injury or trauma during combat or armed activity in war or peace, for the purpose of defending SFR of Yugoslavia, i.e. RS, thus suffering a war inflicted disability of at least 20%, that is, a person that acquired a disease under the same circumstances causing war inflicted disability of at least 40%. The persons who acquired this status under the regulations of former SFRY also have the status of disabled war veteran and they exercise the rights in accordance with this Law. A disabled war veteran who meets the conditions for obtaining the status of peacetime disabled

⁸² RS Official Gazette, edition 100/12

⁸³ RS Official Gazette, edition 100/12

⁸⁴ RS Official Gazette, edition 100/12

veteran subsequently retains the status of disabled war veteran and their disability is defined on the basis of total body damage on both grounds.

According to the degree of damage disabled war veterans have been classified into 10 disability categories.

The rights of the disabled war veterans are: personal disability allowance, allowance for care and assistance, orthopaedic allowance, supplementary material security, healthcare and other rights in connection with the exercise of healthcare protection, orthopaedic and other aids, spa and climatic treatment, priority in employment, priority in housing benefit care, tax and duty exemptions, removal of architectural obstacles, provided parking space, advantage in using the services of the Republic authorities, public institutions while resolving the rights and interests, priority in the enrolment of children in educational institutions, awarding scholarships and accommodation in student dormitories.

The fundamental right on the basis of which all the other rights from war veterans-disabled persons protection are achieved is the right to personal disability allowance. The amount of compensation for personal disability allowance is conditioned by the degree of disability and the level of the base for calculation which is being defined every year.

The base for calculation of the right is defined as a percentage of average net salary in Republic of Srpska in the previous year, and in 2013 it was 515.00 BAM or 263.32 Euros. The Law does not define the character of certain rights and their purpose, but it can be concluded that the right to personal disability allowance is a right that is used for provision of social security disabled war veteran, and by their name, the other rights are for the purposes of covering the costs related to disability.

In addition to these financial benefits that are exercised by disabled war veterans as different rights, they are users of other benefits (health insurance, spa and climatic treatment, priority in employment, priority in using public services, priority in housing benefit care, using parking space etc.

Presenting the rights of disabled war veterans in social protection shows that Republic of Srpska regulates this field with special care giving very broad range of rights and significantly higher than the social protection system. This pointed out socially recognized relationship towards the victims of the war who became so while performing their duties. However, it has not been defined what is appreciation of the society and

compensation of the damage for loss of social protection that should mitigate poverty and equalize possibilities.

This approach produced discrimination among persons with disabilities, because it does not take into account the needs, but the cause of disability. The attempts to change the approach so far lacked political support, so that the current trends continue to dominate the system, and the activity of members of this population and responsible authorities has been aimed at increasing the quantity of rights and extend the rights of disabled war veterans.

Analysis of the legislative and institutional framework for civilian war victims protection

In terms of organisation, there is an organised and separate system of social protection of civilian victims of war within the system of war veterans-disabled persons protection under separate Law on Protection of Civilian Victims of War (RS Official Gazette, edition 24/10).

All the rights of civilian victims of war are conditioned by the degree (percentage) of the damage to the body. Minimal damage must be 60%. According to this criterion, the beneficiaries are classified into six groups.

By acquiring the status of a civilian war victim in legal proceedings on the basis of the findings and opinion of the expert committee and a certain percentage of disability, they exercise the rights that can serve different purposes according to their designations and names.

These are the following rights: civil disability allowance, allowance for care and assistance of another person, welfare benefit for a family member incapable of work, additional financial support, single parent support, health insurance, professional rehabilitation. Families of the killed or deceased victims of war are entitled to family disability allowance. The fundamental right in the protection of civilian victims of war is civil disability allowance and all the other rights are derived from it.

Although contained in one system, the civilian war victims have much smaller amounts of rights than the disabled war veterans. The base for defining the amount of rights is lower, and the status of civilian war victim is obtained with at least 60% of the damage, whereas disabled war veterans obtain the status with 20% of the damage. The purpose of the right has not been defined and different functions intertwine (social-protective, indemnity, family protection and similar).

Protection of civilian war victims is performed by the entity (Republic of Srpska) and local self-government units. Funds are fully provided for in the budget of Republic of Srpska.

The civilian victims of the war in Republic of Srpska have more favourable status than other civil persons with disabilities because their rights are significantly higher than in the social protection. Viewed separately, these solutions allow for better living standards and greater material security of this category of persons with disabilities. However, compared to other persons with disabilities, this approach is discriminatory because it does not respect the needs, but the cause of disability, which is not in accordance with the Convention. Also, traditional approach to the treatment of persons with disabilities that is based on the medical model, and which is applied to civilian victims of war, is not in accordance with the Convention, as it observes the damage to an organ rather than the capability and functionality of that organ. The existing legal solutions do not take into account specific needs of civilian war victims, such as children and women, which also points to non-compliance with the Convention.

Analysis of the legislative and institutional framework for protection of persons with disabilities in the system of pension and disability insurance

In the RS system of pension and disability insurance the persons with disabilities and family members of deceased persons with disabilities shall be provided social security and protection in the event of disability on the basis of compulsory insurance, and on the principles of reciprocity and solidarity.

According to our legal and professional understanding, social insurance is a part of social security, but not social protection, and in the themes context, the rights from the pension and disability insurance should be observed as part of the overall living standards.

This field is governed by **the Law on Pension and Disability Insurance** (RS Official Gazette, edition 134/11), and the RS Government was also preparing a **Strategy of the pension system reform in the RS**⁸⁵, with its the most important objective to reduce poverty through provision of appropriate levels of income in the old age and balanced consumption, that is, maintenance of relative living standards in line with previous earnings.

⁸⁵ The Strategy was prepared by the Working Group in the period 2003 – 2007, the proposal was published, but it was not adopted upon the public discussion.

The Law on Pension and Disability Insurance does not define a person with a disability, but it defines disability of the insured persons. Disability exists when it has been determined that, due to permanent changes in the health status, that cannot be eliminated by treatment or medical rehabilitation, a reduction or loss of ability to work in the workplace occurred, that is, at the job position they performed on the day of working ability assessment or they performed prior to termination of the insurance (Article 49, Section 1). The rights in this system are defined depending on the fact whether it was a reduction or loss of the ability. The law makes a distinction between the insured farmers defining that the disability is acquired through complete inability to perform agricultural activities, and with the insured on the voluntary insurance principle who acquire disability on the basis of total inability for earning (inability to perform the simplest tasks).

Defining disability is performed by the expertise authorities of the Fund for Pension and Disability Insurance of Republic of Srpska and the Republic of Srpska Government governs the process of working ability assessment and determining disability through a by-law.

Rights on the basis of disability are classified according to working ability. The insured person with reduced ability to work is entitled to another job position transfer, right on retraining or additional training and the right to compensation in connection with reduced working ability.

The insured person with complete loss of ability to work is entitled to a disability pension prior to meeting the conditions for age pension, provided that they have five years of insurance or 10 years of pension service prior to occurrence of the disability. The disability pension is determined in the same manner as the age pension.

The Law on Pension and Disability Insurance does not define the right to allowance for care and assistance of another person and the right to body injury. The insured persons with disabilities are entitled to allowance for care and help and they obtain this support in the social protection system. However, based on the judgment of the RS Constitutional Court, the Fund has enabled a number of the insured who were using these rights in this system up to 2000⁸⁶ to continue to use them. In this way 363 pensioner

⁸⁶ The Law on Pension and Disability Insurance envisaged monetary compensations for bodily injury and for allowance for the care and assistance of another person as a right up to 2000. Through the changes in policy and legislation (Law on Pension and Disability Insurance, RS Official Gazette, edition 32/02) those rights no longer existed. Beneficiaries of the rights requested court protection and in its judgement the Constitutional Court recommended to the Fund for Pension and Disability Insurance to resolve the problem and allow protection of

users receive monetary compensation for bodily injury and allowance for assistance and care of another person. The policy of the Fund in this case constitutes violation of the law and obvious discrimination among persons with disabilities in this system, because a small number of users is allowed to use the rights without any legal basis whereas majority of people with the same condition and needs is denied access to benefits.

The rights arising from pension and disability insurance shall be exercised with **the RS Fund for Pension and Disability Insurance** uniquely organised for the entire entity, having six branch offices at the regional level (Banja Luka, Prijedor, Doboj, Bijeljina, Eastern Sarajevo and Trebinje) and 52 offices managing first instance procedures. All the decisions are subject to revision, and the Director of the Fund resolves appeals. The Fund is raising funds based on contributions and other sources: the RS budget, the Pension Reserve Fund revenues, leasing and sales of the Fund's assets, interest on funds, provision of expert services, subsidies and donations and other sources. Units of the Fund in most cases are not physically accessible to people with disabilities.

According to the data from the RS Fund for Pension and Disability Insurance 41,292 persons receive disability pension. This is 17.30% of the total number of pensioners. The average age of users is 51, whereas the average disability pension is 287.67 BAM or 147.00 Euros. About 12 million BAM (6.13 million Euros) a month is allocated for disability pensions.

The current system of pension and disability insurance in case of disability allows the insured persons with this system to have equal access to the rights established in the system. Status of the insured is a starting point that allows them access and if it is not achieved, the persons with disabilities should exercise their rights in the other systems. The structure of the system is based on insurance and the rights arising from the payment of contributions, length of working service and the amount of funds, so that it can be concluded that the system of pension and disability insurance is accessible to people with disabilities and it complies with the provisions of the Convention on the Rights of Persons with Disabilities.

the users' rights. Through their internal acts, the Fund allowed use of the rights only to the persons who used the rights prior to adoption of the Law.

Analysis of the legislative and institutional framework of the child protection system

Child protection in Republic of Srpska is regulated by the Law on Child Protection of the Republic of Srpska (RS Official Gazette, editions 4/02, 17/08, 1/09). Children with disabilities in the child protection system have been identified as particularly sensitive groups (vulnerable groups), which exercises their rights independent of material conditions, in nominally larger amounts than the other children and in longer duration. The Law does not define who are the children with disabilities, but defines this category by the status as follows: a child for whom the competent authority has issued an act on classification due to developmental disability. It is the assessment that is done by the social protection regulations.

Funding for the child protection is largely provided through the contributions stipulated by the Republic of Srpska Law on Contributions. The organisation of the system is based on two key institutions. These are the Public Fund for Child Protection of the Republic of Srpska and social welfare centres.

The Fund is raising funds on the basis of contribution rates for child protection as specified in the Republic of Srpska Law on Contributions, funds from the Republic of Srpska budget and other sources defined by law. The funds collected are distributed to users on the basis of the decisions brought by the social welfare centres in the stipulated manner. In addition, the Fund monitors the needs and financial effects of the measures, conceives and proposes child protection policy and legislative amendments and supplements to the competent ministry. Social welfare centres conduct the first instance appeal process and determine the rights of child protection. Their decisions are subject to review by the second instance authority of the RS Public Fund for Child Protection.

The rights of children with disabilities in the system of child protection have socially protective nature are: children allowance, meeting the developmental needs of children and indirect right from labour, reimbursement of wages for reduced working hours.

The right to children allowance is given to the children with developmental disabilities up to 19 years of age, whereas the other children up to 15 years of age. The amount of rights is higher than the rights of children who do not belong to vulnerable groups. Out of the total of 4,918 children from vulnerable groups, 67% of children is with disabilities. The nominal amount of the children allowance for them is 90.00 KM per month per child, and for

other children it is 35.00 KM. Total funds disbursed under this category in 2011 amounted up to 3,513,150.00 BAM.

Children protection meets developmental needs of children with disabilities through programmes of early detection and inclusion in the systems of prevention and treatment and providing joint holiday for the purpose of integration and socialization of the children. In 2011, 354 children with disabilities were included in this programme and the amount paid was 139,900.00 BAM.

Parents of the children with disabilities under the RS Law on Labour can achieve special protection of women and motherhood in such way that they are entitled to reimbursement of wages for reduced working hours if the child is not accommodated in appropriate social or health facility. Employed parent works half of the working hours, and for the second half of the working hours the funds are reimbursed from the child protection funds. This right was used by 112 parents in 2011 and the amount paid was 452,052.00 BAM.

The child protection system in Republic of Srpska is very sensitive to the needs of children with disabilities, because it defined more favourable conditions for exercising the rights for these children. There are no discriminatory provisions contained within and in beside the use of inappropriate term, there are no other inconsistencies with the Convention.

Analysis of the application in RS

The information obtained through analysing of the functioning of institutional and legislative framework of social protection in Republic of Srpska in the field of exercising the rights of persons with disabilities have been verified in practice with the persons with disabilities themselves. The results obtained from the focus group and surveying the persons with disabilities enabled obtaining insight on how the social rights users feel and perceive functioning of the social security system in which social protection has been obtained and whether the results obtained by analysing the legislation were in accordance with the users experience.

The questions in the survey questionnaire, as well as directing the focus group interviews illuminated the views of the users on the knowledge of social protection, its institutional and legislative organisation, knowledge of their rights and procedures for exercising the rights, as well as their own experience about the compliance of the rights with the principles and standards in international documents.

Surveyed persons with disabilities are only partially aware of the legislative framework which includes their rights to social protection, because almost half of the respondents or 49% said they were familiar with the legal framework of their rights. The other half (26%) did not know anything about it, and 25% had partial knowledge. Those who did have the knowledge, linked social protection solely to the social welfare system and the rights exercised in it, because 94% of them stated that they knew the Law on Social Protection. Respondents explain the poor knowledge of the law by insufficient awareness due to lack of adequate coverage in the media that do not address these issues, lack of interest of social welfare centres and other public services to provide adequate information and by lack of personal awareness. Lack of awareness of the users on their rights inevitably results in the consequence of their insufficient insight into application of international standards in the legislative and institutional framework of social protection in Republic of Srpska in the field of exercising the rights of persons with disabilities.

Since the majority of the Republic of Srpska local self-government units made decisions about the extended rights which enhanced the rights of persons with disabilities in social protection, respondents were asked to reflect on how much did they know about these extended rights. Very few respondents knew about that (18%), 29% of the respondents have heard of them, but did not know what the extended rights included and 53% of the respondents did not know anything about them. Major number of those who were familiar with them linked the extended rights with the programme of the Republic of Srpska Government for the electricity subsidy.

The obtained responses could be expected bearing in mind the mass use of the right for allowance for the assistance and care by another person from the social protection system. Among the respondents, about 46% exercised this right, as well as the personal experience of persons with disabilities from the other systems that the rights they exercised did not belong to social protection.

Similar is awareness of the respondents with regards to the international documents defining the status and rights of persons with disabilities. Slightly less than half of the respondents (48%) reported that they were aware of the existence of international documents, 8% did not know anything about it, and 46% knew they existed, but did not know which international documents regulated the rights of persons with disabilities. The largest number of those who were familiar with international

regulations (84%) stated thatt they were familiar with the Convention on the Rights of Persons with Disabilities.

The results show us that awareness of persons with disabilities regarding their rights is still insufficient and that services dealing with the rights of persons with disabilities, and organisations of these people in particular, must work much more on informing and educating people with disabilities about their rights.

For the purpose of expanding the knowledge on awareness of the users about the legislative framework, their awareness of the institutional framework was also analysed through the question whether they knew which institution initiated the procedure for exercising the right to social protection. Their awareness of this issue was significantly better, because 95% of the respondents knew where they should go and which institution was responsible for conducting the procedure for exercising the right. A small number (5%) of them did not know the answer to this question justifying this by insufficient work of the institutions on promoting and informing the public on their work.

All the persons with disabilities were subjected to disability assessment process which is performed differently in different systems. The opinion of the respondents on the assessment should be worrying for the ones carrying out these activities. Two-thirds of the respondents believed that the assessment of disability in different systems of social security was not correct and was not performed professionally. They substantiate their position with the following: corrupt members of the committees, absence of clear, transparent and common criteria in the assessment, high costs that they must pay themselves during the assessment within the pension and disability insurance system, lack of expertise and training of the members of the committees, failure to adhere to applicable laws and regulations by the members of the committees, insufficient acceptance of medical records, abuse of authority by the committee members, subjectivity of doctors who are individuals in the committees, and not representatives of institutions, discrimination in the assessment and insufficient supervision over the operation of the committees by the competent authorities. The obtained opinions of the respondents on a very important process in evaluation of disability undertake to seek other solutions that would organise assessment process in an uniform manner and enable use of the findings in all systems.

Analysis of the legal and institutional framework of social protection of persons with disabilities showed that there was discrimination in exercising the right from social protection based on the cause of disability and place of residence, because the rights are different in all the systems, significantly more favourable in some systems and more developed communities. The attitudes of the respondents confirmed the previous part of the analysis.

Social protection rights vary according to the cause of disability thought 61% of the respondents, only 7% believed that there was no difference, and 32% of the respondents did not have any knowledge on that. Bearing in mind extensive lack of information of the respondents on legal frameworks and rights, it is clear why almost one-third of them could not give any comments. These differences are in terms of the amount of the rights, the scope of rights, the procedure conducted, the competence of certain institutions and overall benefits exercised by the users. The differences are not justified in any event thought 60% of the respondents who stated that there were differences. However, 40% of the respondents thought that it was justified for the rights of the disabled war veterans and civilian victims of war to be higher than non-war persons with disabilities. The inability of persons with disabilities to objectively see the nature of social rights, the uniqueness of the needs of each person with disabilities, regardless of the cause of disability leads to disunity in the disability movement and weakening of their forces in the fight for a better position and better quality of life.

46% of the respondents was able to interpret identifying the differences in the rights based on the place of residence in such way that there was a bigger number of services and greater rights in more developed local communities. One-fifth (21%) believed that the differences did not exist, and one-third (33%) was not informed and did not know anything about it. A very small percentage of them (16%) justifies identified differences, because according to them it was normal that a larger and more developed community provided more opportunities. During the focus group it was explained that there should be no differences in monetary compensations, but with regards to services, more developed local communities have more developed infrastructure at all levels and thus including the social protection field, they are able to develop institutions that provide services, the number of non-governmental organisations is higher and the needs are greater, but in smaller communities they have incomparably smaller number of persons with disabilities.

Identifying the differences and discrimination was followed by a survey of the users' attitudes on compliance of the rights of persons with disabilities in social protection with the principles and standards of international documents. A very small percentage of the respondents (11%) believed that the rights of persons with disabilities in our legislation complied with the principles and standards of international documents. The highest percentage (78%) did not know anything about it, and 21% was explicit in their view that our legislation was not in line with international instruments. During the focus groups examples were given on how this was governed in some western countries according to their knowledge.

Among the key issues which most concern people with disabilities in Republic of Srpska was a question of providing material security. The current situation is such that a significant number of persons with disabilities is fully supported by their families, because they don't have provided social security on any grounds and they have no developed community care services and other services which would enable them to have an autonomous and independent life. Therefore, they believe that social protection must find a way to define the social security of these people and work much more on the development of specific services that match their needs. And this is the responsibility of the country in the process of implementation of the ratified Convention.

The issue of healthcare protection is inseparable from and closely linked with social security, which has to work together with the social security towards the very development of services. People with disabilities have high health needs and those needs are intertwined with social needs and plans of protection in healthcare and social sectors should be developed together.

General assessment of social protection for BiH

Generally it can be said that the field of social protection in Bosnia and Herzegovina has not been well resolved, it does not provide for not even minimum security for citizens, social minimum has not been determined even for the persons with disabilities, and support for the families with children is also insufficient.

The rights stipulated by these laws for persons with disabilities have not been clearly defined, abuses occur easily, and the issue of support for persons with disabilities is often considered as provision of classic social welfare benefits for supporting persons with disabilities or their families,

whereas it actually allows for their functioning and creating equal opportunities.

These laws do not include many of the rights of persons with disabilities that they need in order to have equal opportunities in the society and to be able to achieve basic human rights.

4. CONCLUSIONS

General conclusions

- The survey results and analysis indicate that the legislative framework in the fields of accessibility, education, healthcare protection, labour and employment and social protection complies with the provisions of the UN Convention to a large extent, but that there are problems in practice.
- The Constitution of BiH, the Constitution of FBiH, the Republic of Srpska Constitution, laws and by-laws, policies, strategies and other documents of general character of the BiH Federation and Republic of Srpska, contain clear principles, objectives and methods of the society operation with its entire structure in the field of disability based on international standards, which represents sufficient value and legal basis for building the system in these aforesaid fields.
- The regulations governing these fields include anti-discrimination provisions and guarantee equal access to the defined rights for persons with disabilities.
- The established institutional framework in these fields reflects the manner of their constitutional arrangement, organisation and action and as such it allows implementation of policies and exercising the rights of the persons with disabilities.

The problems in practice reflected in the following:

- Non-existence of a uniform definition of persons with disabilities or a disability. In each field, these terms have been defined in the specific manner.
- Carrying out disability assessments under different criteria by the competent authorities in each system for the purpose of exercising their rights.
- Not observing functional capabilities and the ability to interact with society or individual needs and abilities, which has been stipulated by the Convention.

- Insufficient intersectoral cooperation in the observed sectors which leads to unequal access, position and discrimination against persons with disabilities in the process of exercising legally defined rights.
- Insufficient funds for financing the rights of persons with disabilities in these fields.
- Inconsistent data collection and the lack of a unified registry of persons with disabilities.
- Lack of public awareness of the needs and rights of persons with disabilities.
- Unequal treatment and access to the rights of persons with disabilities, given the development of local communities and place of residence.

CONCLUSIONS BY FIELDS

4.1 Conclusions in the field of accessibility

From all the above stated it can be concluded that physical environment, information and communications, including public television broadcasting services and the Internet, services intended for the public, and public transport are not sufficiently accessible to people with disabilities through legislative or institutional framework, especially bearing in mind the aspects of education, employment, healthcare and social protection.

- People with disabilities in the field of accessibility are discriminated against in all systems - legislative and institutional.
- Insufficient training of stakeholders on accessibility issues that the persons with disabilities encounter, with an emphasis on accessibility standards used in the EU.
- People with disabilities have very little knowledge on the legislation as well as the other documents regulating the issues of accessibility and discrimination.
- Existing legislation regarding accessibility should be upgraded and updated, regulate in a better way the right to the International Symbol of Access and the benefits of the radio and television license fee.

- Architectural obstacles, access to information and communications, access to public services and public transport still continue to be present in practice.
- There is almost no public transport adapted for people with disabilities
- Information tailored to the available techniques for the people with sensory impairments are available at a very low percentage according to the study
- Inactiveness of persons with disabilities is evident from the given responses - insufficient knowledge of the legislative framework, indifference towards accessibility assessment according to the questions

General assessment is that normative acts or the institutional framework in the field of accessibility do not comply with the UN Convention, since it has been made clear from the above stated analysis by sectors that the physical environment, public transport, public services, and communication and information are not in accordance with the provisions of the UN Convention.

4.2. Conclusions in the field of education

By ratifying international documents, such as the UN Convention on the Rights of Persons with Disabilities, the obligations Bosnia and Herzegovina assumed need to be met due to its tendency towards European integration.

- Certain measures have been taken and a number of strategic documents has been adopted providing a good starting point for exercising the rights of persons with disabilities to education at all levels -from preschool to higher education in the Federation of Bosnia and Herzegovina, but there is no application of the existing laws, or rather there is random application.
- Normative and institutional framework for education of persons with disabilities in Republic of Srpska is in accordance with the Article 24 of the UN Convention, as persons with disabilities have been provided with equal access to education.
- The regulations in the field of education do not contain any discriminatory provisions.

- Terminology unevenness and non-existence of a uniform definition of disability.
- Lack of uniform cumulative databases on children and persons with disabilities.
- Lack of intersectoral cooperation that would facilitate and economised problems solving in the education field.
- Lack of adequate legal measures that would sanction non-compliance with existing laws.
- Lack of knowledge on regulations in the education field.
- Lack of awareness, interest and self-activation of persons with disabilities to resolve problems in the education field and lack of organised joint activities.
- Dominance of the medical approach to people with disabilities over the social approach.
- Lack of early intervention.
- Unfitness of schools for children and persons with disabilities (accessibility, lack of educational and other aids for performing the teaching process).
- Inadequate training of teaching staff for working with children and young people with disabilities.
- Lack of sensitisation of the society to the needs and abilities of persons with disabilities.
- A small number of teaching assistants.
- Insufficient number of mobile-professional teams.
- Insufficient number of specialised schools.
- Insufficient training of teachers for inclusive education process.

4.3. Conclusions in the field of health care

- Legislative framework in the BiH Federation that regulates the healthcare field does not comply with the UN Convention on the Rights of Persons with Disabilities.
- Due to divided responsibilities between the Federation and the cantons with regards to regulating the healthcare field, there are various forms of discrimination against persons with disabilities depending on the cause of disability occurrence, place of residence, type of disability.
- Regulations of the Federation and the cantons define more comprehensive protection of disabled war veterans in comparison to

persons with non-war disabilities and civilian victims of war, because healthcare protection has been provided for them through a wider range of measures beyond the scope of the measures established under the compulsory healthcare insurance.

- Due to different economic power of the cantons, people with disabilities exercise the listed rights under different conditions and in a different scope depending on the place of residence.
- There is a different number of aids that people with disabilities can obtain, in their quality, expiry dates, participation, and the differences exist in terms of the availability of medicines and participation fee for the aforementioned.
- Regulations in the field of social security in some cantons only provide the right to compulsory healthcare insurance for the people with disabilities who do not qualify as the insured person under the legislation in the healthcare field.
- The institutional framework of the Federation of Bosnia and Herzegovina in the healthcare protection field has also not been compliant with the UN Convention on the Rights of Persons with Disabilities as it does not provide equality in accessing healthcare services in terms of the scope, quality and standards.
- Healthcare system in Republic of Srpska insufficiently identifies specific healthcare needs of persons with disabilities.
- Education and training of the healthcare system employees for working with persons with disabilities has not been sufficiently performed.
- Inadequate technical and safety conditions for working with persons with disabilities in healthcare facilities.

4.4. Conclusions in the field of labour and employment

- In Republic of Srpska and the Federation of Bosnia and Herzegovina formally observed there is a relatively good legal framework that regulates the issues of labour and employment of persons with disabilities.
- Very serious problem manifest through application, that is, lack of application of specific legal provisions.
- Appropriate by-laws are missing, (and they are too generalised, if any), statutory provisions have been stipulated mostly, which do not offer specific solutions and have no binding force in their application.
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- Very rare and insufficient support is given to the employment at the open labour market. It is a trend for the persons with disabilities to be employed only for a certain time period through the offered projects and programmes, after which they remain out of work again.
- The subject laws that have been analysed are not sufficiently aligned because they do not emphasize the issue of persons with disabilities enough and they do not address each segment under the Article 27 of the UN Convention on the Rights of Persons with Disabilities.
- There is a lack of coordination with regards to institutions that address issues of labour and employment of persons with disabilities, that is, cooperation between the institutions and organisations of persons with disabilities which implies that institutions do not have a clear picture of the situation.
- The existing legislative solutions have not been sufficiently applied.
- In Republic of Srpska the process of professional rehabilitation and training of persons with disabilities has not been carried out.
- Non-existence of reserved jobs for persons with disabilities.
- Uneven percentage of disabilities as a minimum for exercising the right to rehabilitation and employment.
- Non-existence of job centres and sheltered workshops for employment of persons with disabilities with a higher degree of disability and physical impairment.
- Insufficient incentives for employers to employ people with disabilities.
- General assessment is that the existing legislation is insufficiently harmonized with the provisions of the UN Convention.

Knowing that they work and thus provide for their own living, that is, they are not at the expense of the family and society, for every person, and in particular for a person with disabilities, is invaluable and it very much contributes to socialization and integration into the society as a whole.

4.5. Conclusions in the field of social protection and appropriate standard of living

The conclusions that can be drawn from the above described analysis in the field of social protection and appropriate living standards are:

- Laws and other regulations in the field of social protection are not aligned with the Convention on the Rights of Persons with Disabilities.
- There is no uniform definition of disability, and the one that exists in the law does not comply with the definition in the Convention.

- No social minimum has been defined, not even for the people with disabilities.
- The capacities of the system for ensuring social security do not match the needs, they are not based on human rights and they do not eliminate discrimination.
- Allocation of funds in the social protection is not fair and it is not based on the needs but rather on the status. There are evident differences in the scope, amounts of benefits and inclusion of persons with disabilities.
- Non-existence of a mechanism for providing social security.
- Undeveloped services and support services in the local community.
- The rights have been defined on the basis of status, that is, the cause of disability occurrence, rather than on the basis of the actual needs of a person.
- There is discrimination against persons with disabilities based on the causes and circumstances of the disability occurrence, that is, the rights have been defined on the basis of status rather than on the basis of the actual needs of a person for equalisation of opportunities.
- Discrimination against the PWDs based on the territorial principle has not been removed.
- Non-existence of social housing services, supportive and protected housing, and the programme of social housing and independent living in the community has not been developed.
- Children with disabilities do not have equal support on the entire territory of the Federation of Bosnia and Herzegovina.
- Unfitness of social services in local communities to persons with disabilities.
- Insufficient staff capacity to provide adequate services and an insufficient number of interpreters for communication with persons with impaired hearing.
- Organisations of persons with disabilities do not have the appropriate status, they do not have adequate support from state institutions and for those reasons they do not have the capacities to advocate the rights of people with disabilities.

5. RECOMMENDATIONS FOR HARMONISATION AND COMPLIANCE OF THE LEGISLATIVE AND INSTITUTIONAL FRAMEWORK WITH THE UN CONVENTION

Based on the analysis of the legislative and institutional framework and comparisons with the UN Convention, as well as the results of the legislation application analysis and the situation in practice with regards to the persons with disabilities and their rights, the following recommendations arise:

General recommendations

- Constantly work on harmonisation of the normative and institutional framework in the BiH Federation and Republic of Srpska in observed fields with the provisions of the UN Convention on the Rights of Persons with Disabilities.
- Establish a systematic coordination for all issues related to disability.
- Ensure active participation of persons with disabilities in developing, implementation and monitoring of public policies.
- Provide definitions of disability and persons with disabilities in all laws in accordance with the UN Convention.
- Establish a single registry with information on the types of disability, sex, age and other characteristics of the persons with disabilities.
- Establish uniform criteria for assessing disability in accordance with the UN Convention.
- Increase the scope and ensure more fair distribution of resources for exercising the rights of persons with disabilities.
- Continually work on informing and sensitization of the general public on the rights and needs of persons with disabilities.
- Encourage networking of organisations/associations that bring together people with disabilities.

5.1. Recommendations for harmonisation and compliance in the field of accessibility

From the above stated analysis in the field of accessibility in certain sectors - physical environment, public transport, public services, as well as communication and information, the following recommendations arise:

- Develop accessibility programmes, aids and literature in the available techniques (Braille, sign language, sound technique, magnified letters print, customised contents) for all levels of education, as well as the

sign language interpreters, other non-verbal forms of communication, as well as other forms of support for education of persons with disabilities.

- It is necessary to ensure equal access to services for an affordable life in the community, which means better accessibility to information for the people with hearing impairments, vision impairments and persons with reduced intellectual capacities, high quality orthopaedic aids, adapted to modern technologies, etc.
- Regulate accessibility to public facilities through the universal design application.
- It is particularly necessary to work on promoting the "universal design", which means designing of products, environments, programmes and services in a way that they can be used by all the people to the greatest extent possible, without the need for adaptation or special designing. Universal design should not exclude accessory devices for particular groups of persons with disabilities in those cases when it is necessary.
- Support introduction of the universal design in the curriculum of all professions involved in building the environment and European standards for accessibility.
- Provide conditions for independent living and full participation in community life for all persons with disabilities.
- Establish broad networks of support in the community to enable the people with disabilities to make an independent choice and achieve their life goals.
- Create an environment that will be accessible to all persons with disabilities.
- Provide adequate access to information and communications, including all forms of transport, as well as the use of modern technology, both in urban and rural areas, for all persons with disabilities.
- Provide access to public transport through accessibility to the public transport and provision of special transport and other communication contents for persons with disabilities (accessible pedestrian crossings, audio traffic lights, stops, platforms and parking spaces for persons with disabilities).
- Harmonisation of laws and regulations at all levels with international standards governing the above fields.

- Create conditions for the PWDs in which they will be able to choose and create the conditions themselves under which/who with and where they will live and participate in the community life.
- Strengthen supervising and control of the application of laws and regulations governing this field.
- Ensure full enforcement of the BiH Federation Decree on spatial standards, urban planning-technical requirements and standards for prevention of creating architectural-urban planning obstacles for persons with reduced physical abilities, that is, the RS Regulations on conditions for planning and designing facilities for unimpeded movement of children and persons with reduced physical abilities in order to remove physical obstacles to accessing all public and other buildings.
- Introduction of appropriate elements of support in the field of information, means of communication and new technologies for the deaf, hard of hearing, blind and partially sighted persons and persons with mental and intellectual disabilities.
- Ensure availability of all forms of public transport for all PWDs.

5.2. Recommendations for harmonisation and compliance in the field of education

In accordance with the problems identified, the following is proposed:

- Changing and adapting the education system in order to meet the special needs of individuals thus creating school tailored to fit the child.
- Increase enrolment of children in preschool education.
- Training the teachers for inclusive education process.
- Increase the number of teaching assistants and increase the number of mobile-professional teams.
- Provide textbooks and teaching aids in accustomed techniques for the children and students with disabilities.
- Synchronise normative acts in the field of education within the BiH Federation and the Article 24. Of the UN Convention on the Rights of Persons with Disabilities.
- Agree terminology referring to people with disabilities and provide a clear and unique definition of disability.
- Establish mechanisms for monitoring implementation of legislation referring to the inclusion of children with disabilities in regular education.

- Resolve architectural and urban-planning obstacles within education institutions at all levels.
- Establish adequate documentation on monitoring the students with disabilities from pre-school to professional training with a view to facilitate adjustment of individual programmes and adequate learning and teaching aids, which would make the learning more successful.
- Provide additional technical support to children in accordance with their interests and needs.
- Develop a support system in teaching through establishing and developing the model of assistance for the children and persons with disabilities (teaching assistant, personal assistant, educational - rehabilitation and peer support).
- Legally resolve providing personal assistance (as well as technical and professional assistance) to the students in need of adequate assistance.
- Ensure compulsory inclusion in the regular education system of the children with disabilities accommodated in the institutions of social protection due to undeveloped support services in the local community.
- Provide lifelong learning for adults with disabilities, in a form of additional training, retraining and development of specific properties of the persons with disabilities, talents and creativity, in order to enhance the dignity and self-worth.
- Develop accessibility programmes, aids and literature in the available techniques (Braille, sign language, sound technique, large letters print and customised aids) for all levels of education, as well as the sign language interpreters, other non-verbal forms of communication, as well as other forms of support for education of persons with disabilities.
- Establish a growing number of mobile teams for helping students, teachers and parents of the children with disabilities, or, employ a number of experts in accordance with the required level of support for the students, which will provide timely, adequate and continuous support.
- Introduce subjects that will give you the knowledge and skills for working with children with disabilities in the teachers' education facilities.
- Provide professional development for educators, teachers, professors, pedagogues, who did not have the subjects at the undergraduate study

course of the role and tasks of teachers, educators, principals, pedagogues in inclusive education.

- Set up a database on children who need professional support (from developmental counselling / obstetric clinics, to high school).
- Provide a multidisciplinary and inter-sectoral approach, based on a legal act, to the problem of disability among educational, health and social institutions, and certain type of cooperation with non-governmental organisations.
- Plan the funds in the budgets of the competent Ministries of Education for architectural organisation of schools where the children with developmental disabilities are located, as well as resources for learning and teaching aids needed for working with these children.
- Provide education and psychological-social support to parents by establishing developmental counsels for parents, in order to receive adequate technical assistance as early as possible for help in education, skills acquisition and socialisation of children.
- Establish a "Service for tracking success of inclusive education" with the cantonal educational institutes and ministries.
- Provide alternative education in special institutions according to the needs and best interests of children and commitment of the parents.

5.3. Recommendations for harmonisation and compliance in the healthcare field

- Secure and provide minimal scope of rights under the compulsory health insurance through consistent application of the decision on the basic package of healthcare rights of all persons with disabilities, which is of particular importance when it comes to orthopaedic and other aids and lists of essential drugs.
- Improve the standard of quality of healthcare services.
- Include all persons with disabilities under compulsory healthcare insurance regulations of the cantons from the field of social protection, if they do not qualify as the insured person under the legislation in the healthcare field.
- Provide and ensure accessibility to healthcare facilities for all persons with disabilities without discrimination on any grounds whatsoever.
- Establish the same standards in terms of equipment and facilities starting from the needs of persons with disabilities in healthcare institutions.

- Provide approximately the same conditions and scope of the right to orthopaedic and other aids considering the importance of orthopaedic and other aids to all persons by disabilities regulations at all levels.
- Provide and ensure uniform standards of healthcare on the entire territory of BiH to all women with disabilities.
- Provide permanent education for medical and paramedical staff that will be providing healthcare services to persons with disabilities.
- Establish programmes that will aim to detect disorders that lead to disability in both the prenatal and in postnatal stage.

5.4. Recommendations for harmonisation and alignment in the field of labour and employment

- The existing legal solutions would have to be improved in such way that certain provisions are elaborated more specifically, possibly incorporating new provisions that will contain measures already listed in the Article 27 of the UN Convention on the Rights of Persons with Disabilities.
- Upgrade the existing legislation with appropriate laws and regulations in order to achieve more consistent application in practice.
- Develop and implement professional rehabilitation and training of persons with disabilities.
- Define and reserve jobs for persons with disabilities.
- Increase the percentage of disability as a minimum for exercising the right to employment and rehabilitation in Republic of Srpska through amendments to the Law on Professional Rehabilitation, Qualification and Employment of Persons with Disabilities.
- Within the framework of legislation and regulations oblige the institutions in the field of labour and employment of persons with disabilities in a certain way to partnership with organisations of persons with disabilities, which means incorporation of more specific provisions defining the level, forms and method of the partnership.

The position of persons with disabilities in the field of labour and employment would be enhanced significantly through implementation of these recommendations and it would set strong foundations for the new, more detailed reforms, all with the goal of full compliance with the UN Convention on the Rights of Persons with Disabilities.

5.5. Recommendations for harmonisation and compliance in the field of social protection and appropriate standard of living

- Align the definition of disability with the definition of disability under the Article 1 of the Convention on the Rights of Persons with Disabilities.
- Define the minimum social security of disabled people living in poverty under the Law on Social Protection and Social Security.
- Base the rights of persons with disabilities, who aim to cover the costs related to disability and equalisation of opportunities, on the need and in a uniform manner in all the laws.
- Conform the laws governing the rights of persons with disabilities with the Convention and ensure that the rights and benefits and support are provided in accordance with the needs of each individual, and not on the basis of the status, cause and circumstances of the disability occurrence (CVW, disabled war veterans, people with non-war disabilities).
- Stipulate combined support model to the PWDs through establishing support services in the local community by amendments to the existing legislation or the adoption of new laws, which will not exclude remunerations of certain categories of persons with disabilities.
- With regard to the constitutional system of the Federation and huge powers given to the cantons, it is necessary to define the framework for the rights of the PWDs at the level of the Federation for the rights of the PWD exercised at the cantons. This would eliminate or at least mitigate discrimination on the territorial principle.
- Define social programmes in general by appropriate law at the level of Republic of Srpska, the law at the level of the BiH Federation, and then the cantonal laws, as well as for the people with disabilities (supportive and sheltered housing), with the obligation of incorporation of provisions referring to the adaptation of the housing for these people.
- Stipulate clear obligations for the authorities to start organisation of services in the local community to support people with disabilities by amending the existing laws in all systems, or by adoption of a new law on social services.
- Increase obligations of the local self-government units in the development of accessible communities that enable people with disabilities integrated life in the community, and an independent life with support rather than living in special institutions by amending the Law on Local Self-Government.

- Fundamental rights of children with disabilities need to be addressed in a uniform manner throughout the BiH Federation territory.
- Incorporate the rights for persons with disabilities who have acquired the disability based on work injury or occupational disease which will allow for covering the costs related to disability by amendments to the Law on Pension and Disability Insurance.
- Define more clearly monitoring and control of the application of legal solutions in the existing laws.
- Through an act or a regulation it is necessary to clearly define organisations of persons with disabilities, define their representativeness and the criteria for their financing from the budget and outside the budget funds at all levels of organisation.

Implementation of the proposed recommendations and measures should be implemented by the competent authorities, institutions and organisations, in cooperation with all the interested citizens, and especially with the persons with disabilities.

Annex 1

In each entity there were five working groups that participated in the research for the purposes of producing this Report and in the following composition:

The BiH Federation		Republic of Srpska	
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**Report on Compliance
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in the Republic of Serbia
with the UN Convention on the Rights of Persons
with Disabilities
and Recommendations for Harmonization**

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1. INTRODUCTION

The “Report on Compliance of Legislative and Institutional Framework in the Republic of Serbia with the UN Convention on the Rights of Persons with Disabilities and Recommendations for Harmonization” was developed as part of the project “Establishing the Balkans Independent Disability Framework” implemented by Agency for Coordination, Education and Development - ACED as a leading agency, with partner organizations in Bosnia and Herzegovina (in both entities), Serbia and Montenegro. The Report was prepared according to the common methodology agreed upon by the partners. The situation in five fields recognized by the organizations of the persons with disabilities in all three countries as the most important for their members was analyzed, namely: ***accessibility, education, health protection, social protection and employment***. Working groups that were formed for each field analyzed the situation in that specific field.⁸⁸

This report represents an analysis of the harmonization of the legislative and institutional framework and the implementation of the UN Convention on the Rights of the Persons with Disabilities in the fields of accessibility (Article 9), education (Article 24), health protection (Article 25), employment (Article 27) and social protection (Article 28) for the persons with disabilities in the Republic of Serbia, with the recommendations for harmonization of legislative and institutional framework and their application.

National Assembly of the Republic of Serbia ratified the Convention and the related Option Protocol on 29 May 2009. The initial report on

⁸⁸ The list of Team members is included in Annex 1

implementation of the Convention was delivered by Serbia to the Commission for the Rights of the Persons with Disabilities on 20 June 2012.

Summary versions of reports per individual fields are included in the National Report and contain a detailed analysis of regulations and their application in practice. For those who are interested in more details in specific fields, the Center will consider a possibility of publishing more extensive versions as special reports per specific fields.

Representatives of over 50 organizations of persons with disabilities in Serbia took part in designing the report, through working meetings, focus groups and sending comments. We would like to thank them all for that.

2. CONTEXT

According to the estimates of the Republic's Institute of Statistics, the population of Serbia is 7.241.295.⁸⁹ The Republic's Institute of Statistics states, according to the data of the census carried out in the territory of the Republic of Serbia without the territories of AP Kosovo i Metohija, there are 571.780 persons with disabilities in Serbia, or 8% of the population.⁹⁰ This data are obviously not in conformity with the WHO and Eurostat statistics as there were some mistakes in formulating the questions and training of poll-takers as to how to ask these optional questions, while 119.482 persons did not want to answer these questions at all. The number of persons with disabilities in Serbia is certainly bigger.

According to the data of the Institute of Statistics of 29 March 2013, GDP in Serbia in 2011 amounted to „3.208.620,2 mil. RSD“⁹¹. GDP per inhabitant in dollars, *according to the purchasing power of domestic currency (PPP)* was⁹²: in 2010, 10.120 \$; in 2011, 10.409 \$; in 2012, 10.528 \$ (respectively).

Situation in the field of accessibility

There are unfortunately no data on a part of GDP apportioned for accessibility in Serbia. Partial indications on the investment in accessibility may be derived from the data on the projects financed by the Ministries responsible for the social policy, culture and information fields.

⁸⁹ Website of the The Republic of Serbia Institute of Statistics webzs.stat.gov.rs data of 23 March 2013.

⁹⁰ DISABILITY: Data per towns and municipalities, the Republic's Institute of Statistics, Belgrade 2013.

⁹¹ Website of the Republic of Serbia Institute of Statistics <http://webzs.stat.gov.rs>

⁹² IMF data, according to the citations from the Journal "Makroekonomija", of 12 February 2013.

Situation in the field of education

The information on the number of the enrolled children with disabilities of preschool, elementary school and secondary school age as well as on the number of persons with disabilities attending elementary schools for adults is not available, because the database of the Ministry of Education, Science and Technological Development is currently being designed⁹³. According to the Republic's Statistics Institute (hereafter: RZS) data, as stated in the Strategy of development of education by 2020, in the school year 2009/2010, only about 4.000 children with disabilities were included in preschool education. There is no reliable data as to the /degree/ (percentage) of the children with disabilities finishing elementary school. The Institute of promotion of education and upbringing has the data only on the children who are in the system, and not on those who remained outside the system. There is no reliable data on the number of children with disabilities attending SOUOV. According to the findings of research of the found situation in the framework of TEMPUS project EQUIED⁹⁴ from 2011, and based on the database of RSZ, in the school year 2010/11, of total 228.531 students there were 1.197 students with disabilities, which is 0,5 % of student population.

At the UNICEF meeting held in New York on 06 February 2013, in his presentation on inclusive education, the education minister stated that since the adoption of the Law on the Basis of the Education and Upbringing System in 2009 about 15.000 teachers were trained to date, i.e. one fifth of the teaching staff, while one third of the elementary schools in Serbia increased enrollment of the children with developmental disabilities/ in 2010⁹⁵. There is no available data on the number or structure of persons with disabilities employed in the education system.⁹⁶

⁹³ <http://www.equied.ni.ac.rs/dokumenti/viewcategory/4-publikacije.html> (Downloaded docuemnt Study of the Found Situation, p. 34)

⁹⁴ V. Ibid pp. 34-38 and 41

⁹⁵ izvor: http://www.prosvetni-pregled.rs/list_detalji.php?id=848.

⁹⁶ At enrollemnt, at all teachers' and educators' faculties/colleges of vocational studies, the candidates take the exams of affinities and abilities – physical, music, and oratory, which are of eliminatory character. This formulation is quite uniform in all Statutes. The Statute of the School of Pedagogy in Sombor states in its Article 73 („Protection of Persons with Disabilities – harmonized with UNS Statute), that the „persons with disabiities“ may enroll in the study programmes in which checking of abilities and affinities are not placed as a condition, which includes the study program „Teacher“ and „Trainer“. In fewer Statutes it is explicitly stated that the necessary documentation includes doctor's certificate and speech therapist's

Situation in the field of health protection

Allocation of funds for the health protection in 2013 amounted to \$546 per capita, which is 1.875% of total GDP. There is no available data as to allocation for the health protection of persons with disabilities.

Free medical assistance is available to anyone *who is need of it*. However, in order to use any other form of health protection free of charge, i.e. with payment of the participation fee, a person should have medical insurance with the Republic Institute of Health Insurance (RFZO), i.e. he/she must be employed on a permanent basis, must perform independent /or agricultural activity, must be a pensioner, unemployed in the records of the National Employment Service, or have a decision entitling him/her for other person's care and assistance. Property limit was introduced for the first time allowing the persons who are in social need easier access to health insurance rights.

Obligatory health insurance includes insurance in cases of disease and injuries outside the place of work and insurance in case of injury at work or professional disease. Basic rights from health insurance include the right to health protection, right to wages during the time of temporary inability of the insured person to work, and the right to be compensated for transport expenses incurred in relation to the use of health protection.

Family members of the insured person (spouses and children up to 26 years of age) are entitled to obligatory health insurance on a condition that the insured person through whom they exercise such rights is eligible for such insurance. Social health insurance is a contract between the client and the insurance according to which, when an event for which we are insured, occurs, a certain sum is reimbursed to the insured person or, most frequently, bears the expenses of the medical provider either fully or partly. Social insurance is obligatory. Anyone in a certain group must be insured and pay a certain amount of money as contribution. RFZO insured persons may receive medical protection in state healthcare institutions.

Situation in the field of employment

In December 2012 there were 20.666 unemployed persons with disabilities on the records of NSZ⁹⁷, with 67,0% men and 33,0% women. According to

certificate on speech abilities, while in others this is mainly regulated by Rulebooks and decisions.

⁹⁷ National Employment Service, March 2013.

the age structure, 42.2% of unemployed persons of disabilities are over 50 years of age, 40.8% are of age from 30-50 years and 14,9% are younger than 30⁹⁸. The education structure of the persons with disabilities is such that as many as one third of them have finished only 4 grades of elementary school (32.0%), 12,2% finished only the elementary school. 51,5% of persons with disabilities completed the secondary school (III-V degree of professional qualification), and only 4,4% of persons with disabilities completed higher education. The number of adults who do not have any legal capacity and therefore no working capacity in 2011 was 11.025.

Total funds of the Budget Fund for Professional Rehabilitation and Fostering Employment of Persons with Disabilities in 2013 amounted to 16,663,773.55 Euro, chapter 29.7^{99, 100}, which is 0.18% of the Republic of Serbia budget for 2013. For direct incentive measures for employment through NSZ, 6,155,561.59 Euro or 0.06% GDP-a were allocated from this sum

The situation has significantly changed since passing of the Law on Professional Rehabilitation and Employment of the Persons with Disabilities in 2009. A total number of legal entities to which the obligation of employing persons with disabilities related, at the end of 2012 was 5.142, of which 1.968 budgetary beneficiaries and 3.174 others, while the number of employed persons with disabilities during the period May 2009 to December 2011 was 5.290 which is considerably more compared to previous years, when about 200-250 persons were employed on the average on the annual basis¹⁰¹. The total number of employed persons with disability in 2010 was 10.326¹⁰², while at the end of 2012 there were 11.467 persons with disabilities who were employed¹⁰³, which is an 11% increase. This shows that since promulgating the Law on Employment of Persons

⁹⁸ National Employment Service, March 2013.

⁹⁹ Law on the Budget of the Republic of Serbia for 2013, 1.894.976.000,00 Dinars

¹⁰⁰ Exchange rate as of 31 December 2012, when 1 Euro was equivalent to 113,7183 Dinars

¹⁰¹ <http://www.paragraf.rs/strane/aktuelne-vesti/031210-vest11.html>

¹⁰² Initial Report on Implementing the Convention on Rights of the Persons with Disabilities in Serbia, Belegrade, 2012, p. 69:

http://www.ljudskaprava.gov.rs/sites/default/files/u3/konvencije/invaliditetom/inicijalni_izv_estaj_na_srpskom_jeziku_lat.pdf, downloaded in March 2013.

¹⁰³ Report on fulfilling the obligation of employing persons with disabilities based on filed IPWD forms, for December 2012.

with Disabilities (hereafter: OSI), employment of persons with disabilities has been continuously increased.

The legal obligation of employment of persons with disabilities in December 2012, according to all modalities, was fulfilled for 17.175 persons. If we compare the total number of employed persons in 2012 and the obligatory number of employed persons with disabilities, according to the law, the obligation of direct employment of OSI in 2012 was fulfilled in 66.8% cases. In 30.7% of cases this obligation was fulfilled by financing the wages of persons with disabilities in a company for professional rehabilitation or in a social company, while 2.2% of employment obligation was fulfilled based on contracts on business and technical cooperation, purchase of products or provision of services with a company for professional rehabilitation and employment of disabled persons. Only 47 employers (0.3%) fulfilled the employment obligation by payment into the OSI Employment Fund. Having in mind that in 2012 there were 1.727.048 employed persons on the average¹⁰⁴, we can conclude that a share of the persons with disabilities in total employed persons in Serbia is 0.6%.

Situation regarding an appropriate standard of living and social protection

Social inclusion of persons with disabilities is at a low level. This is contributed by financial poverty and inaccessible living environment, non-acceptance and prejudices of the community and the lack of interest of local community for their needs. According to the Ministry of Labour, Employment and Social Policy data, 70% of total number of persons with disabilities in Serbia are poor, 13% are employed and more than a half live on different social benefits.

Insufficient number of services in the local community also influences the social inclusion of the persons with disabilities. The system of social protection services for persons with disabilities in Serbia is still mostly institutionalized, with a relatively limited range of services in community and services of support at the local level. The distribution of services is uneven, because the number and quality of services is determined by the

¹⁰⁴ Republic of Serbia, Republic's Statistics Institute:

<http://webzrs.stat.gov.rs/WebSite/Public/ReportResultView.aspx?rptKey=indId%3d240201ND01%2635%3d6%262%3d%23last%233%2633%3d0%2c1%2c2%2623%3d0%2c2%26sAreal%3d240201%26dType%3dName%26lType%3dSerbianCyrillic>, downloaded in 2013.

degree of economic development of local self-governance units within broader territorial units. The fewest services are available in rural areas. The content of certain services is insufficiently known both to the providers and beneficiaries of service. Service providers include the institutions of the system and associations of persons with disabilities, most frequently engaged in projects, all of which has an impact on the type, quality and sustainability of services.

The most used services in the community for this beneficiary group are the following: day care and education, sport, recreational and the activities in the field of culture, transport related to program activities. Some of the most rarely used services include the following: home-based assistance, personal assistants service, supported community living, therapy services and specialized city transport¹⁰⁵. The highest share is a share of services for the children and for the young with developmental disabilities. The biggest number of local self-governance units (68) provide services of day-care for children with developmental difficulties and twice less (35) self-governance units provide services of home assistance for children with developmental difficulties¹⁰⁶.

In order to improve the position and social inclusion of the persons with disabilities, the Ministry of Labour, Employment and Social Policy provides financial support for the implementation of the program of social and humanitarian organizations as well as for the implementation of the projects for improving the position of the persons with disabilities.

24.6% of gross domestic product was spent in 2010 in Serbia, while the average in 27 countries European Union members was at the level of 29,4%¹⁰⁷. There is no available data on the allocation in percentages for GDP for the field *appropriate standard of living and social protection of persons with disabilities*.

The highest share of allocations for social protection comes from the national level. Allocations from the Republic of Serbia budget for social protection beneficiaries do not follow the trend of increase in number of these beneficiaries, that is to say, there is a great misbalance between the

¹⁰⁵ Source: The first national report on social inclusion and reduction of poverty (2011).

¹⁰⁶ Preliminary data of research of the Center for Liberal-Democratic Studies carried out during 2012.

¹⁰⁷ According to Eurostat data.

number of beneficiaries on the one hand and allocations for the social protection/benefits on the other. A share of expenditures for social protection in total expenses of local self-governance units is less than 5%. The structure of local self-governance units expenditures itself is relatively stable but with big differences between individual units. *Social protection benefits* (with a share of 71% i.e. 56% if the city of Belgrade is excluded from the analysis, in total expenses of cities and municipalities for social protection) dominate the expenses, while allocations for *financing the work of social protection institutions* are 29% on the average (i.e. 24% if data for Belgrade are excluded).

Methodologies

Working groups analyzed five mentioned fields; in the first segment „desk analysis“ of legislative and institutional framework was carried out, which was then presented to the organizations of persons with disabilities (OOSI) in meetings and by sending through OOSI mailing list in Serbia in order to receive comments.

The analysis of the implementation of legislative framework in practice and collecting case studies in certain fields were done by sending questionnaires to the OOSI members, and then through five specially organized focus groups in Belgrade, Novi Sad, Niš, Kragujevac and Užice, as well as on the basis of independent regulatory bodies in the Republic of Serbia (Ombudsman and Commissionaire for Protection of Equality), reports from other relevant institutions and published surveys of different organizations in these fields.

3. ANALYSIS OF LEGISLATIVE AND INSTITUTIONAL FRAMEWORK

3.1. ACCESSIBILITY

3.1.1. LEGISLATIVE FRAMEWORK

The analysis of harmonization of legislative and institutional framework in the Republic of Serbia was done on the basis of Article 9 of UN Convention on the Rights of Persons with Disabilities and the field of accessibility.

Definitions and anti-discrimination legal framework

Law on Planning and Construction defines accessibility standards as „obligatory technical measures, standards and requirements of designing, planning and construction that enable unimpeded movement and access of persons with disabilities, children and elderly people“ (Article 2, section 40). **Rulebook on Technical Standards of Accessibility** of May 2013 defines a person with a disabilities in the following way: „A person with disabilities is anyone with bodily, sensory or intellectual impairment who, due to the barriers that exist in the environment is unable to move unimpeded or use public areas, public use facilities, residential buildings, including public transportation and other services intended for the public“ (Article 3).

Law on Prevention of Discrimination of Persons with Disabilities lays down, among other, the ban of discrimination of persons with disabilities in the field of access to public buildings, areas and services (Art 13-16), and access to public transportation (Art 27-29). The law forbids denial of access to public buildings and areas, refusal to provide services by a person within the framework of his/her activity or provision of the same service to persons with disabilities under unfavourable conditions. A person providing the above services is required to perform *necessary adaptations* in order to make the service accessible to a person with disabilities. An owner of a public use facility is required to perform necessary adaptations. The Law forbids disabilities-based discrimination in public transportation. That discrimination includes refusal to transport a person with disabilities, refusal by the transportation means staff to offer physical assistance necessary for transport by that means, if such assistance does not endanger safety of traffic; the law also forbids imposing disadvantageous transportation conditions for persons with disabilities (Article 27). Transportation of persons with disabilities in specially adapted means of

transport and special rate fares do not constitute discrimination acts (Article 28).

This Law lays down that local self-governance units should undertake measures to create accessible physical environment for persons with disabilities (Article 33). The Law also envisages an obligation of public authorities bodies to take measures to ensure that the persons with disabilities are equal in procedures conducted before these bodies (Article 34). In May 2008 started the development of the **draft Law on Use of the Sign Language**. Section V also lays down a separate civil procedure for disabilities-based discrimination.

Legal framework for accessibility of physical environment

According to the Law on Planning and Construction of 2009, an obligation is laid down for designing and construction of high rise buildings of public and business purpose as well as of residential and business-residential buildings with 10 and more apartments, so that the persons with disabilities, children and elderly persons are allowed unimpeded access, movement, staying and working in them (Article 50). The Law defines the accessibility standards (Article 2) which are further defined in more details in a by-law. Article 30 of the Law on Planning and Construction, in its item 5 explicitly states that physical plans must contain, among others, the requirements stipulating that the areas and the public purpose buildings should be made accessible in the sense of technical accessibility standard.

A body responsible for issuing building permits issues a decision approving removal of barriers for disabled persons (Article 149). A fine has been laid down from 100.000 to 500.000 Dinars for the investors who do not comply with accessibility standards, as well as a fine of 10.000 to 50.000 Dinars for responsible individuals. In May 2013 a new **Rulebook on Technical Accessibility Standards** was adopted.¹⁰⁸ The Rulebook defines more closely technical accessibility standards and elaborates on city planning and technical requirements for planning the areas of public, traffic and pedestrian areas, access ways to building and building design, both for newly designed buildings and buildings being renovated (residential, public use buildings, etc. as well as special devices in them (Article 1).

The Rulebook on Manners and Content of Performing Review of Main Designs envisages performing of technical check of new building main

¹⁰⁸ „Official Gazette RS“ no. 46/ 2013.

designs. Among other, application of technical standards is checked; however, the Rulebook does not explicitly state accessibility standards, due to which there may be some challenges regarding application in practice.

Legal framework for accessibility of public transport

The new **Law on Air Traffic** was adopted in autumn 2010. In its Article 127, paragraph 3, it lays down an obligation of an operator to provide all necessary services to passengers with disabilities and with impaired mobility so that they can have the right to participate in air traffic on the same conditions, i.e. without discrimination.

Law on Safety of Road Traffic regulates, among other, issuing of tickets for the vehicles for persons with disabilities. A vehicle adjusted for operation by a person with disabilities can be marked by a special sticker issued upon that person's request. The Ministry of Internal Affairs prescribes the appearance of the sticker (Article 24). Uniform sticker for parking the vehicles registered on the name of a person with disabilities at designated parking places is valid for the entire territory of the Republic of Serbia. However, local self-governances are responsible to prescribe the criteria for issuing stickers, so that in practice, there are no uniform criteria. No stopping or parking of the vehicles on strips for movement of persons with disabilities are allowed or at parking places reserved for vehicles of persons with disabilities, unless a vehicle has a parking sticker" (Article 66)

The Law on Railway Transport, in its Article 87 lays down that the contract on obligation of public transport and general rules define the quality requirements, including ensuring accessible crossing with passengers with disabilities (item 6) and level of quality of services provided by railway carrier, including accessibility for passengers with disability (item 7). Railway Directorate performs checking of quality of railway services, including accessibility for passengers with disability (Article 93).

The Law on Road Transport does not contain any special provisions on accessibility of public railway or road transport. City transport company Beograd as well as Public Company Lasta issued a decision to allow the blind passengers to get on their vehicles with guide dogs.

1.4 Legal framework for accessibility of information and communication

Law on Public Information of Serbia of 2003 envisages a general obligation of the state, territorial autonomy and local self-governance to make the

information available to persons with disabilities, while **the Law on Preventing Discrimination of Persons with Disabilities** prescribes an obligation of the state bodies, territorial autonomy and local self-governances responsible for issues of culture and media to take measures to provide access to information and communication to persons with disabilities through the use of appropriate technologies and ensuring access to information in the public TV service informative program by subtitling the news and text display (Article 35). The public debate on draft of the new Law on Public Information is currently ongoing. The draft contains clauses on providing persons with disabilities access to public information by, among other, application of translation into sign language and the use of Braille alphabet.

Law on Electronic Communications envisages that the goals and principles of governing the relations in the field of electronic communications should, among other, include ensuring availability of services of universal service to all citizens of Serbia, while meeting the needs of specific social groups, including persons with disabilities and provision of maximum benefit for the users of electronic services, including the persons with disabilities, especially in terms of rate, selection and quality of services (Article 3). General requirements that may be prescribed for all or only some types of electronic communication networks and services include, among other, consumer protection requirements, including requirements for provision of accessibility to services of universal service for persons with disabilities, (for example by fixing terminal equipment adjusted for the use of persons with impaired hearing, vision etc. in operator's offer, that are defined for the universal service providers, as envisaged by the Law; or by adjusting the telephone booths for access and use of the persons with disabilities – Article 37, item 12). The main services of universal service also comprise special measures offering the persons with disabilities the same possibilities to access telephone services, including calls to emergency services (Article 55, item 5). The Ministry lays down the requirements in terms of providing the same possibilities for using the services by persons with disabilities (Article 55). The Agency is authorized to order modification of rates to the operator if necessary to provide equal possibilities for using the services by persons with disabilities (Article 56).

The Government of Serbia has issued a **recommendation** to responsible authority bodies to provide availability of public information in electronic format for the blind and persons with poor vision. It is worrying that the

„Presentations of the public administration bodies largely do not pass the validation in the context of eAccessibility (accessibility of content of presentation to the persons with disabilities)“.¹⁰⁹

Legal framework for accessibility of services designed for the public

Law on public procurements lays down obligatory technical specifications and documentation in the public procurement procedure. Technical specifications relate to, among other, the accessibility of goods and services to persons with disabilities (Article 70).

Rulebook on the Conditions and the Manner of Performing Hospitality Activity, the Manner of Providing Hospitality Services, Classification of Hospitality Facilities and Minimal Technical Requirements for Organization and Equipping of Hospitality Facilities, in its Article 30 envisages that a hospitality facility in which services are also provided to the persons with disabilities, must have an entrance to the building, as well as the door, equipment and the area for manipulation in the rooms that are used, and must be dimensioned in accordance with the needs of the persons with disabilities.

Strategic framework for accessibility

The Government of the Republic of Serbia adopted on 28 December 2006 a **Strategy for Promotion of the Positions of the Persons with Disabilities in Serbia from 2007 to 2015**. The fifth general objective envisaged by the Strategy is allowing access to persons with disabilities to built environment, accessible transport, information and communication as well as to services intended for public. In order to reach this goal, the plan of removal of barriers and building of accessible buildings and services should be developed and implemented. In order to implement the goal 5, the Strategy defines the following objectives:

- Objective 13: Make sure that all new public buildings and buildings open for the public, traffic infrastructure and buildings in the function of passenger transport are accessible to persons with disabilities in all traffic branches
- Objective 14: Gradual and continuous adaptation of the existing public buildings, transport infrastructure and transport means in public

¹⁰⁹ Harmonization of websites of state administration bodies with the document „Guidelines for designing web presentations of the state administration bodies“: Report of the Administration for Digital Agenda to the Government of Serbia, Belgrade, 2011, p. 4

transportation of passengers in all traffic segments, in order to make them accessible to persons with disabilities

- Objective 15: Provide accessibility of information, communication and services, including application of information and communication technologies and other scientific achievements in order to create equal opportunities and improve the position of persons with disabilities.

In the field of physical environment accessibility, local self-governance units adopt general urban plans and regulatory plans; however, these documents most frequently do not contain the provisions on accessibility. Some towns, like Novi Sad and Pančevo, have adopted local strategies and action plans to create accessible environment. Action plans for creation of accessible environment have also been adopted in Majdanpek, Veliko Gradište, Novi Pazar, Užice, Pirot, Zrenjanin, Sombor, Apatin, Indija, Titel, Temerin, Vrbas, Žabalj, Bačka Palanka...

Strategic documents governing the field of public transport and public information do not contain special provisions on accessibility.

3.1.2. INSTITUTIONAL FRAMEWORK

Institutional framework for accessibility of physical environment in Serbia

Ministry of Construction and City Planning is a responsible ministry for the issues of physical environment accessibility in Serbia. The Republic Agency for Physical Planning, among other obligations, has an obligation to organize training, offer expert assistance during preparation of plan documents. Engineers' Chamber may have a role in promoting accessibility standards since it works on preparation of by-laws and may initiate procedures before the Court of Honour for members who act unprofessionally and unconscientiously. At the level of autonomous province, the provincial secretariat for city planning, construction and protection of the environment is responsible for physical environment accessibility issues, while at the level of local self-governances these are municipal and city secretariats and city planning and construction administrations, directorates for construction land, administrations for public utility issues and administrations for transport and roads. Supervision of compliance with the accessibility standards should be performed by construction and city planning inspection, however this rarely happens in practice due to insufficient definition of the control system and lack of knowledge of accessibility standards, lack of expertise

and low level of awareness. Physical planning documents with the enclosures, including the graphical part of the plan, as well as the urban plan are made available to public (for 30 days at the document issuer's seat, publishing a public gazette, on the Internet). When the making of the city planning design is envisaged by the plan document, this design is also made available for public inspection (during 8 days). At this stage the responsible persons are: the responsible planner, responsible city planning officer and planning commission.

The committees in charge of technical inspection of buildings should have an important role in monitoring the compliance of accessibility standards, but in practice they deal with accessibility standards insufficiently often or systematically. Persons responsible for compliance with the law, and hence with accessibility standards during designing and construction of the building is a responsible designer, technical control of the project (the most responsible for correcting the errors during the design stage), responsible contractor, independent engineer and the Committee for Technical Inspection of the building.

Local accessibility teams have been formed in: Novi Sad, Pančevo, Sombor, Zrenjanin, Apatin, Indija, Bačka Palanka, Titel, Vrbas, Žabalj and Temerin.

Accessibility and universal design are taught at Belgrade and Novi Sad Universities. Professional associations of architects, city planners and engineers could play an important role in promoting accessibility and universal design.

Institutional framework for accessibility of public transport in Serbia

Transport Ministry is responsible for the issues of transport in the Republic of Serbia. At the level of province and local self-governances the bodies in charge of this field are transport secretariats. In efforts to ensure accessibility of public transport, the Directorate for Railway, Public Company Air Serbia, Serbia Railways, Public city transport companies, public companies of airports in Belgrade and Nis, trade and professional associations, chamber of engineers and associations of carriers may also have an important role.

Institutional framework for accessibility of information and communication

The Ministry of Culture and Information and the Ministry of Foreign and Internal Trade and Telecommunications – Administration for Digital Agenda are responsible for accessibility of information and communications, as well as for public TV services. The Republic Agency for Electronic Communications and the Republic Radiodifusion Agency RRA could also play a significant role. At the provincial level and the level of local self-governances these are secretariats for public information. Public Company PTT, other public companies and providers in telecommunication fields and different professional associations may also have an important role.

Institutional framework for accessibility of services intended for public

Ministry of Foreign Affairs and of Internal Trade and Telecommunications, and of Finance and Economy are important for the accessibility of services intended for public, while the chambers and different professional associations may also have a certain role.

3.1.3. COMPLIANCE WITH UN CONVENTION

Compliance of legislative and institutional framework

Definitions of the persons with disabilities and of accessibility in the regulations relevant for this field are fully harmonized with the provisions of UN Convention.

Legislative framework of the Republic of Serbia for accessibility of physical environment has been to a large degree harmonized with the provisions of the UN Convention. Still, the provisions on monitoring mechanisms are not elaborated in sufficient detail, so they need additional improvement.

The legislative framework of the Republic of Serbia for accessibility of public transport in the field of air traffic and railway transport has been partly harmonized with the provisions of the UN Convention. Legislative framework of the Republic of Serbia for accessibility of road transport has not been harmonized with UN Convention provisions because the laws in this field do not contain accessibility provisions.

Legislative framework of the Republic of Serbia for accessibility of information and communications, including public TV services, has been partly harmonized with the provisions of UN Convention. The Law on Public Information and the Law on Electronic Communications contain high quality general norms on provision of equal access to public information and electronic communication by persons with disabilities, however these generalized provisions need further elaboration.

Legislative framework of the Republic of Serbia for accessibility of services intended for public has been partly harmonized with UN Convention provisions. The law on prevention of discrimination of the persons with disabilities governs extremely well the ban on discrimination of persons with disability in the field of access to services intended for public, however, by-laws and technical norms ensuring the accessibility of goods and services are missing.

3.1.4. IMPLEMENTATION ANALYSIS

Implementation analysis of legislative framework for accessibility

According to the data from the initial report of the Republic of Serbia on implementation of UN Convention on the Rights of the Persons with Disabilities to the Committee for the Rights of the Persons with Disabilities of January 2012, a total of 23 claims have been filed due to disability-based discrimination.¹¹⁰

So, for example, a suit was filed against the local self-governance in Novi Sad due to non-accessibility of public areas and buildings of public interest and for denying the freedom of movement. The first instance decision was issued in favour of the defendant, while the plaintiff appealed against that decision.

*L.Č. sued the management of the hotel in Zaječar due to inaccessibility of hotel services to persons with disabilities. This court procedure was finished with a decision that the claim of the plaintiff was affirmed. After the hearing, the hotel manager admitted that they acted in a discriminatory way and took measures to make the hotel more accessible to persons with disabilities.*¹¹¹

¹¹⁰ Initial report on implementation of the UN Convention on Rights of the Persons with Disabilities in Serbia, Section 165, Belgrade, 2012.

¹¹¹ Ibid cit. pp. 103- 104.

The Republic of Serbia also promulgated the Law on Ombudsman, which lays down that the protection of the human rights of persons with disabilities will be within the competence of one of the ombudsman's assistants, who will be responsible for protection of interest of this group of citizens. According to the annual work reports, an increase in the number of appeals submitted to the persons with disabilities to the Ombudsman is visible, and in 2012, 281 appeals were filed to the Ombudsman Office, relating to the position of the persons with disabilities, of which in 11 cases inaccessibility of architecture environment were claimed, and in cases inaccessibility of services intended for the public.¹¹²

Based on the Law on Ban on Discrimination the office of the Commissioner for Protection of Equality was established. During 2012 the Office received 76 motions on the grounds of disability-based discrimination.¹¹³ Even 21 % of these motions related to the situations of provisions of services intended for public and access to buildings and areas.¹¹⁴ The first lawsuit for protection against disability-based discrimination was filed by the Office of the Commissioner for Protection of Equality on 02 October 2012 against the entrepreneur M.A. owner of the shop „P. C.“ whose employees refused to provide a service to the group of young persons with disabilities.¹¹⁵ The First Basic Court in Belgrade reached a decision on 22 January 2013 on the grounds of omission, by which the claim of the Commissioner for Protection of Equality was fully confirmed.¹¹⁶

According to the annual report on the work of Centers for Social Work for the year 2011, of 160 centers for social work only 16% have ramps on the entrance, only 15.5% have handrails, 29% accessible ground floor, and there are no lifts in any of the Centre for Social Work in Serbia! Only 14% of centers have an accessible toilet.¹¹⁷

In December 2011 a survey on accessibility and availability of buildings in public ownership in five towns and municipalities of Serbia was conducted

¹¹² Ombudsman's Report for 2012, Belgrade, 2013, p 74.

¹¹³ Special report on discrimination of Persons with Disabilities in Serbia, Belgrade, 2013, p.

11.

¹¹⁴ Ibid.

¹¹⁵ Special report on discrimination of Persons with Disabilities in Serbia, Belgrade, 2013, str.

14.

¹¹⁶ Ibid cit., p. 58.

¹¹⁷ Annual Report on the Work of Centres for Social Work for 2011, Belgrade, 2011.

by the organization CHRIS-Network of Boards for Human Rights in Serbia.¹¹⁸ The survey covered local self-governance bodies, judicial bodies, tax administrations, public companies, social protection institutions, health care institutions, institutions of culture, educational institutions, i.e. all those institutions in which citizens exercise some of their rights on a daily basis. On a sample of 156 institutions that provided the information, it was determined that 67% of them were not accessible to persons with disabilities, and that five of six surveyed institutions do not provide a possibility of vertical movement through a building by using a lift or other mobile platforms. Only one of ten institutions involved in the survey had toilets and counters adjusted to persons with disabilities. A great problem observed during this survey was the lack of ramps for access to buildings. For example, of eight schools in Nis that responded to the questionnaire, only one school had a ramp for access to the building.¹¹⁹

The Ombudsman office annual report for 2012 states that, based on its own inspection, this body could see that none of over thirty local self-governances in Serbia provided full accessibility to the environment and information in a way envisaged by the Article 9 of UN Convention of the Rights of the Persons with Disabilities.¹²⁰ Having said that, even the Ombudsman offices do not fully comply with the prescribed accessibility standards, because they have tried to overcome the problem of the stairs at the building entrance by mobile ramps and stairway platform.

The representatives of the Office of the Commissioner for Protection of Equality in Serbia, on 8 and 9 May 2013, made a check of the accessibility of buildings of National Assembly, the Serbia Government building, different ministries as well as the business building that houses the Supreme Court of Cassation, the Court of Appeals in Belgrade, Commercial Court and Administrative Court.¹²¹ The report on accessibility of these buildings shows that a big number of them are not accessible for persons with disabilities.

The conclusions on inadequate implementation of the accessibility of physical environment regulations are supported by two case studies in

¹¹⁸ Niš, Novi Sad, Negotin, Novi Pazar and Valjevo

¹¹⁹ Special report on discrimination of Persons with Disabilities in Serbia, Belgrade, 2013, pp. 52 – 53.

¹²⁰ Ombudsman's Report for 2012, Belgrade, 2013, p. 75.

¹²¹ Report on Accessibility of Office Buildings of State Bodies to Persons with Disabilities, Belgrade, 2013, p 1.

Sombor and Vranj, received during making of the report 'from the shadow' on implementation of the Convention on the Rights of the Persons with Disabilities in Serbia in 2011.¹²²

Survey and focus groups

The relevance of findings from the survey and focus group has primarily a descriptive component – experiences and views of the respondents toward the questions contained in the questionnaire and the subjects that were addressed during the work in the focus group. Each interpretation on the basis of the above was derived with a certain amount of investigator caution, given a small sample; still, the data obtained in such a way still have a capacity to point out at illustrative and important sequences of practice. We shall state some of the data derived from the questionnaires in reference to accessibility only as a possible illustration of the situation in this field.

Roads, pavements and roadsides are accessible in 14.71% of cases, i.e. partly accessible in 64.71% cases. As for the public transport in 55,88% cases it is not accessible, while accessible specialized public transport for OSI, in big cities such as Belgrade, Novi Sad, Kragujevac, is available in the form of specialized transport by adapted vans for the persons with disabilities, but their number is insufficient to meet the needs.

Access to information and communications in available formats in Braille alphabet and sign language for the persons with sensor impairments is provided in 11.76% cases only. Such responses are a clear indication that the access to information and communications for the persons with sensor impairments is very difficult, although there is a legal obligation of ensuring access to information and communication. Also, in 82.35% cases the persons with intellectual impairments are not provided access to information and communications by use of the documents in easily readable format, which shows an extremely uneven position of these persons when it comes to their access to information and communication.

Post offices, banks and shops are accessible for OSI in 22.55% cases, while the hospitality and sport facilities and institutions of culture are accessible in 8.82% cases only, and partly accessible in 66.6% of cases.

¹²² *Disability is an Issue of Human Rights*, the first draft of report 'from shadow' on implementation of the UN Convention on the Rights of Persons with Disabilities in Serbia, Belgrade, 2011.

From the findings of such a partial survey, although on a small sample, a conclusion may be drawn that the provisions of valid regulations in the accessibility field in all segments in the Republic of Serbia are not sufficiently implemented in everyday practice.

3.2. EDUCATION

3.2.1. LEGISLATIVE FRAMEWORK

Obligations of states in the field of right to education of persons with disabilities are regulated by Article 24 of the International Convention on Rights of Persons with disabilities.

Definitions and anti-discriminatory legal framework

In the Law on preventing discrimination of persons with disabilities, which indirectly relates to education, the expression 'persons with disabilities' denotes persons with innate or acquired physical, sensory, intellectual or emotional disabilities, who, due to social or other obstacles, do not have possibilities or have limited possibilities to engage into the social activities at the same level with others, regardless whether they are able to realize the mentioned activities with the aid of technical accessories or support service.

There is no definition of disabilities in the Law on basics of education and upbringing.

In the Book of Rules on additional educational, health and social support to a child and a student (pupil) (Official Gazette 63/2010), regulation of Article 2 prescribes that additional support is provided without discrimination in any way to every child, i.e. pupil from socially sensitive groups, who need additional support in education, health or social care, due to social deprivation, developmental impediment, disabilities, learning difficulties and other reasons.

Article 2 of the Book of Rules on more specific guidelines for determining the right to an individual education plan, its implementation and

valuation¹²³, the right to IOP, inter alia, according to OECD classification, lies with the student who:

1. has learning difficulties (due to specific learning difficulties or problems in behavior and emotional development),
2. has developmental impediment or disabilities (bodily, motor, sensory, intellectual or multiple impairments, or disorders from the sphere of autism).

The formulation 'child with developmental impediments and disabilities' or 'child with disabilities and impediments in development' is consistently used in the Law on basics of system of education and upbringing, bylaws that enable its implementation and laws adopted based on that law and after that law, while the Law on higher education consistently uses the term 'students with handicap', except in Article 90, where a term 'student with disabilities' is used, and in Article 81 para 1, 'a student with special needs'.

Anti-discriminatory regulations in this field

Anti-discriminatory regulations in this field

Provisions of Articles 15-27 of the Law on prohibition of discrimination prescribe specific cases of discrimination; according to Article 19 para 2 it is forbidden to harden or to deprive a person or a group of persons an enrolment to an educational institution based on their personal characteristic, or exclude them from these institutions, harden or deprive the possibility to follow the lessons and participate in other educational activities, sort them by their personal characteristic, molest them or create an unjustified difference in any other way and treat them unequally.

Law on basics of system of education and upbringing¹²⁴ (ZOSOV) defined equal right and access to education for all; regulations of Article 44 para 1 prescribe that in (education) institution it is forbidden to perform activities that jeopardize, belittle, discriminate or separate a person or groups of persons, on the account of: racial, national, ethnic, language, religious or gender affiliation, physical and mental properties, developmental impediments and disabilities, health condition, age, social and cultural background, personal possessions, political affiliation and encouraging or non-preventing such activities.

¹²³ "Republic of Serbia Official Gazette", no. 76/2010

¹²⁴ Law on basics of system of education and upbringing ("RS Official Gazette no. 79/09 and 52/11)

Law on higher education, in its provision of Article 4 para 1 point 6, prescribes that education activity is based, among other, on the principle of respecting the human rights and civil freedoms, including prohibiting all forms of discrimination, while regulation of Article 86 para 2 point 8 prescribes that a student has the right to be different and to be protected from discrimination.

Law on preventing discrimination of persons with disabilities, provision of Article 3 para 1 point 2, prescribes that expressions 'discrimination' and 'discriminatory action' denote every making of difference or unequal treatment (exclusion, limitation or giving priority) in relation to other persons or groups, as well as to members of their families or persons close to them, in an overt or covert way, which is based on disabilities or reasons related to it.

Law on prevention of discrimination of persons with disabilities contains a part called *Discrimination in relation to education and upbringing*, forbidding discrimination due to disabilities in all levels of education and upbringing (Article 18 para 1), while the discrimination encloses (para 2): a) depriving admittance of a pre-school child, student or a student with disabilities in educational institution that corresponds to his/her previously acquired knowledge, i.e. educational possibilities; b) exclusion from educational or upbringing institution that a pre-school child, a student, or a student with disabilities already attends, on the account of his/her disabilities; and c) putting no-disabilities as a particular condition for admittance into the educational institution, including presenting health certificate and prior check of physical and psychical abilities, unless such a condition is determined in accordance with regulations that regulate the field of education.

Provisions of Article 19 prescribe that the following is not considered discrimination in education: a) checking special talents of pre-school children, pupils and students, i.e. candidates for enrolment to an upbringing i.e. educational institution according to certain teaching subject or group of subjects, their artistic talents or forms of special gifts; and b) organizing special forms of teaching for students i.e. pre-school children,

who cannot follow regular teaching contents¹²⁵ due to insufficient intellectual capabilities, as well as directing students i.e. pre-school children to such forms of education, if enrolment is made based on an act of competent body determining the need for such form of education of students, i.e. pre-school children.

Intimidation, insulting and belittling of a disabled pre-school child, pupil or student, on the account of his/her disabilities, when those actions are committed by a teacher or other person employed in an educational institution, is prescribed as particularly difficult case of discrimination (Article 20).

Legislative framework in the field of education

National rights of persons with disabilities to education, based on the Constitution, prescribe: Law on prohibition of discrimination, Law on preventing discrimination against persons with disabilities, Law on equality of genders, Law on basics of system of education and upbringing, Law on pre-school education and upbringing, Law on social care and children, Law on primary school, Law on secondary school (the last three adopted prior to signing the Convention), Law on textbooks and other teaching means, Law on high education (adopted prior to signing the Convention) and Law on pupils' and students' standard.

By-laws (rules on procedure, decisions, standards in this field, are numerous and there are 51 of them, this report analyzed only those most relevant for persons with disabilities.

Strategies and other documents

National framework for monitoring the development in lowering the inequality in education¹²⁶, Strategy of education in Republic of Serbia till 2020, Strategy of improving the position of persons with disabilities, Youth strategy and Action plan of politics for young APV.

¹²⁵ Commissioner for protection of equality sent to the Constitutional Court of Serbia a proposal for checking the constitutionality and legality of this regulation, considering that it is discriminatory towards one group of children with disabilities.

¹²⁶ Source: <http://magazin.invalidnost.net/index.php/sekcije/drustvo/303-Serbia-u-njujorku-predstavila-rezultate-inkluzivnog-education-dece-sa-smetnjama-u-razvoju-i-invaliditetom>

3.2.2. INSTITUTIONAL FRAMEWORK

Institutional framework at the national level

Ministry of education, science and technology (hereinafter: the Ministry) secures the functioning of education system, in accordance with general principles and goals of education and upbringing.

In order to perform technical-pedagogical supervision, providing support to developmental planning and securing the quality of work of institutions and performing other jobs foreseen by law, organizational units of **school administration** – 16 of them, are formed within the Ministry, for the activities relating to: Expert-pedagogical supervision in institutions; managing the lists of employees in education institutions; coordinating professional advance of teachers and associates, directors and secretaries of institutions; supporting developmental planning, developing pre-school, school educational program and securing the quality of education; participating in preparations of development plan for education for the area of concern of particular education institution and monitoring its realization; providing all conditions for institutions for undisturbed entry, updating and maintenance of education database within the framework of a unified Education information system; control of spending for appropriate purpose by the institutions, that is, performing activities in relation to financing indirect users of budgetary funds in the respective school administrative area; realizing cooperation with local community relating to providing funds from the budgets dedicated to professional advance of employees; technical processing of issues and complaints with regard to technical-pedagogical supervision and other businesses in accordance with the law.

Department of inspections in institutions of pre-school, primary, secondary and higher education performs activities relating to: Supervision over the legality of work of institutions; supervision over the legality of acts brought by institutions, when deliberating on rights, obligations and legal interests of citizens, on the basis of the law; inspection oversight and supervision over the work of institutions of higher and high education; supervision over the legality of work of and acts of the Institute for improving education and upbringing (ZUOV) and Institute for evaluation of quality of education and upbringing (ZVKOV); inspection oversight over the work of institutions when not performed by a municipal/city administration; administrative activities related to entrusted businesses;

deciding on meeting the criteria for issuing a working license; preparing responses to complaints / law suits and other submissions for the needs of court and other proceedings before the competent bodies; preparing a response on the appeal against the first instance Decision of the Education Inspector; realizing immediate supervision over the work of municipal / city education inspectors; issuing mandatory instructions; withdrawing the authority from individual inspector(s); technical/expert processing of cases and complaints in relation to performing the inspection oversight and other business in accordance with the law.

Inspection oversight of the work of an institution, as an entrusted job, is performed by municipal i.e. city administration. It is performed by an Education Inspector. The Inspector controls implementation of the law, realization of protection of rights of children and pupils, their parents/custodians and employees; meeting the conditions for exams; prescribed evidence (documentation); enrolment procedure and similar. Education Inspector of the Ministry (republic inspector) oversees the work of education inspectors.

Education Counselor performs activities of expert-pedagogical oversight. He evaluates the quality of work of the institution; gives help in self-evaluating; monitors respecting the principle and realizing the goals of education and upbringing; advises and gives technical/expert help; has a direct insight into the work of the institution, proposes to the institution, minister and competent bodies undertaking necessary measures for removing the irregularities and similar.¹²⁷

Within the mandate of **National educational council** is the development and improvement of system of education through following and analyzing the state of education and its compliance with European principles and values, determining the line of development and improvement of quality of education, participation in preparing strategy of education, giving opinion to the Minister of education and science in the process of adopting the regulations, and other.

Institute of improvement of education and upbringing – ZUOV with the Center for developing programs and textbooks, Center for technical

¹²⁷ www.mpn.gov.rs,

http://www.cipcentar.org/i_roditelji_se_pitaju/index.php/informacije/76-znacajne-ustanoveustanove-znacajne-za-education

<http://www.equied.ni.ac.rs/dokumenti/viewcategory/4-publikacije.html>

downloaded Study of the Found Situation, p. 41)

education and adult education and Center for professional development of employees in education, was established with the aim to perform developmental, advisory, research and other technical businesses in order to follow, secure and improve the quality and develop the system of education and upbringing. For performing expert activities in the sphere of following and evaluating, implementing general principles, realization of goals of education and upbringing, standards of achievements per levels and types of education, the **Institute for evaluation of quality of education and upbringing – ZVKOV**.

The Council for technical education and adult education is authorized for secondary vocational education, adult education, education for work, technical training

The Ministry of education has formed **a network of support to teachers and schools for introducing inclusive educational practice** that are formed with all school administrations. It includes employees in schools – practitioners, teachers, expert associates, directors, employees of the Ministry and school administrations, experts of ZUOV and ZVKOV, education inspectors, members of IRK and representatives of OCD. A team has been appointed for each school administration that a school can address and get support from. The Network is defined as an open system for further inclusion of practitioners and experts, as well as schools that are developing inclusive practice. At the moment, the support Network has 126 members, out of which 26 education counselors

2.4 Institutional framework at the provincial and local levels

For the field of education in APV (Autonomous Province of Vojvodina), a **Provincial secretariat for education, regulations and national communities**¹²⁸ is authorized body, and it closely regulates and secures realization of rights of national minorities to education in their mother tongue, in all levels of education, as an issue of significance for APV for all education levels, including adult education and students' standard.

With regard to education of students with disabilities the Secretariat brings the decision on the quota of students from marginalized groups that will be enrolled based on passed entry exam and who will have a preferred

¹²⁸ Source:

http://www.education.vojvodina.gov.rs/index.php?option=com_content&view=article&id=4&Itemid=6&lang=sr

treatment for accommodation in students' dormitories and use of ration cards for food; the Secretariat allocates funds to secure accessibility to education institutions through bidding, but does not have dedicated funds for this segment in the framework of annual bids for programs of OCD, it finance the OOSI and other OCD projects in the field of informal education, support to educational institutions and securing the accessibility.

The Pedagogical institute of Vojvodina was established by a Decision of the Assembly of AP of Vojvodina. Through its Development(al) Department it organizes events in the aim of improving the education process; designs and realizes programs of advanced training for teachers and technical staff in schools and pre-school institutions, encourages development and application of Strategy for developing the minority education; establishes technical bodies, commissions and working groups, uses the results of formal and informal education of governmental and OCD that can give a significant contribution to the concept of life-long learning. Within the framework of Research Department, there is researching of the state, possibilities and the need for education and upbringing process in pre-school institutions, primary and secondary schools, students' dormitories of Vojvodina; teaching programs for the needs of organizing education on languages of national communities in the area of APV, analyze and gives opinion on the quality of textbooks in languages of national minorities, program of VO work with recommendations and proposals for improving the quality of work; establishes cooperation with similar research institutions in the country and abroad.

At **municipal** level, in the field of education i.e. for construction of objects, their infrastructure and segment of informal education, municipal / city administrations or secretariats for education are competent bodies. It is often the case that administrations/secretariats are in charge of social and children care, general affairs and culture.

Based on ZOSOV and Book of rules on additional educational, health and social support to children and pupils, local self-management structures are obliged to form inter-ministerial commissions. According to the data available to the project team of DILS¹²⁹, 151 such commission have been formed, three of which are inter-municipal (Vlasotince with Crna Trava, Lapovo with Raca, Prokuplje with Kursumlija, Raca and Zitoradja); 16 such commissions were formed in the city of Belgrade. The commissions were

¹²⁹ Data of DILS project, situation on 3 October 2012, www.dils.gov.rs

not formed in 5 municipalities: Belgrade, Novi Knezevac, Presevo, Sremski Karlovci and Trgoviste.

The Law on basics of the system of education and upbringing prescribes that parents and persons who know a child well be a part of the team for giving additional support to an individual child and that a parent of a child with disabilities be a member of the Parents' Council. It prescribes forming of a team of experts for inclusive education in every school that educates children who need additional support in education. This law, as well as Law on high education, prescribes forming of pupils' and students' parliaments. There is a possibility to regulate the participation of insufficiently represented groups in pupils' and students' parliaments that can be regulated through statutes and rules of institutions.¹³⁰

According to the data of Ministry of education, culture and technological development, Serbia has a total¹³¹ of 220 pre-school institutions and kindergartens, 1106 primary schools and 7 schools for primary education of adults, 503 secondary schools. There are 324.145 vocational schools, 33 art schools, 5 foreign schools, 41 schools that the Law on basics of system of education defines as schools for children with impediments in development, out of which 23 are primary schools with pre-school departments, 17 schools for primary and secondary education with pre-school departments, and 1 secondary school. From the overall number of schools, 5 are for education of children with hearing impairment, from them 4 are SOSO with dormitories, 2 primary schools for students with sight impairment and one secondary school. For most profiles in secondary schools, them being a three-year (vocational) schools, there is no access to high education, which is recognized as one of reasons of lack of deaf people in the system of high education, 8 state (including University of Kosovska Mitrovica) and 10 accredited private universities, 8 of which are in Belgrade and 1 in the process of accreditation, 1 in Novi Sad, 1 in Sremska Kamenica and 1 in Novi Pazar.

¹³⁰ Affirmative measures and the limits are not stipulated by the Law on Higher Education. In Novi Sad Universtiy Statute there is a provision that NSUSI and the Union of Roma Students appoint one representative of student parliament each (with a note that the explicit statement of the organizations that gather only two insufficiently represented groups is not in accordance with the development of (higher) education for all. Other universities do not have such provisins in their Statutes, which are only harmonized with the Law on Higher Education with regards to the issue of possibiity of adjusting the manner of taking exams.

¹³¹ <http://www.mpn.gov.rs/sajt/section.php?sekcija=31>, link Registry of institutions, accessed on 4 April 2013.

3.2.3. COMPLIANCE WITH UN CONVENTION

By provision of Article 19 para 1 point 2 of the Law on preventing discrimination of persons with disabilities, an unjustified difference was made between children with intellectual disabilities and other children, thus discriminating this group of children based on their personal characteristic. Besides the fact that this approach has been overcome, the legal regulation is outdated and discriminatory, as it sets only the children with intellectual disabilities ('insufficient intellectual abilities') to an unfavorable position when it comes to selection of the kind of education. In that way, only one personal characteristic of a child is singled out.

Provisions of Article 24 of the Convention were incorporated into all the mentioned documents from the sphere of education and Strategy adopted in 2005, though, essentially, it is just a harmonized text of the Strategy of improving the position of persons with disabilities. All documents in the field of education adopted after 2009 maintain social distance towards persons with disabilities.

In laws and by-laws, apart from repeating the social distance, the most disputable is adherence to Article 24 paragraph 4 of the Convention. Regarding the educational profile of the staff, it is mentioned *special skills and knowledge to work with children with disabilities, defectologist training or defectologist education*. These regulations in documents adopted prior to and after adopting ZOSOV, in the manner they were formulated, it seems they were completely and uncritically adopted at the proposal of institutions of special education and defectologist profile, in the aim of their own sustainability. It has no mention of a teaching staff with disabilities and their employment. The Law on students' standard and in Books of rules, a medical approach is dominant.

3.2.4. IMPLEMENTATION ANALYSIS

Analysis of application of legal framework

The Ombudsman realized that the Republic of Serbia adopted the laws and other regulations that improved the normative basis for realization and protection of rights of persons with disabilities, but they are daily faced with complex problems that make it impossible to realize those rights and to reach the desired level of social inclusion, all because particular

normative solutions do not contribute to their efficient, systemic and permanent solving. The support, partially provided through systems of social care and education, is not sufficient to lift the causes of problems that are an obstacle to full inclusion of persons with disabilities into the social life. In Ombudsman report for 2012¹³², it was stated that during previous year, regarding protection of rights of persons with disabilities, 270 citizens addressed the Ombudsman, while 11 procedures were initiated through personal initiative (281 in total), of that 2 in the field of education. It did not specify what these two complaints related to.

Based on cases that Ombudsmen was handling during 2012 it turned out that persons with disabilities in Serbia are most often faced with problems in realizing rights to social and health care, education, employment and professional rehabilitation, while the causes for that are prejudice, discrimination and 'inaccessibility of rights', both due to lack of information and appropriate legal aid in the local administration and inaccessibility to public institutions and communication obstacles. Total improvement of the position of citizens with disabilities and their full social inclusion depends on the support they will get in the immediate environment through systems of social and health care, education, employment and elimination of discrimination and fighting the prejudice. In order to achieve that, it is necessary to, besides adopting appropriate normative basis, overcome the existing resistance and problems in the public administration that are noticeable in the non-timely processing of citizens' complaints relating to realization of rights deriving from disabilities; non-harmonized and partial implementation of improvement measures in different administrative systems; inexistence of clear criteria for implementation of measures to secure full equality of these citizens; and permanent lack of funds for their implementation.

Independent life and social inclusion should, according to the Ombudsman, "stimulate fight against poverty, i.e. planning and managing measures that will contribute to lasting removal of causes that are an obstacle to realization of mentioned goals. Improving education and employment of persons with disabilities were singled out as such measures and appropriate regulations were brought accordingly; with certain corrections,

¹³² <http://www.ombudsman.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji>:
[godisnji izveštaj zaštitnika građana za 2012 godinu.doc](#), pg. 191-199.

Rights of persons with disabilities

improvements and, most importantly, strict implementation, they might contribute to improvement of persons with disabilities.”

Data from researches conducted by CSOs

During 2012, a group of civil society organizations¹³³ was engaged in monitoring of education according to inclusion principles in 25 primary schools and 5 pre-school institutions in Serbia (Nis, Pancevo, Uzice and Belgrade) and presented the most important improvements and aggravating circumstances of implementing inclusive education in their report, particularly in relation to the resources of education institutions. The Report¹³⁴ states that in some situations procedures of functioning of technical teams for inclusive education are not respected, especially in cases ‘when there is a resistance with teachers who do not want to report a child with potential developmental impairment, because they do not want to get additionally engaged’, which causes discrimination and not securing additional support to a child with developmental impairment in practice. This directly deprives the possibility of quality education, since the process of support within the education institution is stopped at the first stage, at getting to know the educational situation of a child and planning the further support. The Report also said that the work of technical teams for inclusive education in some situations is aggravated by teachers who openly refuse to work on inclusive education, resisting even planning and realizing activities of inclusive education, or are being passive¹³⁵.

According to the Report of the office of Commissioner for protection of equality, normative framework in the field of education and upbringing of children with developmental impairment and disabilities is mainly completed, however, difficulties are found in the field of implementation of legal solutions, particularly in the field of providing additional support regulated by *Rules on additional education, health and social support to*

¹³³ Association for development of children and young – Open club Nis, Initiative for inclusion Veliki Mali, Center for interactive pedagogy, Uzice center for children rights, Nexux Vranje, within the framework of the project ‘Civil society for inclusive education – children tailored education’ <http://www.oknis.org.rs/education-po-meri-dece/> (accessed on 7 March 2013).

¹³⁴ Report on results of monitoring of education according to inclusion principles (inclusive education) in the education system institutions, published by Center for development of children and youth – Open Club Nis, 2013, <http://zadecu.org/wp-content/uploads/2013/01/Izvestaj%20o%20rezultatima%20pracenja%20IO.pdf> (accessed on 15 March 2013)

¹³⁵ Downloaded from special report of the Commissionaire for Protection of Equality

*children and students.*¹³⁶ Some forms of support, such as personal attendant to a child, pedagogical assistant and other support that demand additional funds, actually do not exist in the local level, and they are not regulated or planned in any way. Depriving additional support puts a child with developmental impairment into an unfavorable position in relation to children of wider population and influences the quality of education and their equal position. Non-compliance to legislative framework and possibilities prescribed for quality education of children with developmental impairment is noticeable in the real situation in the practice, i.e. opinions of inter-ministerial commission for securing additional education, health and social support to a child / student, resources of educational institutions and local communities.¹³⁷

With regard to higher education, there is no unique database or access to collecting the information on number and structure of students with disabilities. Data of the Republic Statistical Bureau and students' organizations differ. Students with disabilities make 0.5% of students' population. In the special report of the Commissioner, family poverty and inaccessibility of objects are listed as main reasons, as well as insufficient availability of textbooks and other auxiliary technical means. It does not mention educational structure of young with disabilities who complete secondary school and the fact that a number of students do not have transferability due to previous education in special or three-year schools.

Surveys and focus groups

Answers to the sent questionnaire (21) relating to personal experience show that 75% of persons who filled out the questionnaire have experience in this field, work in the field, have information about rights and have advocacy experience in changing the existing formal framework and the situation in the field, and recognize what steps need to be taken. Most persons who filled the questionnaire said they did not know answers to a good deal of questions and therefore did not know whether to fill it and

¹³⁶ "Republic of Serbia Official Gazette", no. 63/2010

¹³⁷ See Opinion with the Recommendation of the Ombudsman, no. 14-2755/12 of 6 December 2012, sent to the Ministry of Education, Science and Technological Development, Ministry of Labour and Social Policy and Ministry of Health, in order to get additional support for pupils with developmental disabilities in the education system, http://www.ombudsman.pravdeteta.com/index.php?option=com_content&view=article&id=475%3A2012-12-05-16-48-54&catid=40%3A2012-04-09-12-59-47&Itemid=85&lang=sr (accessed on 07 March 2013)

how (or did not have sufficient information, first and foremost about the education of persons with other kinds of impairment in relation to their personal experience).

The most indicative answers, from the aspect of being informed, were those to the question if APV, their city, municipality, University, have adopted decisions and measures and formed bodies in the aim of securing the rights and conditions for inclusive education. They all responded that they are familiar with decisions of a level competent for education level attended by their children, or education level in the domain of activity of organizations they represent. Representatives of organizations from Belgrade were not informed about the steps adopted by the APV in the aim of securing the rights and conditions for inclusive education.

Considering that the sample was small and profiled in relation to being informed about the matter, the relevance of the data is conditional. Based on received answers, questions, suggestions in relation to the questionnaire and accompanying reactions, it may be concluded that pupils / students are not familiar with Article 24 of the International Convention. Bearing in mind developed practice and knowing the situation in the field, recognizing its purpose in the process of advocating improvement of the legal framework, its implementation and improvement of education conditions by representatives of organizations active in the field of education of persons with disabilities, would create a group that would exert pressure with its activity relating to Article 24, which would enable full participation of the movement in all segments of the process, from adopting the decisions and documents to individual initiatives, in order to improve conditions of education of persons with disabilities.

Some personal experiences of other persons with disabilities and experiences of children in relation to realization of rights to education were presented in the focus group, and here are only some of them, for the purpose of illustration:

Although he has been disabled before 7 years of age (particularly in the system of education), as parents we recognized the desire and the capacity of our child to be an equal member of this society, his place of residence, his street, school. Thanks to the support of the association and work of our family with defectologists from CZU, we successfully realized the right of our child to education and growing without disabling. He is a happy and

successful pupil of the 3rd grade of primary school. As a parent, though, I am still not happy with the way how inclusion is applied, manner of working with disabled persons in education institutions.

My son is a boy with difficulties from the autistic spectrum. He just completed the first grade of secondary school. Support in the framework of education system was minimum (if we leave out first four grades of primary school) and he is a successful student only thanks to his own enormous effort, work and engagement of the whole family, and a few enthusiasts – his teachers.

From my personal experience I can say that parents and teachers are left to themselves; despite all legally guaranteed rights, system of support does not exist in the field. Work of the inter-ministerial commission is terribly slow and unreachable, meanwhile the children are deprived of quality education adjusted to their abilities.

The problem with persons with hearing impairment is the communication, and they are not in a position to follow the lessons; some professors did not want to adjust their lecturing to deaf persons and often called them to come out and answer orally.

Another group of experiences relates to assumed capacity, in the sense of lowering the criteria and demands for the disabled students, automatically excluding them from the competition for the highest marks – smaller number of exam questions (resulting in maximum mark of 8) etc.

An example of little Anja, enrolled in a primary school in Novi Sad – all children in the class accepted Anja as equal and they were helping her during classes and breaks. The teacher, however, said from the start that the girl did not belong to school, constantly avoided talks we asked for – more consultative rather than mentor, she insisted that I, as an expert and a person with personal experience, am banned from coming to the meetings of the inclusion team, saying that listening to me makes her uncomfortable....

Conclusions

There are not enough data to assess the trends in the high education of persons with disabilities, because students fulfilling the SV form are not obliged to fill the part relating to this and some other identities, while this

type of data is not envisaged in the form that is filled upon completed studies. Therefore, data on number of graduated students is available at National Employment Bureau (NSZ), according to the structure of those registered with this body, and organizations of persons with disabilities that have databases about their members. Since the registration with NSZ and private employment services, as well as membership in associations, is voluntary and personal decision, we lack the exact data on the number of enrolled/completed students, at an annual level and in general .

In defining measures of adaptation or individualization, disabilities and impairment are mentioned as a reason, not accessibility and adequate conditions to use the textbook, take the exam, etc., which points to the lack of understanding of the disabilities phenomenon and implies lack of expectations from the disabled students and lack of counting on them.

3.3. HEALTH CARE

3.3.1. LEGISLATIVE FRAMEWORK

The anti-discrimination legal framework legal framework

Health care for all the citizens for the Republic of Serbia is regulated by a number of laws and bylaws. However, there is no specific law regulating the issue of health care for persons with disabilities, but there are provisions in the existing regulation regarding this population. Also, there is no official definition of disabilities in this area, nor the uniform terminology. In addition to the Law on Anti-Discrimination and the Law on Prevention of Discrimination against Persons with Disabilities, prohibiting discrimination in all spheres of life, most of the regulations in the health care field comprise provisions on prohibiting discrimination on various grounds.¹³⁸

Constitution of the Republic of Serbia¹³⁹

Article 21, paragraph 3 prohibits any form of discrimination on any grounds, mentioning “physical or mental disabilities”, and **Article 68** states that “everyone” has the right to health care, while the paragraph 2 defines the people who actually have a right to health care from public sources (children, pregnant women, mothers on maternity leave, single parents with children under seven years of age and the elderly). This right, however, does not apply to people with disabilities, which should be added.

Law on Prevention of Discrimination against Persons with Disabilities¹⁴⁰

Article 17 classifies discrimination in the provision of health services to people with disabilities as a severe case of discrimination in the situation as follows: if the provision of a health service to a person with disabilities is refused because of his/her disabilities; if specific requirements for the provision of health services to people with disabilities are set if these requirements are not justified by medical reasons; if one refuses to diagnose and denies the adequate information on current health status, undertaken or intended treatments and rehabilitation of people with disabilities because of their disabilities. Discrimination is also any

¹³⁸ Addressed in more details in the section of dealing with individual regulations.

¹³⁹ Official Gazette RS, 83/2006

¹⁴⁰ Official gazette of the Republic of Serbia, 33/2006

harassment, insulting or belittling people with disabilities because of their disabilities, during their stay in a medical institution.

National level

Law on Health Insurance ¹⁴¹

Article 22 provides that the insured, among others, are considered persons with disabilities or mental disabilities, so **the status and terminology should be unified** and Article 34 regulates which health care activities represent the **Right to health care**, and among other things it lists prevention, examination and treatment of diseases, dental examinations and treatments, rehabilitation, drugs and medical devices and medical and technical devices.

Preventive measures are regulated by Article 35, and they lists - health education for a healthy lifestyle, and systematic and screening programmes, dental measures, family planning counseling and various types of tests for sexually transmitted diseases, vaccination, epidemiological measures. Screening programmes are also important for women with disabilities to preserve gynecological health. Article 36 prescribes that in connection with family planning, during pregnancy, during childbirth and motherhood up to 12 months women are provided the right to gynecological examinations and treatments within which fall hospitalization, treatment of infertility and patronage visit. This provision is important because of women with disabilities who want to realize their motherhood.

Article 37, paragraph 4, provides that a chosen physician may perform **the examination in primary health care and in the home of the insured**, and paragraph 8 prescribes that the elderly with serious bodily and mental developmental disabilities, i.e., persons who, in their lifetime, lost some bodily or mental functions due to illness or injury because of which that person is not able to independently to perform activities of daily living, including the blind, visually impaired as well as deaf persons **have the right to a carer** during their hospitalization and medical rehabilitation, if it is medically necessary. Article 41, paragraph 1, item 1 determines that **the treatment of diseases of the mouth and teeth** at the expense of the state is provided to the elderly who have severe physical or mental disabilities, as well as to persons with severe congenital or acquired deformities of their

¹⁴¹ Official gazette of the Republic of Serbia, 107/2005, 109/2005, 57/2011 (see also transitional and final provisions) and 119/2012 (see also artt. 11, 12. i 13). See: Decision US RS, IU no. 54/2006 - 38/2010-28. See: Decision US RS no. IUz-314/2011 - 110/2012-15

face and jaw. Article 44 envisages the right of the insured to **medical-technical devices** as well as the obligation of the Fund to more precisely regulate this area by a general law (ordinance). Article 45 envisages that the compulsory insurance **covers 100% of the cost of check-ups, treatment and rehabilitation of the insured** in the event of injury or illness of persons who have severe mental or physical disabilities, for examination and treatment of multiple sclerosis, progressive neuromuscular diseases, cerebral paralysis, paraplegia and quadriplegia, as well as the medical-technical equipment in connection with the treatment of injuries and diseases referred to in paragraph 1 of this Article. This article envisages coverage of at least 80% of the cost of health services, among other things, for treatment at home and rehabilitation in-patient facility. The Law in Articles 50 and 51 also envisages that **the health care in full amount without participation** be provided, among other things, to war veterans and civilian war invalids, blind persons, permanently immobile persons and persons who are entitled to reimbursement for home care.

Article 52 defines the **health care content**, which includes: procedures and methods of diagnosis, treatment and rehabilitation in order to prevent, control, early detect and treat diseases, injuries and other health disorders, which are covered by compulsory health insurance. Article 61 defines a set of services that **are not provided** in the health care system, and paragraph 22 does not include long-term care and home care in these cases, as well as care in a health institution and a social protection institution, which is primarily aimed at providing common personal care and recovery, i.e., for care and assistance in daily life activities such as assistance in walking, going to and getting out of bed, bathing, dressing, cooking, supervision of medications, and not intended to diagnosis, treatment or rehabilitation due to illness or injury. **People with disabilities are also exempt** from this article.

Law on Health Protection ¹⁴²

Article 11 of the Law envisages that the social care for health is guaranteed under the same conditions by providing the health care to groups that are at higher risk of morbidity and to socially vulnerable population, including people with disabilities and mentally underdeveloped persons. Article 19 refers to **the principle of access** to primary health care and physically, economically and geographically accessible to the citizens of the Republic

¹⁴² Official Gazette RS, 107/2005, 88/2010 (see also Article 8), 99/2010, 57/2011 (see also Art. 46-47) and 119/2012. See: Art. 109. of the Law - 72/2009-193

of Serbia and Articles 20 and 26 introduce anti-discriminatory provision and **prohibit discrimination** in providing health services, among other things, on the basis of mental and physical disabilities, and provide equal access to health services without discrimination, among other things, with respect to the type of disease. Article 25 envisages that every citizen has the right to enjoy health care that involves the highest standards of **respecting human rights and values**, and Articles 27, 28, 29 and 30 guarantee patients' rights to information, to information on the disease, to **free choice of doctors** and procedures, to the **confidentiality of information**, as well as to **self-determination**. Article 35 determines that the **consent to undertake** medical measures against minors and persons deprived of legal capacity may be given by his/her legal representative (parent, adoptive parent or guardian). Article 36 envisages the right of a patient and the immediate family members to have **access** to medical records, and Article 37 envisages that information about health situation and human substance from which the identity can be determined are considered **confidential** and can not be given to other parties without the consent of the patient. Article 38 regulates the extremely sensitive issue of medical experiments. They can be carried out only on adult patients with legal capacity who have given consent to the experiment. A medical experiment can also be carried out on a minor, but only because of his/her immediate benefits, and with the consent of his/her legal representative previously informed. Article 39 regulates the patient's right to a **complaint** if he/she is denied the right to health care, if he/she is not satisfied with the health service or procedure of a health care worker or other worker of the health care institution. The complaint is filed to the Protector of patient rights of that institution. Article 88 determines that health activities at the primary level also includes **preventive health care** of groups exposed to increased risk, home health care visits, treatment and rehabilitation in the home, health care and rehabilitation of persons in social care institutions, rehabilitation of children and youth with disturbances in mental and physical development, mental health protection. Articles 98 and 99 prescribe that **primary** health care is realized through a selected physician in general medicine, pediatrics, dentistry and gynecology. Selected physician, among other things, conduct home treatment and palliative care, and treatment of patients who do not need hospital treatment.

Article 256 also envisages a fine of 300,000 to 1,000,000 dinars for medical facilities in cases of performing medical procedures on a patient against his/her will, not taking measures to protect the rights of patients, the failure to notify the competent court of placing people with mental illness

in an institution without his/her consent within 48 hours, and Article 259 envisages that the responsible medical worker in cases of performing medical procedures on a patient against his/her will and failure to notify the competent court of placing people with mental illness in an institution without his/her consent within 48 hours will be fined from 30,000 to 50,000 dinars.

Law on Transplantation of Tissue Cells¹⁴³

Article 7 regulates the **principles of accessibility and prohibition of discrimination** which are realized in a manner that provides equal opportunities for transplantation of cells and tissues to all recipients for whom it is medically justified, regardless of sex, religion, national origin, age, financial status, social status, political or other conviction, and only respecting ethical principles, as well as medical criteria for taking and giving cells and tissues. Article 22 envisages that cells, i.e., tissues can be transplanted to a minor without **legal capacity**, as well as an adult fully or partially incapacitated by a court decision only with the consent of his/her legal representative, i.e., guardian, provided that there is no express opposition of a minor who is older than 15 years of age, i.e., of the person with a partial legal capacity. The guardianship authority must agree with the written consent of the guardian referred to in paragraph 1 of this Article.

Strategy for the improvement of the situation of the people with disabilities 2007-2015¹⁴⁴

The general goal 3 indicates that, in addition to other services, **health services** based on the rights and needs of users, must be made available, in accordance with current internationally accepted methods of assessment of disabilities and needs, and Special goal 5 has a number of measures regarding **health care of persons with disabilities**, in particular: the comprehensiveness of health care prescribed by the Law on Health Care **without discrimination** as to their condition and disease, according to their needs, the realization of rights to modern **medical-technical devices**, that health care workers provide health care to people with disabilities, respecting all the patients' rights according to the Law on Health Care, that exist and that develops a rehabilitation programme for all groups of

¹⁴³ Official gazette of the Republic of Serbia, 72/2009

¹⁴⁴ Downloaded from <http://www.minrzs.gov.rs/sektor-za-zastitu-osoba-sa-invaliditetom-strategije.php> 09.03.2013.

persons with disabilities, based on **individual** needs. Special goal 10 is intended for **women with disabilities**, and only one measure tells about providing information on women's human rights (reproduction right) for women with disabilities.

Strategy for the continuous improvement of the quality of health care and patient safety (2009-2015)¹⁴⁵

The first strategic goal talks about creating conditions so **users / patients are at the centre** of the health care system, the special goal 1.3. talks about the improvement of the **availability and accessibility** of health care to vulnerable population groups (**particularly for OSI**) by providing quality standards through the identification of vulnerable groups, education of health care workers, an assessment of user needs, development of procedures for admitting and making technical and safety conditions in health care facilities for particularly vulnerable groups, especially people with disabilities.

Strategy for development of the mental health protection¹⁴⁶

It deals with mental disorders, behavioral disorders and promotion of mental health. There is a **non-discrimination** clause in the part of accessibility and equality regardless of gender, ethnicity, race, religion, age, educational level and social status, but it does not mention disabilities as a personal trait. The strategy has a part of the care for vulnerable groups including children, single mothers, the elderly, refugees, displaced persons who should have priority in the process of planning and organization of services, but again there is no specific mention of the OSI.

Regulation on the scope and the content of the health care of population¹⁴⁷

Article 1 explains the scope, content and manner of implementation of the health care protection of groups of the population exposed to **increased risk** of morbidity and health care related to the prevention, control, early detection and treatment of the most common diseases of major social and medical importance, which also includes **people with disabilities**. Article 3, Item 6 refers to health care protection from **diseases that cause disabilities**

¹⁴⁵ Taken from <http://www.zdravlje.gov.rs/showpage.php?id=138> 10.03.2013.

¹⁴⁶ Taken from <http://www.zdravlje.gov.rs/showpage.php?id=138> 10.03.2013.

¹⁴⁷ Official gazette of the Republic of Serbia, 43/93)

(neuromuscular diseases, multiple sclerosis, cerebral palsy ...), and includes the detection of disease, examination and treatment at an appropriate medical facility and at home, according to medical indications, preparation of medicines and orthopedic devices and aids to medical indications and determined disabilities. Article 7 envisages that **an uninsured handicapped and disabled person can get his/her health card** on the basis of the residence and proof of the determined handicap, i.e., disabilities.

Rulebook on voluntary health insurance¹⁴⁸

Article 12 envisages that the insurance provider is obliged to conclude an agreement on voluntary health insurance with all persons or for all persons for whom the contractor expresses a clear intention to close a contract on voluntary health insurance with that insurance provider, regardless of the risk to which the insured is exposed, regardless of age, sex and medical condition of the insured. Article 13 **prohibits the insurance provider** to request genetic information, i.e., results of genetic testing for certain hereditary diseases of the contractor, and Article 52 prescribes **fin**es for insurance providers if they violate the provisions of Articles 12 and 13 of the Regulation.

Rulebook on the content and scope of the rights to health care under the compulsory health insurance and participation for 2013

Article 8 provides a set of rights to health care provided by **compulsory health insurance** which includes measures of prevention and early detection of disease; examinations and treatment of women in relation to family planning as well as during pregnancy, childbirth and motherhood to 12 months after birth; examinations and treatments in case of illness or injury; examinations and treatment of diseases of the mouth and teeth; medical rehabilitation in the event of illness or injury; medicines and medical devices; prostheses, orthoses and other assistive devices for walking, standing and sitting, aids to vision, hearing and speech, dental prosthetics, and other aids. Article 11 envisages **the right to a carer** to an insured person under 15 years of age as well as to an older person who is more severely physically or mentally disabled, i.e., to a person who during life due to illness or injury lost certain bodily or psychological functions because of which that person is not able to independently perform activities of daily living, including the blind, visually impaired as well as deaf

¹⁴⁸ Official gazette of the Republic of Serbia, 108/08 i 49/09

persons during inpatient treatment and medical rehabilitation, and that it is medically necessary. Article 12 prescribes that the persons who **lost certain bodily or psychological functions** in the course of life due to illness or injury, because of which they are not able to independently perform activities of daily living and have the rights to someone else's care, have the right to an examination and treatment of diseases of the mouth and teeth. Article 15 regulates the right to medical-technical aids. Article 22 envisages that **the participation is not paid** by disabled veterans, peacetime military invalids and civilian invalids of war; blind persons and permanently handicapped persons, as well as persons entitled to an allowance for assistance and care of another person. Article 23 envisages that the health care from the mandatory health insurance funds in full amount **without co-payments** is provided to persons who acquired the capacity of an insured person as a person with disabilities, according to the regulations on pension and disabilities insurance, as well as mentally underdeveloped persons.

Regulation on medical rehabilitation in inpatient health care facilities specializing in rehabilitation.¹⁴⁹

This regulation establishes the types of indications, duration, method and procedure, as well as referral to **medical rehabilitation** in inpatient medical institution specializing in the rehabilitation of ill and injured insured persons of the Republic Health Insurance Fund paid by the compulsory health insurance (Article 1). Article 2 states the reason for medical rehabilitation as follows: **improvement or restoration of lost or damaged functions of the body** as a result of acute illness or injury, worsening of chronic illness, medical interventions, congenital anomalies or **developmental disorders**. There is also **Extended rehabilitation** provided as a continuous extension of treatment and rehabilitation, when the functional disturbances cannot be mitigated or eliminated with equal efficiency in the out-patient-polyclinic conditions and within the hospital treatment of the underlying disease (Article 3), as indications for obtaining this kind of rehabilitation. In addition to other types of illnesses Article 4 also states neurological disorders, rheumatic diseases and injuries and diseases of the locomotor system. The same Article explains that extended rehabilitation is conducted as medically indicated therapeutic procedures

¹⁴⁹ ("Official Gazette RS", No. 47/2008, 69/2008, 81/2010 (also see Article 14), 103/2010, 15/2011, 48/2012 and 55/2012

or as prevention of deterioration, i.e., complications of certain chronic diseases.

Regulations on medical-technical aids that are provided from the funds of the compulsory health insurance¹⁵⁰

This regulation governs the types of medical-technical aids, indications for prescribing aids provided to insured persons by the Republic Health Insurance Fund from the funds of the compulsory health insurance, standards of materials used to manufacture aids, expiration dates of aids, i.e., procurement, maintenance and renewal of aids as well as the way and procedure for exercising the rights of the insured persons to aids (Article 1), and other articles list which aids and under what conditions can be obtained.

Local level

It is difficult to obtain information about local documents regulating the health care field, but some municipalities have a strategy of health care, dealing mainly with prevention of health of the local population. So let's say that there is a **Strategy of the development of the primary health care of the town of Kragujevac for the period 2011-2014**, which also states, in addition to standards at the national level, the need to build access ramps for people with disabilities in all primary health care facilities, education of personnel for working with particularly vulnerable groups, provision of mobile equipment, creating services customized to these groups and creating custom printed materials. It is evident, however, that the disabilities language closer to the medical approach was used in writing the Strategy. It is also interesting that in entire Vojvodina, for example, there is only the **Strategic plan of the Health Center Novi Sad from 2011 to 2015** including concrete actions which will be implemented at the city level and that do not distinguish particular activities related to the health of people with disabilities.

3.3.2. INSTITUTIONAL FRAMEWORK

National level

The Ministry of Health performs tasks of the state administration related to: the health care system; system of compulsory health insurance, other

¹⁵⁰ ("RS Official Gazette", Nos. 52/2012, 62/2012, 73/2012, 1/2013 and 7/2013

forms of health insurance and health insurance contributions; more precise regulation of rights under the health insurance; participation in the preparation and implementation of international agreements on compulsory social insurance, and other activities.

Republic Health Insurance Fund - RHIF is an organization for mandatory social insurance where the rights of compulsory health insurance are exercised and the funds for compulsory health insurance are provided in accordance with the law.

Institutional framework at the provincial and local level

Secretariats of Health at provincial and city (municipal) level monitor the health status of the population and of work of health services in their territory, and they also see to the implementation of the identified priorities in health care; they deal with creating conditions for accessibility and equalization of use of primary health care in their territory; they coordinate, promote, organize and direct the implementation of health care that is realized through the activity of bodies of local self-government, citizens, companies, social, educational and other institutions and other organizations; they provide funds for the realization of the founding rights over health institutions whose founders they are.

In accordance with the policy of decentralization, local self-governance takes care of the health institutions on their territory, primarily to provide funds for technical maintenance of buildings and the purchase of necessary equipment.

At the local level health care for the population is implemented through four regional centres in Belgrade, Novi Sad, Kragujevac and Nis. In these centres, there is a network of health care institutions of all levels of care (health centres, clinical centers, special hospitals ...). Within certain health centres, since 2000 there has been the **Service of Home Treatment and Health Care**, which provides services in the field immobile and semi-mobile patients, cancer patients and patients who are discharged from hospital.

Health institution

According to the Law on Health Care, care for the health of citizens of Serbia is performed at three levels: *primary, secondary and tertiary*.

Institutions at the primary level:

A **Health Centre** (116 independent and 42 as a part of health centres) is a health care institution where the lowest preventive health care for all categories of residents is provided, emergency medical care, general practice, health care for women and children, home visiting, as well as laboratory and other diagnostic .

Institute (16 at the primary level) is a medical institution that provides health-care activities at the primary level and implements health care of certain groups of the population, i.e., health activities in certain areas of health care such as the protection of students, of workers, emergency medical aid, etc.

Institutions at the secondary level:

Hospital (*General* - 16 independent and 24 as a part of health centres, *special* - 20 for acute and chronic conditions and 17 for rehabilitation) is a medical institution that performs health-care activities as a rule as a continuation of the diagnosis, treatment and rehabilitation in a health center, i.e., when due to the complexity and severity of the disease special conditions in terms of personnel, equipment, accommodation and medicine are needed.

Institutions at the tertiary level:

Clinic (6 in Serbia) is a medical institution that performs highly specialized consulting and in-patient health care from a particular branch of medicine or dentistry.

Institute (one in Serbia) is a medical institution that performs highly specialized consulting and in-patient health care activity, or only a highly specialized consulting health activity in one or more branches of medicine or dentistry, as well as educational and research activities.

Clinical - hospital (4 in Serbia) is a medical institution that performs highly specialized specialist consultative inpatient health care activity at the tertiary level in one or more branches of medicine.

Clinical centre (4 in Serbia) is a medical institution that combines activities of three or more clinics, so that makes a functional unit, organized and qualified to successfully perform the duties and tasks relating to: 1) performing highly specialized specialist and consulting and inpatient health care activities; 2) educational and teaching activities; 3) scientific research.

Institutions at multiple levels are:

Institute of Public Health, **Institute of Occupational Medicine**, **Institute of Forensic Medicine**, **Institute of Virology, Vaccines and Sera**, **Institute of Antirabies Protection**, **Institute of Psychophysiological Disorders and Speech Pathology** (which performs outpatient and inpatient health care activities in the field of speech disorders, monitors and studies the situation developmental disorders, hearing impairment in children and adolescents and speech disorders of people of all ages, as well as the blind and visually impaired preschool children), **Institute of Public Health of Serbia "Dr Milan Jovanovic Batut"**, **Institute for Biocides and Medical Ecology**.

In addition to the above mentioned institutions in Serbia, there are also 34 developmental counseling centres for children born with developmental disabilities and they provide multidisciplinary support.

Medical rehabilitation

In Serbia, citizens have access to physical medicine and rehabilitation treatments in the Departments of physical medicine and rehabilitation in clinical centres, military hospitals, general and orthopedic hospitals, dispensaries and non-institutional services of physical medicine and rehabilitation in health centres, spas, institutes for geriatrics and chronic diseases, also dispensaries at private clinics. Rehabilitation centres and clinics located in hospitals or spas are best-equipped and with the largest number of employees. There are also special units for medical rehabilitation at the Military Academy in Belgrade.

3.3.3. IMPLEMENTATION ANALYSIS

Data from the surveys of various civil society organizations

Research on quality of life of women with disabilities in Vojvodina¹⁵¹ carried out in 2011 by the organization ...IZ KRUGA – VOJVODINA showed that women with disabilities see inaccessibility of services as the biggest barrier in realization of health care. In addition, the respondents also indicate both insensitivity and ignorance of the social model by the health care workers. Campaigns intended for prevention are mostly completely inaccessible to women with sensory disabilities, most videos, flyers, posters, which should appeal to health care are not subtitled and written in Braille. The main conclusion when talking about the state of health care at

¹⁵¹ <http://www.izkrugavojvodina.org/publikacije/218-istraivaki-izvetaj-o-kvalitetu-ivota-ena-sa-invaliditetom-u-vojvodini>

the local and provincial level is that there is a huge gap between the legal framework and institutions in the health sector.

Survey and focus groups

All respondents pointed out the same problems in accessing health care. They are related to the inability to have all types of examinations performed due to the technical equipment level of health institutions, especially for people with a high degree of physical impairment, inability for mammography examination, too high examination tables, lack of trained staff as well as the fact that the majority of inpatient health care facilities do not meet the minimum standards of accessibility.

„I recently had some health problems and I was supposed to give immediately urine, the toilet was completely inaccessible, i.e., a Turkish closet and it was impossible for me. Can't clinical centres, health centres have a toilet for disabled people, does it cost so much?“

“Procedures are sometimes too long and complicated, e.g. in order to replace a wheel on a wheelchair you need to have a referral of a GP, and to have an opinion of two specialists, then this opinion is referred to the Health Insurance Fund for approval, and then the approvals are taken to the provider. Unless you can do all of this on your own, and even if you can, you still miss a wheel on your wheelchair and someone needs to do it for you.

The respondents characterize the behavior of health care workers as: fair, good, kind ... but it was noticed that in 80% of cases, they turn to a companion or personal assistant of a person seeking a medical service. Most of them are still nice, and all that mainly depends from person to person. They pointed out that the health care workers of general course do not know the characteristics of certain types of disabilities and they use inadequate terminology.

3.3.4. Conclusion

Analysis of the legislative framework in the field of health care for persons with disabilities and its application in practice showed that there is a large discrepancy between the two. On the one hand, there is the existence of a large number of anti-discrimination provisions and established rights, and

on the other hand there is the existence of apparent discrimination against persons with disabilities in the use of health care and the impossibility to exercise those rights.

Analysis of the implementation of the legal framework has shown that people with disabilities recognized all the difficulties they face in realizing their rights to health care, especially architectural and communication barriers, inadequate medical equipment and inadequately trained medical personnel. They did not recognize as discrimination, i.e., there was not a single example of any of the health workers who refused to give them the service because of their disabilities. They did not recognize as discrimination the fact that there is no ramp to access a medical institution, the fact that they could not use X-rays, mammography and other medical devices, or have a sign interpreter.

The Regulation on medical rehabilitation in inpatient health care institution specializing in rehabilitation, the Regulation on medical and technical aids provided from the funds of the compulsory health insurance and the List of medications given on prescriptions were the most criticized among the legislative solutions.

3.4. EMPLOYMENT

3.4.1. LEGISLATIVE FRAMEWORK

Definition of a person with disabilities

There is not a single definition of a person with disabilities in the Serbian legislation, but the concept of a person with disabilities is defined differently in different acts, depending on the area to which the law refers. In the case of employment it is the Professional Rehabilitation and Employment of Persons with Disabilities Act (Article 3), which defines a person with disabilities as a person with permanent consequences of physical, sensory, mental or emotional impairment or disease that can not be cured by medical treatment or rehabilitation, which faces social and other constraints affecting his/her working capacity and the employment opportunity or maintaining employment, and which has no opportunity or has reduced opportunity to get included, under equal conditions, into the labor market and to compete for employment.

The Law on Pension and Disabilities Insurance is also relevant (Article 21). It does not speak directly about the persons with disabilities but about disabilities defining them as a condition that exists when the insured suffers complete loss of working capacity, i.e., when a professional military person suffers complete loss of ability for military service due to changes in health condition caused by an injury at work, occupational disease, injury outside of work or illness, which can not be cured by medical treatment or rehabilitation.

Based on these definitions, we can conclude that the definition given in the Law on Professional Rehabilitation and Employment of Persons with Disabilities complies with the UN Convention on the Rights of Persons with Disabilities and emphasizes the social nature of disabilities, while the Law on Pension and Disabilities Insurance is based on the medical model and completely ignores the social context of disabilities which deviates from the UN Convention on the Rights of Persons with Disabilities.

Anti-discrimination regulations

Since the Convention itself under Article 27.1 in detail specifies the discrimination in the work context, the issue of protection against discrimination will be in more detail dealt with in the section relating to the assessment of compliance of the said paragraph of the Convention, and the articles regarding the very definition of discrimination in employment will be mentioned in the following part:

Labour Code, Article 18, prohibits direct and indirect discrimination against persons with respect to health status, i.e., disabilities. Article 19 defines direct discrimination as any action caused by any of the grounds referred to in Article 18 of this law by which a person seeking employment, as well as an employee, is placed at a disadvantage compared to other people in the same or similar situation, and in terms of this Law an indirect discrimination exists when an apparently neutral provision, criterion or practice puts or would put at a disadvantage a person seeking employment, as well as an employee, due to a certain quality, status, affiliation or belief under Article 18.

Legislative framework in the field of employment

The Constitution of the Republic of Serbia

The Constitution of the Republic of Serbia¹⁵², as the most general act prohibits discrimination against all citizens, and particularly emphasizes the prohibition of discrimination against persons with mental or physical disabilities (Article 21). For persons with disabilities, the Constitution provides for the possibility of special protection at work and special working conditions (Article 60).

Labour Code

The Labour Code¹⁵³ of 2005 determines the position of people with disabilities in the labour market on a very general level. In addition to prescribing equal conditions for all, Articles 18 and 19 prohibit direct and indirect discrimination against persons who are seeking employment who are employed, including people with disabilities, and Article 273 prescribes a maximum fine in cases of discrimination. At a general level, this law also envisages the right to special protection for persons with disabilities (Article 12) and protects the rights of disabled workers (Article 101).

Law on Professional Rehabilitation and Employment of Persons with Disabilities

The Law on Professional Rehabilitation and Employment of Persons with Disabilities¹⁵⁴ represents the law that more closely regulates the position of persons with disabilities in the labour market. This Law with the accompanying regulations determines the incentives for employment in order to create conditions for equal participation of persons with disabilities into the labour market, the assessment of working capacity, professional rehabilitation, obligation to employ persons with disabilities under the quota system, the conditions for the establishment and performance of activities of enterprises for professional rehabilitation and employment persons with disabilities and other special forms of employment and working engagement for people with disabilities as well as other issues of importance for professional rehabilitation and employment of persons with disabilities. The Law introduces the obligation to employ persons with disabilities under the quota system, whereat other

¹⁵² "Official Gazette RS", No. 98/2006

¹⁵³ "Official Gazette RS", No. 24/2005, 61/2005 i 54/2009, 32/2013

¹⁵⁴ "Official Gazette RS", No. 36/2009, 32/2013

ways of carrying out the obligations of employment of people with disabilities other than direct employment are left as a possibility.

Other legal acts

The Regulation on more detailed conditions, criteria and standards for the implementation of measures and activities of professional rehabilitation¹⁵⁵, the Regulation on more detailed manner, the cost and the criteria for assessing working capacity and employment opportunities or maintenance of employment of people with disabilities¹⁵⁶, the Regulation on the method of monitoring the execution of duties of employment of persons with disabilities and the way of proving the realization of these duties¹⁵⁷, the Regulation on the method and procedure for the calculation and payment of contributions for compulsory social insurance for persons with disabilities¹⁵⁸, the Regulation on education and method of work of the expertise of the Republic Pension and Disabilities Insurance Fund¹⁵⁹, Strategy for Improvement of the position of the persons with disabilities in the Republic of Serbia¹⁶⁰.

Legislation in Serbia presented by paragraphs of Article 27

In order to allow assessment of compliance of national legislation with the Convention on the Rights of Persons with Disabilities, the presentation of legislation is organized on the basis of Articles 26 and 27 of the Convention on the Rights of Persons with Disabilities, which contain several paragraphs regarding various aspects of hiring OSI, and the following analysis is given by paragraphs of Article 27.

Right to work (Article 27.1)

The Regulation on more detailed manner, the cost and the criteria for assessing working capacity and employment opportunities or maintenance of employment of people with disabilities in Article 16 deprives persons who were assigned the 3rd level of working capacity on the basis of expert assessment, of the possibility of employment in the open labour market. Even though these people cannot sign a contract of employment, they may

¹⁵⁵ „RS Official Gazette“, no. 112/2009

¹⁵⁶ „RS Official Gazette“, no. 36/2010

¹⁵⁷ „RS Official Gazette“, no. 33/2010

¹⁵⁸ „RS Official Gazette“, no. 72/2006

¹⁵⁹ „RS Official Gazette“, no. 59/2008 and 75/2008

¹⁶⁰ „RS Official Gazette“, no. 1/2007

be employed in the working centers, which represent a working therapeutic activity, i.e., long-lasting form of professional rehabilitation (Article 43). That person does not earn money on the basis of his/her work through working engagement but he/she receives financial assistance under Article 21 of this Law. Although the Labour Code does not say anything about the employment of persons with disabilities who are completely deprived of their working capacity, pursuant to the Family Act¹⁶¹ (Article 146) persons who have been deprived of the working capacity are legally equated with younger juvenile, and thus they are completely denied access to the open labour market.

Prohibition of discrimination on grounds of disabilities (Article 27.1a)

Article 21 of the Constitution and Articles 18 - 20 of the Labour Code prohibit direct and indirect discrimination against persons with disabilities in relation to employment conditions and selection of candidates for a particular job, working conditions and rights from employment, training and development, promotion at work and termination of the contract of employment. The Law on Prevention of Discrimination against Persons with Disabilities in the part of the discrimination in respect of employment and labour relations (Article 21-26) prohibits discrimination both against a person with disabilities and against the carer/care provider of a person with disabilities (Article 21). In this context, the discrimination in employment is considered a refusal to employ a person with disabilities or his/her carer, setting specific health requirements for hiring unless they are determined in accordance with the Law, the previous verification of psychophysical circumstances that are not directly related to the activities because of which a person is employed, the refusal to perform the technical adaptation of the workplace if the cost is not borne by the employer or are not disproportionate to profit (Article 22), the determination of lower salary, setting special working requirements and special conditions for use of other employment rights for an employee with disabilities (Article 24).

The right to equality with others in the work process (Article 27.1b)

The right to equal pay is regulated in the Labour Code (Article 104) and in the Prevention of Discrimination against Persons with Disabilities Act, setting lower salaries due to a disabilities of the employee, regardless of performance (Article 24) is considered discrimination. The right to safety,

¹⁶¹ „RS Official Gazette“, no. 18/2005

protection of life and health at work are prescribed by Article 60 of the Constitution, Articles 12, 16 and 80 of the Labour Code. Article 8 of the Law on Amendments to the Law on Professional Rehabilitation and Employment of Persons with Disabilities, the company for professional rehabilitation and employment of persons with disabilities can also be provided funds for the improvement of working conditions. The Laws define different mechanisms for the elimination of injustices described in more detail in the analysis of paragraph 2 of this Article.

The right to form trade unions (Article 27.1c)

In any way the Laws do not prevent people with disabilities to form their union, or participate in the work of trade unions, whereat the establishment of trade unions is regulated by the Regulation on the registration of trade unions in the registry¹⁶². Based on this we can conclude that the domestic legislation complies with this position and that allows people with disabilities unionization.

The right to effective access to training programmes and career counseling (Article 27.1d)

Training programmes and career counseling are regulated in the Law on Professional Rehabilitation and Employment of Persons with Disabilities as well as measures and activities of professional rehabilitation and they include various programmes of additional trainings and re-trainings, improvement of working and working and social skills and abilities of working and social integration, career guidance and information, etc. (Article 13).

The right to stimulate employment opportunities and career advancement (Article 27.1e)

Pursuant to the Regulation on more detailed requirements, criteria and standards for the implementation of measures and activities of professional rehabilitation, the indirect support in finding a job exists through the development of an individual plan of employment of people with disabilities who are contracted between the NES and the persons with disabilities (Article 5). The support to people for career advancement, preservation and return to work is conceived in the framework of the mechanisms of maintenance and rehabilitation.

¹⁶² „RS Official Gazette“, no. 50/2005 and 10/2010

The right to self-employment and entrepreneurship (Article 27.1f)

National Employment Office invites tenders regarding the allocation of subsidies for self-employment to unemployed people¹⁶³. Self-employment subsidies are paid in a lump sum, provided that the person performs a registered activity for at least 12 months.

The right to employment in the public sector (Article 27.1g)

Pursuant to the Regulation on the Method of Monitoring the Performance of Obligations of Employment of Persons with Disabilities and the Method of Proving the Execution of these Duties (Article 8), for the direct and indirect budget users whose pay is provided from the budget of the Republic of Serbia, the obligation to employ persons with disabilities may be carried out by the Republic of Serbia, in addition to other ways, by allocation of funds in the budget for the current year for the purposes of reimbursement of salaries of persons with disabilities employed in enterprises for professional rehabilitation and employment of persons with disabilities, for improvement of working conditions, for improvement of production programmes and for other purposes. Although the quota system also applies to the budget users, they themselves do not have to fulfill the obligation to employ persons with disabilities, but their duty of employment can be fulfilled by the state through allocation of adequate funds in the budget for the current year.

The right to employment in the private sector (Article 27.1h)

The Law on Professional Rehabilitation and Employment of Persons with Disabilities introduces the obligation to employ persons with disabilities for each employer that has at least 20 employees while an employer who has 20 to 49 employees is required to employ one person with a disabilities, an employer who has 50 or more employees is required to employ at least two people with disabilities, and one person with disabilities per every next started 50 employees (Article 24). Pursuant to Article 25 of this Law, a newly established employer does not have the obligation to employ persons with disabilities, regardless of the number of workers, for a period of 24 months from the date of foundation. Employment is also encouraged by a subsidy of the salary up to 75% of the total cost of the salary and up to the amount of the minimum salary, for a disabled person with no work

¹⁶³ Public announcement available at:
http://www.nsz.gov.rs/live/digitalAssets/0/550_samozaposljavanje_u_2013_godini.pdf,
data taken on 09. 04. 2013.

experience for a period of 12 months, pursuant to Article 32 and Article 6 as well as the incentives for adaptation activities. An employer also can carry out his/her obligation to employ persons with disabilities, in addition to direct employment, in one of the following ways: (1) participating in the financing of salaries of persons with disabilities employed in the company for professional rehabilitation and employment of persons with disabilities or social enterprise or organization, in amounts of 50% of the average salary per employee in the Republic of Serbia, (2) carrying out financial obligations from the business and technical cooperation agreement, purchasing products or providing services to the company for professional rehabilitation and employment of persons with disabilities in the amount of 20 average salaries per employee in the Republic of Serbia according to the latest published data of the republic authority in charge of statistics at the time of closing the contract. Inspection supervision over the enforcement of the law is conducted by the ministry competent for the employment activities (Article 46), and the control of the fulfillment of the obligations of employment and payment of 50% of the average salary in the Republic of Serbia if an employer has not fulfilled his/her employment obligation is conducted by the Tax Administration pursuant to Article 47 of this Law and to Article 10 of the Law on Amendments to this Law.

Right to safe and adapted workplace (Article 27.1i)

Adaptation of the workplace is supported by the Law on Prevention of Discrimination against Persons with Disabilities, its Article 22, which defines discrimination as a refusal to make technical adaptations to the workplace that enable efficient work of a person with disabilities, if the cost of adaptation is not borne by the employer and are not disproportionate in relation to the profit that the employer makes by employing a person with disabilities. Article 11 of the Law on Professional Rehabilitation and Employment of Persons with Disabilities defines the provision of technical, professional and financial support for adaptation of jobs, workplaces or business and the workplace as an incentive for employment of persons with disabilities. The employer also has the option of reimbursement of appropriate costs to adapt the workplace in order to employ a person with disabilities who are employed under special circumstances (Article 31).

The right to acquire work experience in the open labour market (Article 27.1j)

The state does not envisage special incentives to support persons with disabilities in gaining work experience in the open market through employment. However, NES realizes programmes of professional training apprenticeship designed for unemployed people who are registered with the NES, and who are professionally trained for the first time for the profession for which they have acquired a certain type and level of qualification.

Right to programmes of vocational and professional rehabilitation (Article 27.1k)

The State supports rehabilitation programmes in various ways, through the establishment of the Budget Fund for rehabilitation and promotion of employment of persons with disabilities on the basis of the Law on Professional Rehabilitation and Employment of Persons with Disabilities (Article 28), and through direct support and protection of labour rights of persons with disabilities attending rehabilitation programmes. Article 20 of the Law envisages that employees with disabilities have the right to paid leave from work, with compensation of the salary in the amount of 100% of the average salary earned in the last three months prior to inclusion in the measures and activities of professional rehabilitation, and the employment of the employee cannot be terminated during rehabilitation. An unemployed person with disabilities can also realize a compensation in the amount of 20% of the minimum salary and transportation costs for himself/herself and his/her carer, if the professional rehabilitation is taking a minimum of 100 hours, if a person with a disabilities is not a user of financial compensation on the basis of unemployment and activities professional rehabilitation relating to the activities referred to in Article 13, paragraph 2, 3 and 7).

Right to different ways of reacting in the event of violations of labour rights (Article 27.2)

If discrimination occurs, according to the Labour code a person with disabilities who is employed or seeking employment can initiate the procedure for damage compensation before the competent court (Article 23). In addition to that, on the basis of the Law on Prevention of Discrimination against Persons with Disabilities, a person with disabilities or his/her legal representative, i.e., carer may file a lawsuit (Article 42) and seek a temporary prohibition of a potentially discriminatory action in order to eliminate the effects of discriminatory treatment, establishing that the

defendant treated the plaintiff in a discriminatory manner, compensation of material and non-material damages (Article 43, Article 45).

Important aspects of labour legislation not directly related to Article 27

Evaluation of working capacity

Article 27 does not comprise the assessment of working capacity as an important aspect of labour legislation, so it is additionally analyzed. A person with disabilities needs to have his/her working capacity assessed as well as the possibility of employment or maintaining employment so that person could participate in programmes of maintenance and rehabilitation, and general employment of persons with disabilities. Pursuant to the Law on Professional Rehabilitation and Employment of Persons with Disabilities, Article 8, working capacities and opportunities for persons with disabilities that are necessary for integration into the labour market and job performance are subject of assessment.

Pursuant to Article 9 of the Law, the Decision on assessed work ability and possibility of employment or maintenance of employment is passed by the NES, based on the findings, opinions and assessments of working capacity and the possibility of employment or maintaining employment. Pursuant to Article 4 of the Regulation on more detailed manner, the cost and the criteria for assessing working capacity, the working capacity and the possibility of employment or maintenance of employment is assessed by the Commission of Expert Authority of the Republic Pension and Disabilities Insurance Fund. The very form of the final assessment is determined pursuant to Article 16 of the Regulation through the four-level scale:

Level 0- the difficulties and obstacles are minor and do not affect the working capacity;

Level 1 - the difficulties and obstacles are small and affect the working capacity in relation to profession and jobs that a person can perform, the employment is possible under the general conditions;

Level 2 - the difficulties and obstacles are moderate or substantial and affect the working capacity in relation to profession and jobs that a person can perform and the employment is possible under special conditions;

Level 3 - the difficulties and obstacles are moderate or complete or multiple, and affect the working capacity to a measure that the

performance is less than one third of the performance of the employee in the normal workplace and such person shall not be employed or hold an employment under general or under special conditions.

In this way, by the assessment of working capacity, the people with the assessed third level are denied access to the open labour market, and such person may be engaged in work only under the special forms of employment

Special forms of employment

The Law on Professional Rehabilitation and Employment of Persons with Disabilities envisages three distinct forms of employment, i.e., of engagement of persons with disabilities: the company for professional rehabilitation and employment of persons with disabilities, work centers, social enterprises and organization (Article 34).

Companies for vocational rehabilitation of OSI employ and perform professional rehabilitation of persons with disabilities (Article 35). The Law envisages that the company must employ at least 5 persons with disabilities for indefinite period of time (Article 36). Pursuant to Article 7 of the Law on Amendments of the Law on Professional Rehabilitation and Employment of Persons with Disabilities¹⁶⁴, a company for professional rehabilitation and employment of persons with disabilities is entitled to a monthly salary subsidy for every employed person with a disabilities equal to 75% of the total costs of salary with the pertaining contributions for social insurance, but not more than 50% of the average salary per employee in Serbia.

A Work Center provides working engagement as a working therapeutic activity and represents a long-term form of professional rehabilitation of persons with disabilities who can not be employed or maintain an employment under the general or special conditions, i.e., whose performance is less than one-third of the performance of an employee in the regular workplace (Article Rehabilitation and Employment Promotion of Persons with Disabilities. The Ministry 43), and provided that it hires at least 5 people with disabilities and that persons with disabilities make up at least 80% of the working personnel or employees. According to the same Law, persons with disabilities who have the level 3 of the assessment of

¹⁶⁴ „RS Official Gazette“, no. 32/2013

working capacity and persons deprived of their legal capacity, can also be engaged by other employer, i.e., on the open labour market through the Work Center (Article 43).

A Social enterprise is a company that was established to carry out activities that is focused on meeting the needs of persons with disabilities, and that it employs at least one person with disabilities, regardless of the total number of employees (Article 45).

3.4.2. INSTITUTIONAL FRAMEWORK

- 1. Ministry of Labour, Employment and Social Policy** has different responsibilities in the implementation of the Law on Professional Rehabilitation and Employment of persons with Disabilities and generally in employment of persons with disabilities. The Ministry also manages the Budget Funds for Professional also issues various permits and based on data received from the Tax Administration it monitors the execution of and recommends to the ministry responsible for finance the funds required for the execution of duties of employment of persons with disabilities in the Republic of Serbia
- 2. National Employment Service (NES)** - participates in organizing, planning and implementing the measures of professional rehabilitation and measures of active policy aimed at increasing motivation, employment and self-employment of persons with disabilities, as well as in the process of assessment of working capacity, it proposes committee members for assessment of working capacity and brings The decision on the assessment of working capacity and the possibility of employment or maintaining employment. For these tasks the **Center for Professional Rehabilitation and Employment of Persons with Disabilities** was founded, as a separate organizational unit in Belgrade, as well as two regional centers, which only deal with these activities.
- 3. Republic Pension and Disabilities Insurance Fund** is responsible for the formation of the Commission expert body of the Republic Pension and Disabilities Insurance Fund and it brings Findings, Review and Assessment of Working Capacity and the Possibility of Employment or Maintenance of Employment;
- 4. Ministry of Health**, together with the ministers responsible for pension and disabilities insurance and the minister responsible for employment

activities prescribes a more detailed manner, the cost and the criteria for assessing working capacity and possibility of employment and maintaining employment;

5. **Ministry of Education**, responsible for the accreditation of professional and vocational rehabilitation;
6. **Health centre and other health care institutions** through the chosen doctor give proposals for determining disabilities, propose committee members for assessing working capacities, provide the necessary medical records and psychological findings of the assessment of mental abilities, personality and behaviour of individuals. Institute of Occupational Medicine "Dr Dragomir Karajović" or the Institute of Health Care of Workers are involved in case of the expertise of occupational diseases and assessment of permanent consequences caused by accidents at work.

3.4.3. COMPLIANCE WITH THE CONVENTION

The legal framework of the Republic of Serbia is fully compliant with almost all positions of the Convention, i.e., it guarantees persons with disabilities equality with others in the labour market and prohibits discrimination against persons with disabilities in the work process and employment. Different training programmes are prescribed for persons with disabilities, the career counseling and rehabilitation programmes, the self-employment programmes are available to them and by introducing the quota system, the support for adapting workplaces and other benefits the government strongly encourages the employment of persons with disabilities. Different ways of reacting in case of violation of their labor rights are available to persons with disabilities and laws protect them from forced labour and servitude or slavery-like conditions.

The legal framework in Serbia partially complies with the positions that speak of the right of public sector employment and the right to acquire work experience in the open labor market Domains in which it is possible to further improve laws so they fully comply with the Convention on the Rights of Persons with Disabilities are:

- Article 27.1 - ensuring the availability of the right to work of all persons with disabilities. Although the vast majority of persons with disabilities is recognized the right to work, as defined in the Convention on the Rights of

Persons with Disabilities, persons with disabilities who have been deprived of their legal capacity, either at the request of family members or the center for social work, and who are assessed with the level 3 of working capacity are unable to make their living by doing jobs freely chosen or accepted in the labour market, and the open labour market is not available to them.

- Article 27.1a, which is primarily related to the prohibition of discrimination against persons with disabilities. Although laws generally prohibit discrimination against persons with disabilities in all phases of the work process, it is not completely clear what actions are discriminatory, especially as the interpretation of discrimination is associated with the rationalization of costs.

- Article 27.1g, which is related to the employment of persons with disabilities in the public sector. Although the Law on Professional Rehabilitation and Employment of Persons with Disabilities is also applied to the Republic of Serbia, as an employer, and it is required to fulfill the obligation of employment, according to the Regulations on monitoring the execution of duties of employment of persons with disabilities and the manner of proving the execution of the duties, the state fulfills its obligation of employment through allocation of the funds in the budget for the current year, and if the funds allocated in the budget for that year are lower than the needed, for the next year the planned funds are increased for at least the amount of the difference. Thus, the direct and indirect budget beneficiaries are put in a more favorable position in relation to other taxpayers. This solution contained in the bylaw sends a bad message to other employers because the state as an employer uses the opportunity to avoid this obligation through the payment of funds instead of giving an example to other employers by employing persons with disabilities in public bodies.

- 27.1j gaining experience in the open labour market. Although there are programmes for acquisition of practices organized by the NES, there is no incentive for gaining work experience in terms of employment and acquiring years of service.

A special issue is issue of the special forms of employment, which, as forms of permanent employment, i.e., working engagement, do not comply with the Convention on the Rights of Persons with Disabilities, which recognizes only the employment of persons with disabilities in the open labour

market. However, these forms of employment and working engagement play an important role for persons with disabilities as a preparation for the full participation of persons with disabilities and their full integration into society, and it is necessary to consider well their role in the system of employment of persons with disabilities.

3.4.4. IMPLEMENTATION ANALYSIS

Analysis of the application of legal norms in practice was done through a survey and topics which were addressed during the work in the focus group. These findings should be considered in the context of the limitations of the sample of organizations of the OSI, i.e., of the individual representatives who participated in the study, and therefore any interpretation on the basis of the above was carried out with caution, and the conclusions and recommendations that are in this report indicate illustrative and important segments of practices.

Almost all respondents (88.9%) are aware that there are laws governing special assistance for persons with disabilities in the process of employment and work. Although the Law on Professional Rehabilitation and Employment of Persons with Disabilities largely complies with the UN Convention, even 88.9% of respondents believe that the OSI do not have equal opportunities to find work in the open labour market as other citizens, i.e., the current application of the law does not enable a realistic availability of the right to work for persons with disabilities. As the main reasons for this, representatives of the OSI see prejudice, stereotypes and general discrimination against the OSI as workers. Fewer respondents also mention, as barriers, insufficient accessibility of the community, low education of persons with disabilities, as well as the economic crisis and the low rate of employment in general. In addition to these barriers, they also indicate following barriers: lack of adaptation of working places; there are no clear plans for hiring OSI; lack of interest of employers to hire OSI; poor family support; party ineligibility. However, even 88.3% of SCOs representatives of the OSI believe that if discrimination against the OSI occurred in the labour market, the OSI could realize their rights through the mechanisms provided for by law.

A position was put forward that the OSI often do not recognize that their rights have been violated, and even when they recognize it, they cannot obtain witnesses, they are afraid of losing their job and they do nothing

about that issue, and when a procedure is initiated, it takes a long time. One of the concrete ways to manifest discrimination is hiring for positions that are less valued in relation to competence, which is the impression of 55.6% respondents. However, this must be interpreted in light of the fact that the majority of the OSI who are employed have a primary or incomplete primary school, and their employment at least lowest paid jobs is in accordance with their competencies.

Representatives of the OOSI believe that the assessment of working capacity is superficial and does not recognize the abilities and possibilities of OSI, but it is more bureaucratic and formal. The assessment is not personalized even at the level of recognition of how different types of disabilities affect the ability of an OSI to perform various tasks. In line with this, 83.3% of respondents consider that the assessment of working capacity does not reflect what the OSI can do. The respondents see an extension of the Commission or the assessment of work skills in a real working environment as basic ways to improve the assessment of working capacity.

As far as the support of the National Employment Service is concerned, 38.9% believe that the support is good or mostly good, but even 33.3% expressed strong dissatisfaction with the NES. The fact that the employees of the NES always try to find a job for the OSI is indicated as a good side of its work as well as that various programmes related to employment of the OSI are carried out, and it is highlighted that they are well informed by the NES about employment opportunities, job vacancies. Negative evaluations are related to the low funds that are designated to support the employment of the OSI, and generally that NES primarily acts as a broker or works on a campaign bases through the competitions, and that there is no continuous support

The UN Convention does not recognize the special forms of employment of persons with disabilities, which are widespread in Serbia but two-thirds of respondents believe that these special forms of employment should not be abolished. A position was put forward that the right to work in the open labour market is not available at all to the persons with the estimated third level of working capacity and the persons deprived of the their legal capacity.

The OOSI make recommendations for improving employment as follows:

1. Improving education of the OSI, programmes for additional training and retraining, but also the educational system in general;
2. Improving accessibility to workplaces as well as the possibility of communication of the OSI in the workplace;
3. Increasing the number of trained work assistants;
4. Increasing the availability of the orthopedic aids and assistive technology in general;
5. Improving the knowledge of the OSI about the job expectations and discrimination, improving the protection of the OSI from discrimination;
6. Improving labour laws to allow more flexible forms of employment;
7. Increasing motivation of the OSI to engage in the labor market;
8. Strengthening special forms of employment within which the OSI would acquire knowledge to go out into the open labour market;
9. Improving the assessment of working capacity and increasing the motivation of the OSI to participate in the assessment of working capacity, strengthening the capacity of the NES;
10. Improving the compliance of the labour market and education of the OSI, strengthening mechanisms of career guidance;
11. Increasing employment of the OSI in the public sector;
12. Improving the accessibility of the community;
1. Giving support to employers to hire the OSI, encouraging employers;

3.5. SOCIAL PROTECTION

3.5.1. LEGISLATIVE FRAMEWORK

Defining disabilities and anti-discriminatory provisions

Social Protection Act¹⁶⁵ (Article 41) deals with the persons with disabilities. According to this provision, the social protection beneficiary is an adult or an elderly person „who has bodily, intellectual, sensor or mental difficulties or difficulties in communication, and who, due to social or other barriers, faces functional limitations in one or more fields of life“ The same Article of this Law identifies a child as a social protection beneficiary if „he/she has difficulties in development (bodily, intellectual, mental, sensor, speech-linguistic, socio-economic, multiple), and his/her needs for care and material security surpass his/her family’s possibilities.“

The Constitution of Serbia (Article 21.) defines that everyone is equal before Constitution and law. Everyone has a right to equal legal protection, without discrimination. No discrimination is allowed, either direct or indirect, on any grounds, and especially not on the grounds of the race, sex, ethnicity, social background, birth, religion, political or some other belief, financial position, culture, language, age and psychological or physical **disabilities**. Special measures that may be introduced by the Republic of Serbia in order to accomplish full equality of persons or group of persons who are essentially in unequal position compared to other citizens, are not considered to be discrimination.

Anti-discriminatory provisions relevant for the analysis are contained in the **Law on Prevention of Discrimination of Persons with Disabilities**¹⁶⁶, the first legal act that protects the basic human rights of the persons with disability and that has been in effect since 2007; as well as in **the Law on Ban on Discrimination**¹⁶⁷ - general antidiscrimination law applied since 01 January 2010.

Law on Social Protection¹⁶⁸ contains an anti-discriminatory provision that stipulates that no discrimination of social protection beneficiaries is allowed based on the race, sex, age, ethnicity, social background, sexual orientation, // religion, political trade union or some other affiliation,

¹⁶⁵ « Official Gazette RS» no. 24/11

¹⁶⁶ „Official Gazette RS“, no. 33/06

¹⁶⁷ „Official Gazette RS“, no. 22/09

¹⁶⁸ « Official Gazette RS» no. 24/11, Article 25.

financial position, culture, language, disabilities, the nature of social exclusion or some other personal characteristic.

Legal acts on the national and local level

Constitution of Serbia contains the provisions on social protection (Article 69) that lays down that the citizens and the families that need assistance of the community/social assistance in order to overcome social and life difficulties and create conditions for meeting elementary life necessities, are entitled to social protection, the provision of which is based on the principles of social justice, humanism and respect of human dignity. According to the same institutional provision, special protection is provided to persons with disabilities, war veterans and victims of war, in accordance with the law.

Laws

Law on Social Protection (ZSZ) provides for the mechanisms for expanding the assistance to the poor, includes the strategic goals relating to the reform of social services and governs the rights, types of services, institutions and service providers, beneficiary groups, mechanisms for quality control, responsibility in establishing and financing and other issues. ZSZ is based on the **concept of provision of services** in social protection. This is an approach in meeting the beneficiaries' needs that puts an accent on the type and content of services that the beneficiaries need. The concept of provision of services is based on the concept of the human rights, i.e. rights of a child. It includes fostering the beneficiary, beneficiary's family members and other persons important for the beneficiary. Beneficiary's rights and needs are assessed based on multiple aspects (holistic). A starting presumption of this concept is that the system of services should be defined in the system of social protection, rather than the system of social protection institutions, because we take into account that service providers (organizations) may be different: state services, civil society organizations, i.e. associations, entrepreneurs.

The rights to social protection are exercised by providing ***the social protection services*** and through ***financial support***.

The following has been recognized as the beneficiary groups of social protection: 1) child if he/she has difficulties in development (bodily, intellectual, mental, speech-linguistic, social-emotional, multiple), and his/her needs for care and financial security surpass the possibilities of the family; as well as 2) adult or an elderly person, if he/she has bodily,

intellectual, sensor or mental difficulties or difficulties in communication, and when, due to social or other obstacles he/she faces functional limitations in one or more fields of life. A contemporary value-related and terminological approach to persons with disabilities is visible from the definition of beneficiary groups.

Social protection services are divided into the following groups: 1) services of assessment and planning – assessment of situation, needs, strengths and risks of beneficiaries and other important persons in his/her environment; assessment of the guardian, foster parent and adoptive parent; making individual or family plan for provision of services and measures of legal protection and other assessments and plans; 2) daily services in the community – day-care; home-based assistance; shelter and other services that support staying of the beneficiary with the family and close community; 3) services of support for independent living – supported living; personal assistance; training for independent living and other types of support necessary for beneficiary's active participation in community; 4) counseling-therapy and social-educative services – intensive services of support to the family in crisis; counseling and support to parents, foster parents and adoptive parents; support to the family taking care of their child or an adult member of the family with developmental disabilities; keeping family relations and re-uniting the family; counseling and support in case of violence; family therapy; mediation; SOS phones; activation and other counseling and educational services and activities; 5) accommodation services – accommodation in kin, foster or other family for the adults and elderly; accommodation in a home; accommodation in a shelter and other types of accommodation.

Financial support is provided to a beneficiary through financial social assistance, assistance allowance and other person's care, increased allowance for other person's assistance and care, assistance for training for work, lump sum financial assistance, in kind assistance and other types of financial support, in accordance with this law and regulations promulgating for its application.

A local self-governance unit is an important social actor in providing social protection services. The reason for this is a need for development of bigger number of services in community (*community based services*) that enable staying of a beneficiary in his/her community and his/her social cohesion. Daily community-based services, support services for independent living, as well as counseling-therapy and social-education services are within the competence of local self-governance units.

The process of decentralization has multiple importance. Territorial organization of Serbia is made up of municipalities and cities, as local self-governance units, the City of Belgrade as a separate territorial unit, and autonomous provinces as a form of territorial autonomy. Serbia has 5 statistical regions (Vojvodina, Beograd, Southern and East Serbia, Šumadija and Western Serbia, Kosovo and Metohija), 29 administrative counties and 175 municipalities and cities.

Development programs are adopted by municipalities; they can include the plans in the field of social protection. In the field of social protection, the municipality is responsible to: establish institutions in the field of social protection; monitors and secures their functioning; issues permits for beginning of work of social protection institutions founded by other legal and physical entities; determines fulfillment of requirements for providing the social protection services; lays down the norms and standards for performing the activity of the institutions whose founder it is; issues regulations on rights in social protection.

Special purpose allocations. According to ZSZ, in order to foster out-of-institution services at the local level, three types of special purpose allocations are envisaged, to be used by local self-governances to develop social protection services.

By-laws

By-laws within the competence of the Republic

Subordinate level of regulation is crucial for the application of ZSZ. This law has been designed in way that its full-scale application requires passing of a number of by-laws. The reason for such a designing of ZSZ is in the need to make such a basis in the regulatory sphere that allows changing of regulations sufficiently quickly and easily, in order to improve the system of social protection, in accordance with the needs that will be identified during the application of ZSZ. In this way normative flexibility is achieved and a potential of regulations to be tailored to realistic needs in dynamic or transitional environment.

*Rulebook on Minimum Standards for Provision of Social Protection Services*¹⁶⁹ was designed in a way to make sure that minimum standards can be applied to all social protection service providers (both in the state,

¹⁶⁹ At the time of making this analysis this Rulebook was pending adoption.

private and non-governmental sectors), that they are feasible and measurable. Minimum standards identify minimum and accomplishable requirements in order to reach the quality of social protection services. This Rulebook lays down more specific requirements and minimum standards for provision of all social protection services, unless a special regulation governing more detailed requirements and standards for accomplishing certain social protection services regulate otherwise. The Rulebook defines *personal companion* of a child with developmental disabilities, which can form a separate service, but can also be implemented as a work program with the beneficiaries within the framework of home-based and day care assistance. The Rulebook specifies common and special minimum standards. Common minimum structural and functional standards represent requirements that must be complied with independently of beneficiaries groups to whom a service is intended, unless a special regulation governing more detailed requirements and standards for accomplishing certain social protection services regulate otherwise. Separate minimum and structural functional standards represent specific requirements that must be complied with within the framework of a specific group of services or specific service, in accordance with the needs and differences of beneficiaries' groups.

By-laws within the competence of local self-governance units

According to the ***Law on Local Self-Governance***¹⁷⁰ Municipality, i.e. the city adopts the development programs, including development of social protection, and in the field of social protection establishes institutions, monitors and secures their functioning, adopts regulations on the rights in social protection, etc. Responsibilities of local self-governance units in the field of social protection, from the Law on Local Self-Governance, must be viewed in the context of ZSZ, based on which the system of social protection services is introduced. Based on the decisions on social protection, the local self-governance units determine which services and types of financial benefits from their own responsibility they will provide to the citizens in their territory, to which target groups they provide individual services, in which way (through social protection institutions founded by them or by public procurement of services), issues related to the methodology of forming prices of services in its competence, participation of beneficiaries in the cost of service, etc.

¹⁷⁰ „Official Gazette RS“, no. 129/2007

Strategies, action plans and other documents

Poverty Reduction Strategy (2003) The main strategic guidelines refer to fostering dynamic growth and development, prevention of new poverty and efficient application of the existing and defining new programs, measures and activities, directed toward the poorest and groups in social need (children, the elderly, persons with disabilities, refugees and displaced persons, the Roma, rural needy population and uneducated).

Strategy of development of social protection (2005) The main goal of the development of social protection system is to develop integral social protection in which the social actors use the existing and develop the new resources, in the most efficient way, through available, quality and versatile services, in order to preserve and improve the quality of life of vulnerable and marginalized individuals and groups, training for productive life in a community and prevention of dependence on social services. The Strategy defines special and individual goals, as well as the activities and the measures that should lead to reaching the main goal of this strategy.¹⁷¹ The action plan for the implementation of this strategy has never been adopted, although its draft was developed in 2006. It is noteworthy that a big number of goals defined in the draft of this action plan have been achieved.

Strategy for promotion of the position of persons with disabilities was adopted by the Government of the Republic of Serbia in 2006. This document promotes the standards of human rights and guidelines of the policies in the field of improving life quality of the persons with disabilities during the period 2007 to 2015. The term *persons with disabilities* denotes persons with innate or acquired physical, sensor, intellectual or emotional disability who, due to social or other barriers, do not have a possibility or have smaller possibilities to be involved in the activities of the society at the same level with others, regardless of whether they are able to carry out mentioned activities with the use of technical aids or support services. A

¹⁷¹Local strategies of development of social protection were adopted in 122 municipalities in Serbia. All these strategies were developed according to the same model, with very different proposals for development of services in a local community. These proposals were harmonized with the recognized needs in local communities. Priorities, measures and activities for their implementation were identified. Forming of local bodies for social protection was planned for all municipalities. A limiting factor in the implementation of these measures included local budgets in which there is not enough financial resources for their implementation.

strategic goal set by this document is to improve the position of persons with disabilities up to the level of equal citizens who have all the rights and responsibilities. The strategy promotes social approach (social model) to disabilities, according to which the problems of the persons with disabilities are understood as socially-dependent, i.e. as a product of organization of a society and places an accent on removing barriers faced by the persons with disabilities in everyday life. The Strategy was designed after the model of international standards of protection of persons with disabilities and to the highest degree takes over the principles from the Action Plan of the Council of Europe 2006-2015. The Strategy envisages periodical passing of the action plans for the implementation of this strategy. Ministry of Labour, Employment and Social Policy did not prepare the action plans to accomplish these strategies for time periods 2007-2009, 2009-2011, 2011-2013. At the time of making this analysis, no Action Plan was developed even for the period until 2015.

Concrete rights, services, programs and forms of support to persons with disabilities

Legal capacity, deprivation of legal capacity and guardianship are legal institutes, which, as a red thread, permeates and relates to a number of other rights of the persons with intellectual disabilities i.e. intellectual or mental difficulties, and in reference to Article 12 of the Un Convention of the Rights of the Persons with Disabilities (equal position before and under the law). Family Act¹⁷² is a basic law that regulates the field of deprivation of legal capacity and placing under guardianship.

Financial benefits in social protection

Decisions provided by ZSZ with regards to **cash social benefits**, primarily ensure a larger coverage and higher benefits for more household members as well as for the households in which all members are incapable of work. The Law introduces a term of a base in nominal amount. Depending on the age structure and composition of the household, the levels of limits/amounts of social benefits are obtained for each household by multiplication with appropriate coefficients. Additionally, the social benefits are increased by 20%. **Increased amount of social benefits** is awarded to a person who is incapable of work, i.e. to a family whose all members are incapable of work as well as to a single parent family at the

¹⁷² "Official Gazette RS", broj 18/05.

level of the difference between the amount of increased social benefit and the amount of average monthly income of that individual, i.e. family earned during three months preceding in a month in which a claim for increased social benefit was filed. The term of a person incapable of work has also been expanded based on legal solutions.

A base for determining the amount of cash social benefits at the time of passing ZSZ (March 2011) was 6.050 Dinars (54,53 Euro). A base for determining the cash social benefit is adjusted with the consumer price index in the previous six months, based on statistical data twice a year, on April 1, and October 1.

With regards to the allowance for other person's care and assistance

defining of this institute in ZSZ protection includes definition of a benefit user, with explicit stating of the persons with intellectual disabilities as potential target protection group and persons with organic/ permanent disorders of neurological and psychological type. The amounts of benefits are expressed nominally, with indexing performed twice a year, against consumer price indexes. An allowance for assistance and other person's care is defined at the nominal monthly level, which, at the time of passing the Law, was 7.600 Dinars (68.50 Euro); the Law also stipulates that the amount of the allowance for assistance and other person's care is adjusted with the consumer price index in the preceding six months, based on statistical data, twice a year, on April 1 and October 1. Additionally, this Law stipulates that any person who, due to physical or sensory impairment, intellectual difficulties or changes in health condition is in need of an assistance and care of another person, and who was determined on the basis of the regulations on pension and disabled persons' insurance to have a 100% physical impairment or organic permanent disorder of neurological and psychological type, as well as any person who has multiple impairments, providing that the level of impairment is 70% or more on at least two bases, is **entitled to increased allowance for assistance and care of another person.**

Parents of a child with developmental difficulties entitled to an increased allowance for assistance and care of other persons, i.e. one of the parents of a child, and who has directly taken care of his/her child for at least 15 years, is entitled to a special cash benefit in the form of life-long monthly cash allowance at the level of the lowest pension in employees' insurance at the time of meeting the age requirement for pension according to the

pension and disabilities insurance regulations, in case that he/she is not entitled to pension. A special cash allowance in this regard is adjusted in a way defined for adjusting the lowest pension in employed persons' insurance.

The right to assistance in training/education is primarily exercised by the children and the young with slight physical or intellectual difficulties, and in practice this most commonly includes only the use of the transportation cost benefit and very rarely accommodation costs if the training process is carried out outside of the place of residence¹⁷³.

Only a very small number of beneficiaries uses **an allowance for expenses of staying in pre-school institution for children with developmental disabilities**. This right has been provided for on the basis of the Law on Financial Support to the Families with children, and is within the competence of local self-governance units.

The procedure for exercising the right to cash social benefit, rights to allowance for other person's assistance and care and the rights to increased allowance for other person's care assistance and is initiated upon request, or may be initiated ex officio. The Center for Social Work founded for the territory in which the claimant has a residence, i.e. temporary residence decides on the rights to cash social benefits, right to other person's care and assistance, and right to an increased amount of other person's care and assistance.

Social protection services, defined by ZSZ are available to all beneficiaries who are in need of them. The assessment of the needs for a specific service is performed in the center for social work, ex officio or at the beneficiary's request. Any physical or legal entity may initiate the procedure by filing a claim. Legal jurisdiction of the center for social work is determined according to the beneficiary's residence and exceptionally, the procedure for use of the service may be carried out by a center for social work in the territory of which the beneficiary has temporary residence.

Cash benefits in the system of pension and disabled persons' insurance

¹⁷³ Reports on work of Centers for Social Work in Serbia in 2009 and 2011, Republic's Institute of Social Protection.

The **Law on Pension and Disabled Persons' Insurance**¹⁷⁴ provides for the following types of rights: in case of age – right to age pension; in case of disabilities – right to disabled persons' pension; for the case of death: right to family pension, right to reimbursement of funeral expenses; for the case of physical damage, caused by injury at work or professional disease – right to cash compensation for physical damage; for the case of other person's assistance and care – right to cash compensation for other person's assistance and care. The procedure for exercising the right from pension and disabled persons' insurance is initiated upon the person's request and along with the related documents filed to the responsible branch, according to the place of last insurance or the place of residence of claimant.

The right to disabilities pension is awarded if the total loss of legal capacity until the age necessary for eligibility to age pension: if the cause of disability is injury at work or professional disease, regardless of the length of years of service; if disability is a consequence of a disease or injury outside the place of work, it takes at least five years of service. An exception to this are the insurees with whom disability occurred prior to 30 years of age: until 20 years of age, at least one year of service (insurance) is necessary; until the age of 25 – two years of service; until the age of 30 – three years of service.

The right to cash compensation for other person's assistance and care is awarded to an insuree and the beneficiary of pension, who, due to the nature and seriousness of injury or illness, needs assistance and care to carry out activities in order to meet the basic life needs. According to the Law on Pension and Disabilities Insurance, only immobile persons, persons with completely impaired vision, and persons with dementia and those unable to eating, dressing or moving in the house, as well as persons on hemodialysis are practically entitled to this compensation. In cases where the committee for persons with disabilities assesses that the health condition can improve, a review is scheduled. Cash benefit for other person's assistance and care amounts to 15.439,59 Dinars (139,15 Euro)¹⁷⁵. The payment of this benefit is not dependant on the amount of other income.

¹⁷⁴“Official Gazette RS”, no. 34/2003, 64/2004 – Decision of USRS, 84/2004 - dr. law, 85/2005, 101/2005 - dr. law, 63/2006 – Decision of USRS, 5/2009, 107/2009, 101/2010 and 93/2012)

¹⁷⁵ Source: Pension and Disabled Persons Fund, Belgrade, (2013)

The right to cash allowance for physical injuries is awarded to insurees who, due to an injury at work or a professional disease, have lost the function of a certain organ or parts of the body, or their functioning was significantly impaired. The amount of the cash benefit for physical injury is determined depending on the identified percentage of physical injury from 30% to 100% (which is decided by the competent disabilities committee), of the prescribed basis and is adjusted in the same way as the pensions. The basis for its determination is 6.432,99 Dinars (58,00 Euro)¹⁷⁶.

An insuree – pension beneficiary and the insuree's blind child are entitled to **cash benefit for buying special aids for reading and writing** – reproducer, Braille typewriter and other electronic i.e. digital aids.

Rights of professional military persons, soldiers, military and civilian war disabled persons.

The regulations on the Army of Serbia and the Law on Pension and Disabilities Insurance, defines the right to an age pension and the right to disabilities pension for professional military persons, as well as the right to the family pension of a spouse or children of professional military person. The rights of soldiers, civilian and military war disabled persons, are regulated under the **Law on the Rights of War-Disabled Civilians**¹⁷⁷ and the **Law on Basic Rights of War Veterans, War-Disabled Combatants the Families of Killed Soldiers**¹⁷⁸. Only those citizens who acquired the capacity of a soldier, war-disabled combatant, i.e. war-disabled civilian are entitled to the rights in soldier-disabilities protection. These rights are exercised before the municipal administrative body in charge of soldier protection. The following rights are available in this field: soldier's allowance; personal disabilities payment of disabled soldiers; allowance for assistance and care of the disabled soldier; right to an orthopedic aid; disabled soldier's right to compensation during unemployment; disabled soldier's right to compensation for food and accommodation in order to travel to another place; right to passenger motor vehicle; right to free and privileged transport; right of the member of soldier's and disabled soldier's family in case of soldier, i.e. disabled soldier's death; right to family disabilities

¹⁷⁶ Ibidem.

¹⁷⁷ "Official Gazette RS", no 52/96

¹⁷⁸ "SRY off.gaz.", no. 24/98, 29/98 – corr. and 25/2000 – decision of SUS and "RS Off.Gazette", no. 101/2005 - dr. Law and 111/2009 - dr. law)

payment; rights of the war-disabled civilian to personal disabilities payment; allowance for other person's care and assistance; orthopedic aid; free and privileged transport; compensation for food during traveling and staying in another place upon the invitation of a competent body; compensation for funeral expenses.

Tax and customs duty exemptions

In the legal system of Serbia, persons with disabilities are entitled to exemption from payment of different tax and customs levies. Exemptions in the payment system are realized on the basis of the Law on Sales Tax that regulates (among other) that the following is exempted from the sales tax on products, i.e. services: medicaments stated in the list of medicaments that are prescribed and dispensed charging the health insurance funds; dialysis material; blood and blood products; orthotic and prosthetic aids; medical devices – products that are directly incorporated in the body.

Benefits in internal passenger transport

Persons with disability are provided benefits in internal passenger transport. Benefits relate to the following persons: blind persons; persons suffering from dystrophy and related muscular and neuromuscular diseases; persons suffering from *plegia*; persons suffering from cerebral and child paralysis; persons suffering from multiplex sclerosis; as well as these persons' companions.

Living

The relevant regulations govern the welfare housing and supported housing. *According to the Law on Welfare housing*¹⁷⁹ persons with disabilities are also entitled to be beneficiaries of a welfare accommodation, if they comply with other prescribed conditions. *The Law on Social Protection*, within the group of services of support for independent living, regulates the service of supported living. The service is available in a long-term to persons with physical disabilities, with intellectual or mental difficulties, upon turning 15 years of age.

3.5.2. INSTITUTIONAL FRAMEWORK

¹⁷⁹ "Official Gazette RS", no. 72/2009

Bodies and institutions in the field of social protection, levels of their organization and financing

At the *legislative level*, the **Committee for labour, social issues, social inclusion and poverty reduction** was established as one of the working bodies of the National Assembly of the Republic of Serbia

The Government of the Republic of Serbia has established a **Social Inclusion and Poverty Reduction Team** with the office of the Deputy Prime Minister for European Integration, in July 2009. The Team is responsible for strengthening the capacities of the Government to develop and implement social inclusion policies based on the application of good practices in Europe and to support the competent ministries in the development and implementation of social inclusion policies, with regular consultations with civil society organizations

The social welfare system that is also relevant for persons with disabilities who are recognized as one of the beneficiary groups, consists of the Ministry of Labour, Employment and Social Policy; Secretariat of Health, Social Policy and Demography of the Autonomous Province of Vojvodina; bodies of local self-governance units (municipalities and cities) responsible for social and child welfare; institutes for social welfare; centres for social work; centres for foster care and adoption; Centre for the Protection of Victims of Trafficking; the network of public institutions of social welfare founded by the Republic, AP of Vojvodina and local self-government units, as well as providers of social services organized in different forms in accordance with the laws.

A Centre for Social Work is a social welfare institution in which the rights are exercised, measures are applied, services are provided and other tasks are performed in the area of social protection. In the realization of its public authorization a centre carries out activities which are mainly determined by the ZSZ, Family Act, as well as other acts and regulations. In Serbia there is a network of 140 centres for social work, within 173 departments.

Providers of social welfare services are social welfare institutions and other organizations organized in accordance with the law. A social welfare institution may be founded by the Republic, the Autonomous Province,

local self-government units and other natural and legal persons. Providers of social welfare services may also be associations, private entrepreneurs, etc.

3.5.3. COMPLIANCE WITH THE CONVENTION

Harmonization of the definition of disability

- The Constitution (Article 21) uses the term "the disabled" and it would be more adequate to replace it with the word "persons with disabilities" in order to comply with the terminology of the Convention on the Rights of Persons with Disabilities. ***Due to the use of inadequate terminology, the Constitution partially complies with the UN Convention, and, in the case of amending the Constitution, it is necessary to adapt the terminology to that of the UN Convention and harmonize it with international standards, which are part of the legal system of Serbia.***
- The Law on Social Protection (Article 41) refers to the persons with disabilities, and they are people with physical, intellectual, sensory or mental disabilities or communication difficulties, and when, due to social or other obstacles, they encounter functional limitations in one or more areas of life. Social dimension in the definition of persons with disabilities is visible in this provision. ***The Law on Social Protection regarding the definition of persons with disabilities is in compliance with the UN Convention.***
- When the broader legal, regulatory body concerning the appropriate standard of living and social welfare is considered, it is necessary to review the definition of disabilities at the state level and guarantee a unique definition for the entire sector and all rights pertaining to disabilities. ***It results from this that the relevant legislation partially complies with the UN Convention.***

Anti-discriminatory provisions

- The Constitution of Serbia contains anti-discriminatory provision which complies with the UN Convention
- **The Law on Prevention of Discrimination against Persons with Disabilities and the Law on Anti-Discrimination** contain adequate

modern anti-discriminatory provisions, which are in line with the UN Convention

- **The Law on Social Protection** defines the objectives of social welfare in its introductory section, indicating, among other things, the creation of equal opportunities for independent living and encouraging social inclusion. It is this part of Article 3 that is based on Article 19 of the UN Convention on the Rights of Persons with Disabilities and Article 15 of the revised European Social Charter, and represents a step forward compared to the previous law. The Law on Social Protection recognizes the principle of protection of human rights and dignity for users of social services (Article 24) and prohibits discrimination against them (Article 25), including the prohibition of discrimination based on disabilities. In this sense, services are provided to beneficiaries in the least restrictive environment (Article 27), which means that a person should be able to remain in his/her community. One may conclude from the aforesaid that the Law on Social Protection includes anti-discrimination provisions that comply with the UN Convention.

Deprivation of legal capacity and guardianship

- **Family Act** partially complies with the UN Convention. The provisions of depriving of legal capacity, in particular institute of complete deprivation of legal capacity, are not in accordance with the UN Convention.

Equal access to resources, rights and services

In the relevant regulations that are subject of this part of the analysis, with respect to the adequate standard of living and social welfare, it can be concluded that:

- Persons with disabilities have equal access to social welfare services, devices and other assistance (financial benefits from the social welfare system and pension and disabilities insurance) for their needs. In this section, the provisions of the analyzed regulations comply with the UN Convention.
- Persons with disabilities, in particular women and girls with disabilities and older persons with disabilities have access to the social welfare programmes and poverty reduction programmes. In this section, the provisions of the analyzed regulations comply with the UN Convention.

- Persons with disabilities and their families living in poverty have access to the state aid to cover the costs associated with disabilities, including adequate training, counseling, financial assistance and temporary other people's care. In this section, the provisions of the analyzed regulations comply with the UN Convention.
- Persons with disabilities have access to housing programmes, as well as supported housing as a social welfare service. In this section, the provisions of the analyzed regulations comply with the UN Convention.
- Persons with disabilities have equal access to retirement benefits and programmes. In this section, the provisions of the analyzed regulations comply with the UN Convention.

Institutional framework in the area of social welfare is well developed, and the Law on Social Protection contains provisions that allow greater participation of non-governmental organizations in the provision of social services.

3.5.4. IMPLEMENTATION ANALYSIS

Focus groups

The implementation of the legislative and institutional frameworks in the area of "Adequate standard of living and social welfare", was analyzed with a focus on social welfare

Relevance of the research findings as well as conclusions and recommendations, primarily has a strong descriptive component - experiences and relationships of the respondents towards the topics which were regarded by the survey questions and to the topics which were dealt with during the work in the focus group. Any interpretation based on the above said was carried out with appropriate research caution, and conclusions and recommendations that are in this report indicate illustrative and significant sequence of the practice

In the focus group the subject of discussion were the factors that make it more difficult for the organization of civil society dealing with persons with disabilities to participate in providing social services.

Participants spoke about the experiences they had with representatives of units of local self-government in connection with facilitating the provision of social welfare services and obtaining funds from local budgets for the implementation of activities that are related to the social welfare of persons with disabilities

According to the respondents' statements, the disturbing factors for the participation of organizations of civil society in this area are:

- the existence of spheres of interest of decision makers in local communities, which are not always transparently identified and are not in correlation with the citizen's needs for the social welfare services;
- the importance of the political affiliation of persons interested in obtaining funds for implementation of projects;
- the existence of lobbies for allocation of funds for implementation of projects

One of the important factors that have a negative impact on improving the status and obtaining roles of providers of the social welfare services of organizations of civil society, is also the establishment of public institutions for the provision of these services in the community. The unclear role of centres for social work also has a negative impact on the improvement of the status of civil society organizations in the provision of social services. Centres for social work are favoured as providers of these services, even when the legal requirements for such a solution are not met

The practice of the Ministry of Labour and Social Policy in the open competitions for the allocation of funds for the project financing and development of services in the community is identified as one of the obstacles to the development of social welfare services in the community. Namely, the responsible ministry envisages a guarantee of the service sustainability as one of the criteria for the grant of resources and it should be provided by the units of local self-government. This is an obstacle for poor municipalities, which cannot guarantee that the service will also be provided after termination of project financing from the national budget.

Survey

According to the respondents' statements, in the units of local self-government from which respondents are coming there are the social

welfare services for persons with disabilities as follows: help at home, daycare centres, personal assistance and other services and programmes.

Home-based Assistance is one of the most widespread services in communities intended for persons with disabilities. In addition to the fact that this is a frequent social welfare service, the survey results in terms of the service also points to its recognition, i.e., that the respondents are well informed about the existence of this service. *Daycare centre* is, as well as help at home, very present social welfare service in local communities for persons with disabilities. Although a service with significant capacity to provide independent living for persons with disabilities, *personal assistance* is less common in local communities. According to the respondents' statements this service exists in twelve (12) units of local self-government, but in five (5) of the said local communities where there is personal assistance, the service is provided through projects, i.e., temporarily. *Other services and programmes* identified in the units of local self-government from which the respondents are coming, are: respite - weekend accommodation; transportation of persons with disabilities who are beneficiaries of the daycare centres counseling; supported housing; a club of young people with disabilities

Respondents indicated a number of social services and programmes that persons with disabilities need, but which are not present in all analyzed local communities: personal Assistance

- *help at home*
- *daycare centre*
- *respite accommodation*
- *supported housing*

In addition to the aforesaid, there is also a pronounced need for the following services and programmes:

- *programmes to support the employment of persons with disabilities*
- *transport for persons with disabilities*
- *assistant in school*
- *child's personal companion*
- *sign language interpreter.*

Among used rights to financial support, the respondents state that they use the allowance for assistance and care of other person, as well as the increased allowance for help and care of other person. A number of

respondents indicated that they do not use any rights to the financial help from the social protection.

Proposals for the improvement of the social protection system for the persons with disabilities

The obtained proposals for the improvement of the social protection system for the persons with disabilities can be classified according to similarity and areas to which they relate, as follows: 1) proposals relating to the obligations of republic authorities and units of local self-government to improve the services in local communities; 2) proposals regarding improvement of information, communication and coordination; 3) proposals to improve the capacities and status of service providers, civil society organizations

Obligations of the republic authorities and units of local self-government to improve the services in local communities

Participants clearly recognize the correlation between realization of the legal obligations of local governments to improve services in the community, but the relevance of fulfillment of the obligations of the Republic of Serbia

Information, communication and coordination are recognized as important factors for the improvement of the system of the social welfare services for persons with disabilities

Improving the capacity and status of service providers, civil society organizations has been recognized through the need to strengthen the capacities of the organizations that are interested in the provision of social services.

4. RECOMMENDATIONS

4.1. Recommendations in the accessibility field

1. Provisions of the Law on Planning and Construction, and related by-laws on mechanisms of supervision of compliance with accessibility standards should be further elaborated and clear criteria, authorizations, procedures and duties of performing supervision should be defined.
2. National Action Plan for Removing Barriers and Local and Regional Accessibility Strategies should be adopted,
3. Continuous efforts should be put into education of expert public, bodies responsible for supervision of compliance with accessibility standards and the persons with disability themselves as well as the activities of their organizations.
4. Provisions of the Law on Road Transport should be amended to incorporate the provisions on guaranteeing accessibility to passengers with disabilities
5. General provisions on availability of public information and electronic communication of the persons with disabilities should be further elaborated and by-laws with more precise technical guidelines on how to make public information and electronic communication accessible to persons with disabilities should be adopted.
6. The Law on Use of Sign Language should be adopted.
7. By-laws and technical norms that would ensure accessibility of goods, public goods and services should be elaborated and adopted.
8. The Law on Movement of Blind Persons with the help of guide dog should be adopted.

4.2. Recommendations in the field of education

The process of revision of documents with full participation of the persons with disability is necessary

1. Laws on Elementary and Secondary Schools, adopted before ratification of the Convention, in which the part on special education is applied, as well as the Rulebook on the Type of Professional Qualification of teachers, assistants and assistant teachers in specialized schools for pupils with slight mental

developmental difficulties originating from 1992 should be harmonized with Article 24 of the Convention.

2. Emphasis should be placed on the talents of children with disabilities, on improving the organization of sport activities for children with disabilities. Peer counseling centers within the educational institutions, pedagogical assistance. As for the teaching staff, persons with disabilities should be employed, accessibility. Providing information to the parents on the rights, cooperating of teaching staff.
3. Employment of persons with disabilities in educational institutions, experienced-based counseling of children and peer counseling.
4. Constant education in media, seminars for teaching staff, different forms of support and strict application of laws and improvement of the existing, i.e. passing of the new laws in this field. Provide interpreters, personal assistance, introduce training for teachers who work with persons with disabilities.
5. Introduce education of future teachers, with a certain program relating to the persons with disabilities, so as to be able to influence the improvement of instruction and inclusion.
6. Children and adults with disabilities, i.e. hearing impairment should be provided so that they can have easier communication with the hearing persons and introduction of the gesture language as equal.
7. Implementation of legal regulations, using support by the Network of Support to Inclusive Education, development of services of support to inclusive education by the civil sector, organizations of persons with disabilities.
8. Incorporation of subjects such as the rights of and discrimination against persons with disabilities in higher education curricula for teachers/trainers and expert services in schools.
9. Organize additional training for teaching and other staff of school for application of different methodologies and strategies in education.
10. Provision of information, education and workshops to the teaching staff, principals and lawyers in educational institutions, about the importance of full application of the Convention, on the resources that are hidden in the OSI themselves.
11. Changing of the perspective of OSI from the aspect of persons with *disabilities* to the persons *with developmental difficulties* and advising so that no teacher or pedagogue do not *impede* anyone with anything that they may do. In this, it should be insisted that

the Ministry takes a clear position and necessary steps, by **not** asking for paperwork on the existence of teams, by **non** requiring the making of IOPs, by **not** writing the reports and by not insisting on the meetings in which everyone is mainly quiet waiting for the meeting to end; and instead to apply clear penalty measures if they come across any form of child neglect, interfering with educational or any other functioning...

12. Encourage and inform the parents, especially in small towns/communities and educate the parents of children with disabilities **not** about the rights but about the *way to solve* any situation on the ground – by referring to ombudsman and/or lawyers and by filing appeals, reports from the ground on work and appealing to the work of educational institutions, teaching staff and all others participating in *impeding a child to exercise his/her rights guaranteed under UN Convention, the Republic of Serbia Constitution, Law on Basis of Education and Upbringing*.

4.3. Recommendations in the field of health care

1. Prepare an outline of specific needs and problems characteristic for specific forms of disability, that should be addressed separately.
2. Equalize terminology in all regulations in this field,
3. Amend the Rulebook on Rehabilitation in RH centers (possibility of using a spa for persons with cerebral paralysis after 18 years, as well as using spa treatment for children with disabilities during summer holidays,
4. Decentralize knowledge and resources in university clinics for certain healthcare treatments (non-invasive lung ventilation) and train the healthcare staff,
5. Remove architectural, communication, technical and other barriers in healthcare institutions, wherever possible and in as short time as possible,
6. Make the health protection uniform in the whole of Serbia territory,
7. Introduce a possibility of dispensing medicines for the period longer than one month without a participation fee,
8. Amend the Rulebook on Aids in the segment of simplifying the procedure of getting certain aids for a short time period, servicing and renewing,

9. Raise awareness of health workers on the rights of persons with disabilities,
10. Raising the level of healthcare culture of persons with disabilities.

4.4. Recommendations in the field of employment

1. Start an initiative for the term disabilities in the framework of ZPIO to be adjusted with the Convention on the Rights of the Persons with Disabilities .
2. Improve the mechanisms of acquiring competencies and education of persons with disabilities in order to increase opportunities for employment of persons with disabilities;
3. Right to work should be provided to persons with disabilities on a long-term basis so that the legislation is harmonized with the Convention on Rights of Persons with Disabilities. In that sense, ZPRZOSI should be amended to enable employment with the assessed degree 3 of working capacity.
4. Initiative should be made to amend the positive regulations (ZPRZOSI) or to more precisely define discriminatory procedures in the process of employment and work (ZSDOSI) in order to determine the term 'discrimination' more closely;
5. Initiative should be started to equalize the position of budgetary users and other employers in the sense of the obligations of employing persons with disabilities;
6. Initiative should be started to amend ZPRZOSI or ZR so as to encourage acquiring experience of persons with disabilities in the open labour market;
7. The role of special forms of employment in the sense of inclusion, i.e. exclusion of persons with disabilities in the open labour market should be considered.

4.5. Recommendations in the field of social protection

1. In addition to the most common services of home-based and day care services, the service of personal assistance should be provided to a higher extent, as it has a great capacity to ensure independent living to persons with disability – currently even if it exists it is often provided only within a project framework, i.e. temporarily;
2. Work on the improvement of the system of social protection

services in community designed for persons with disabilities, i.e. those that are in the competence of the local self-governance units, should be continued;

3. Mechanisms of promoting plurality of social protection providers should be more consistently applied, i.e. the place of civil society organizations as potential service providers for persons with disabilities should be promoted;
4. The practice whereby the centres for social work are still given inappropriately big role in provision of community-based services, due to the local self-governance views, whereby the legal provisions on public procurement of services are avoided and the social protection centers enabled to provide these services outside the requirements envisaged by the Law on Social Protection;
5. There should be clear systems of communications between civil society organizations and local self-governance units;
6. Clear procedures, monitoring and control of application of standards of social protection services are all required, making the system sustainable;
7. Representatives of local self-governance units, representatives of centres for social work and representatives of civil society organizations should all be invited together to the meetings dedicated to promoting community-based services.

Annex 1:

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„Report on Compliance of
Legislative and Institutional
Framework in Montenegro
with the UN Convention on
the Rights of Persons with
Disabilities and
Recommendations for
Harmonization“

Union of Associations of Paraplegics of
Montenegro

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1. INTRODUCTION

The Report on Compliance of Legislative and Institutional Framework in Montenegro with the United Nations Convention on the Rights of Persons with Disabilities and Recommendations for Harmonization is a product of the regional project „Establishing the Balkans Independent Network of Persons with Disabilities“ which is supported by the Delegation of the European Union in Bosnia and Herzegovina“. The National Report for Montenegro comprises five sectors of human rights observed with regards to the UN Convention, ratified by Montenegro in 2009, namely: accessibility, education system, health protection, labour and employment and appropriate standard of living and social protection. One group for each of the sectors was formed to analyze the existing legal regulations in the said fields. This was followed by the analysis of application – compliance with legal framework; this analysis was carried out by qualitative poll by the method of questionnaire. By comparing the results of the analysis of legal regulations against the results of the analysis of their application in practice, guidelines and recommendations were created for harmonization of the national legislation with the UN Convention on the Rights of the Persons with Disabilities.

The National Report contains the information about the general conditions (context), and then for each specific area (accessibility, education system, health protection, labour and employment and adequate standard of living and social protection): analysis of institutional and legislative framework, implementation analysis – compliance with the legal framework, as well as consolidated recommendations for harmonization and adjustment resulting from the study findings.

The working group leaders were Aleksandra Popovic, Nataša Borović, Slavko Vučićević, Milenko Vojičić, Goran Macanović and Milisav-Mimo Korać.

2. GENERAL CONDITIONS (CONTEXT)

Statistical data on persons with disabilities in Montenegro

According to the data of the Institute of Statistics of Montenegro¹⁸⁰, of 28 September 2012, the 2011 Census, Montenegro had a population of 625.266. This was the first census in which the data on the existence of „disabilities in performing everyday activities“ were collected. It was stated in the census that the persons who had difficulties in performing everyday activities were those persons who had practical limitations during carrying out of or participating in different activities. This group includes the persons who experience limitations in the main functional activities, such as ambulation, hearing, vision, etc. even if such a limitation is improved by the use of and aid or with support of the environment.

Of total population, 11,4%, or 68.064 persons, said that they had difficulties when performing everyday activities, due to long-term disease, disability or old age.

Five percent of total population had difficulty in walking, 2% had vision problems although they wore glasses or lenses. Of total population 1% had hearing problems although they wore hearing aid, 1% of population had problems with memory, concentration or communication with others, 4% of population experienced difficulties of other types.

As for the orthopedic aids, 2% of Montenegrin population use the walking sticks, crutches or walkers as walking aids; 0.2% of Montenegrin population, i.e. about 1000 persons were permanently immobile; other persons who had walking problems used prostheses for limbs or wheelchair, as a type of walking aid.

The most common cause of difficulties when carrying out everyday activities included: disease, with 6% of population; 2% of population stated old age as a cause of difficulty; 1.2% person had a professional damage caused by injury at work or a professional disease; 3.914 persons stated they had injuries as a cause of difficulty which did not originate at work or in an accident; 3.488 persons had innate difficulties; 0.3% persons had an injury in an accident, while 0.2% persons do not know the cause of a difficulty they face.

One percent of population younger than 29 years had impediments or difficulties while performing everyday activities due to a long-term disease or disability. This percentage rises with an increase of age, up to 40% of

¹⁸⁰ Source: [www.monstat.org/userfiles/file/popis/2011/saopstenje/saopstenje/\(1\).pdf](http://www.monstat.org/userfiles/file/popis/2011/saopstenje/saopstenje/(1).pdf).

population in the age group from 65 to 84 years of age and 61% of population older than 85.

Of total number of persons with disabilities 54% were women and 46% men. Of total number of women, 12% had difficulties when performing everyday activities, while this percentage with men was 10%

Gross domestic product (GDP)

Gross domestic product of Montenegro in 2011 was 3.234 million Euro, while in 2010 it was 3.104 million Euro. Gross domestic product per capita in 2011 amounted to 5.211 Euro, and in 2010 it was 5.011¹⁸¹ Euro. The real growth of gross domestic product in 2011 was at the level of 3.2%.

¹⁸¹ <http://www.monstat.org/userfiles/file/GDP/BDP%202011%20saopstenje.pdf>

3. SPECIFIC FIELD

3.A ACCESSIBILITY

According to Article 9 of UN Convention on the Rights of the Persons with Disabilities, with Optional Protocol, it is recognized that State Parties signatories to the Convention are obliged to take measures to provide persons with disabilities unimpeded access to built environment, transport, information and communications, including information and communication technologies and systems, as well as to other services and facilities intended for the public, both in urban and rural areas. These measures, that will include identification and removal of barriers to accessibility, will, among other, be applied to: (a) buildings, roads, transport and other internal and external facilities and plants, including schools, housing buildings, medical facilities and work places; (b) information, communication and other services, including electronic services and emergency services.

2. State Parties shall also take appropriate measures to: (a) develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public; (b) ensure that the private entities and entrepreneurs that offer facilities and services which are open or provided to the public, take into account all aspects of accessibility for persons with disabilities; (c) provide training for all stakeholders on accessibility issues relevant for the persons with disabilities; (d) provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms; (e) Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public; (f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information; (g) Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet; (h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Article 21 of the Convention lays down an obligation of the State Parties to provide the persons with disabilities access to information in accessible formats and technologies accessible to different forms of disabilities; Article 24 provides for accessibility to education; while Article 25 provides for access to health protection services.

According to Article 27 of the Convention, States Parties have an obligation to provide access to work and employment and ensure reasonable adaptation at work and in the working environment.

Based on Article 28, item 2a of the Convention, States Parties are required to provide the persons with disabilities access to services, resources and all forms of assistance in order to meet their needs at minimum cost.

Based on Article 30 of the Convention, State Parties have an obligation to provide participation in cultural, sport life, recreation and leisure activities, as well as to places where cultural events take place and cultural services are provided (theater, museum, library), as well as to sport facilities and the facilities for recreation and tourism.

Montenegro is inaccessible for persons with disabilities in all segments. Although there is quite a good legal framework creating a good basis for making a physically accessible environment with persons with disabilities, concerning this population, Montenegro is physically inaccessible state. Public transportation is not accessible to them. There is no accessible means of transport for the persons who use wheelchairs, while for the persons with sensory impairments, there is adequate signalization at only about dozen traffic lights in the whole territory of the country.

Accessibility to information and communication, TV and the Internet is a barrier that is less visible, but very much present. Most information provided in printed form is not available to persons with vision impairments, as they are not printed in Braille or in appropriate format.

A great deal of information or services is not accessible to persons with hearing problems due to the lack of the text synchronization devices and sign language interpreters, which has not yet become an official language in Montenegro.

3.A.1 ANALYSIS OF INSTITUTIONAL AND LEGISLATIVE FRAMEWORK IN THE ACCESSIBILITY FIELD

LEGISLATIVE FRAMEWORK IN THE FIELD OF ACCESSIBILITIES

Definitions of disability

There is no general law in Montenegro dealing with disability in all segments of the society; instead this problematic is addressed in a number of regulations.

Law on Physical Development and Building Construction, as the main law in the field of construction does not contain the definitions of, but recognizes the term „persons with disabilities“.

This Law represents a legal basis for creation of an accessible physical environment for persons with disabilities (Article 73) by defining a standard through the Rulebook on More Detailed Conditions and Manner of Adjustment of Facilities for Access and Movement of Persons with Decreased Mobility and Persons with Disabilities.

In the list of terms of this Rulebook the term „*a person with disabilities*“ is defined as „*a person with innate or acquired physical, sensory, intellectual or emotional decreased ability*“, whereby a medical approach to disability is applied, which is not in accordance with the Convention.

The Law on Ban on Discrimination against Persons with Disabilities, as a separate law, contains a definition in accordance with UN Convention. It reads as follows: „A person with disabilities is a person who has long-term physical, mental, intellectual or sensory impairments, which in interaction with different barriers may make full and effective participation of this person in the society more difficult based on the equality with others“. The Law defines the term „person with disabilities“, which is in accordance with the UN Convention on the Rights of Persons with Disabilities.

Law on Electronic Communications recognizes persons with disabilities as one of the categories of users of the services, to whom, under this Law, special benefits in terms of choice, rate, conditions and access to use are provided and the quality of electronic-communication services are provided.

Law on Electronic Media recognizes the term „a person with disabilities“ with regard to whom the public broadcasters have an obligation to provide their services without discrimination, particularly fostering social integration of persons with disabilities.

Law on Contract Relations in Railway Traffic¹⁸² which defines contractual and other relations arising in the transport of passengers, items and luggage and vehicles in internal and international railway traffic, contains a definition of the term „a person with disabilities“ which reads as follows: „A person with disabilities or with decreased mobility is a person whose mobility in the use of transport is decreased due to some physical incapacity, sensory or locomotor, permanent or temporary), intellectual incapacity or impairment or any other cause of incapacity or due to age, so

¹⁸² „MN Off.Gaz.“, no. 41/10

that this situation requires appropriate attention and adaptation of the transport services to his special needs.”.

Anti-discriminatory provisions

There are a number of regulations that contain anti-discriminatory provisions in this field.

Under the **Constitution of Montenegro**, any direct or indirect discrimination on any grounds is forbidden (Art 8). Article 68 of the Constitution provides that special protection to the persons with disabilities is guaranteed.

Law on Ban of Discrimination, as a general law protecting human rights, recognizes disability as a special basis of discrimination, and defines discrimination with regard to physical access and use of public facilities as special forms (Art 2, and Art 18, para 2).

Law on Ban of Discrimination of Persons with Disabilities¹⁸³ is a special law protecting human rights of this population. This Law recognizes discrimination based on disability in using facilities and areas in public use (Art 8), discrimination in the field of providing public services to persons with disabilities (Art 9) and discrimination in public transport (Art 16).

Law on Safety of Traffic on Roads guarantees special protection to persons with disabilities under this Law (Art 5), while the Law on Air Traffic contains anti-discriminatory provisions (Art 54) which oblige the providers of services to provide services to persons with disabilities in a way enabling them to be transported in air traffic on equal conditions and without discrimination.

Law on Electronic Communications provides for access or availability of public electronic communication services to persons with disabilities, cost of services on favourable conditions, access to emergency services and envisages an obligation of informing the persons with disabilities about all characteristics of services.

Law on Postal Services¹⁸⁴ in its basic provisions promulgates equality and non-discrimination of users of postal services.

¹⁸³ “MN Off.Gaz.”, no. 39/11

¹⁸⁴ „MN Off.Gaz.”, no. 57/11

LEGAL FRAMEWORK IN THE FIELD OF ACCESSIBILITY

Analysis of legal acts in the field of access in the /field of physical environment/

1. Law on Physical Development and Building Construction defines the conditions for access and movement of persons with decreased mobility (Art 73). This provision lays down that the construction of buildings in public use and residential-office buildings is performed in a way to provide unimpeded access, movement, staying and work to persons with decreased mobility and persons with disabilities. Also, paragraph 2 defines that the residential and residential-office buildings with 10 and more apartments must be built in a way to ensure simple adapting of facilities, of at least one housing unit per 10 apartments for unimpeded access, movement, staying and work of persons with decreased mobility. This provision envisages obligatory compliance with accessibility standards within city-planning and technical requirements. It also envisages a possibility for issuing permits for erecting ramps, lifts and platforms to access a building at the level of local self-governances.

This Law also lays down penalty provisions at the level of 2.000,00 EUR to 40.000,00 EUR for an offence committed by a legal entity for not ensuring access and movement in a facility for persons with decreased mobility and persons with disabilities, for not ensuring construction, i.e. not providing for adaptation of facilities in public use for access to the persons with decreased mobility and persons with disabilities. The Regulation on More Detailed Conditions and the Manner of Adjustment of Facilities for Access and Movement of Persons with Decreased Mobility and Persons with Disabilities prescribes the conditions and the manner of ensuring unimpeded access, movement, staying and work for persons with decreased mobility in facilities in public use, residential and residential-office buildings, as well as the conditions and the manner of simple adjustment of accessibility to residential and residential-office facilities. The Regulation also defines the buildings in public use, residential and residential-office facilities, obligatory accessibility elements, accessibility elements for overcoming height differences, as well as the graphical presentation of accessibility signs.

Regulation on Classification, Minimum Technical Requirements and Categorizations of Camps¹⁸⁵ lays down compliance with the conditions for access and movement of persons with decreased mobility by making sure

¹⁸⁵ „MN Off.Gaz.“, no. 61/11

that at every 100 camp lots there is one 1 camp lot for accommodation of persons with decreased mobility (Art 29) as well as the toilets and showers specially equipped for these persons (Art 25).

2. Law on Ban of Discrimination lays down that inaccessibility of facilities and areas in public use to persons with decreased mobility and persons with disabilities, i.e. restricting or making difficult the use of the said facilities in a way that is not a disproportionate burden for a legal or physical entity required to enable that will be considered discrimination. The Law also envisages penal provisions defining fines for a legal entity or an entrepreneur who restricts or makes difficult the use of access to facilities and areas in public use to the persons with decreased mobility or persons with disabilities.

3. The Law on ban on discrimination of persons with disabilities contains provisions laying down that inaccessibility of facilities and areas in public use, as well as denying access, movement, staying and work in facilities in public use will be considered discrimination of persons with disabilities (Art 8).

4. Law on Movement of Persons with Disabilities with the Help of a Guide Dog¹⁸⁶ regulates the right of the persons with disabilities to use the means of transportation in road, railway, maritime and air transport with a guide dog, and to have a free access and staying in a public place and staying in a working area. In case of denying and restricting the above right legal entities shall be charged a fine at the level of 1.500,00 Euro to 10.000,00 Eur.

The Analysis of Legal Acts Related to Access in the Field of Information and Communications, including public TV services and the Internet

1. Law on Electronic Communications lays down an obligation of providing special benefits for persons with disabilities. This legal act provides for construction and use of electronic communication networks, communication infrastructure and equipment by making sure that the persons with disabilities are allowed access to all electronic communication services, special benefits in terms of access to universal service services, including access to emergency services, services for providing information on telephone numbers and telephone directories, emergency service numbers and a unique „112“ number. The operator shall regularly inform

¹⁸⁶ „MN Off.Gaz.“, no. 79 /09, no. 40 /11

the users-persons with disabilities about all characteristics of services designed for this group and shall give a priority when exercising access to the network and removal of all failures. In a contrary case, failing to do that shall be considered an offence, for which a fine is charged at the level of 4.000,00 EUR to 20.000,00 EUR.

To the end of implementing the **Law on Electronic Communications**, a set of the rules was promulgated to govern this field. The Rulebook on the Criteria for Evaluating the Justification of a user's application for access to the public electronic communication network via Universal Service lays down the criteria for evaluation of justification of user's application to access public electronic communication network and publicly available electronic communication services via Universal Service at a fixed location, thus enabling speech communication and the speed of transfer of data that enables functional access to the Internet.

Regulation on Minimum Set of Services, which includes the Universal service¹⁸⁷, the Rulebook on Quality of Services of Universal Service and Rulebook on Determining the Categories of Benefits in Using Universal Service Services, Rulebook on Tariffs and Packages of Universal Service for users with low income and users with disabilities¹⁸⁸.

The Rulebook on defining categories of benefits in using the Universal Service services lays down the categories of users who are considered persons with disabilities. Rulebook on Tariffs and Packages of Universal Service for users with low income and users with disabilities defines packages of services for users who are persons with disabilities.

2. Law on Electronic Media¹⁸⁹ prohibits encouraging and inciting hatred, discrimination based on, among other, disability (Art 48); it lays down an obligation of a public broadcaster to produce and broadcast the programs designed for different segments of the society without discrimination while taking special account of specific social groups, among whom are also persons with disabilities (Art 74). The Law promulgates the restriction of endangering human dignity and promoting discrimination based on disability in relation to providing commercial audiovisual communications (Art 85).

¹⁸⁷ „MN Off.Gaz.“, no. 60 /10

¹⁸⁸ „MN Off.Gaz.“, no. 14/10

¹⁸⁹ „MN Off.Gaz.“, no. 46/10, 40/11, 53 /11, 06/13

Analysis of legal enactments related to accessibility in the field of public transport accessibility

1. Law on Ban of Discrimination of Persons with Disabilities lays down that the following is to be considered denial to transport a person with disabilities: 2) refusal of the public transportation staff to provide assistance to a person with disabilities, if he/she cannot use that service without such an assistance and if provision of such assistance does not endanger safety of traffic; 3) imposing unfavourable conditions for transport of persons with disabilities, as well as harassment, insulting, belittling during the use of transport by transportation staff (Art 16).

2. Law on roads¹⁹⁰ regulates a legal position, development, maintenance, protection, operation and financing of public roads. In that sense, this law recognizes benefits for participants in transport – persons with disabilities with 80% or more of physical damage, i.e. persons whose physical damage has resulted in incapacity of limbs at 60% or more, in a way to exempt them from annual fee for registration of road motor vehicles, and from special annual fee for road motor vehicles and their trailers (Art 22)..

3. Law on Safety of Traffic on Roads¹⁹¹ lays down that the persons with disabilities enjoy special protection (Art 5). The same Law, in its list of terms, recognizes vehicles that serve for transport of persons with disabilities, and depending on the speed of movement and purpose, they are classified in three categories of participants in traffic: pedestrian, vehicle, special passenger vehicle; it stipulates that other participants in traffic are to treat the above with more attention. This legal enactment defines the manners of marking the vehicles the owners or operators of which are persons with disabilities, so that they are recognized by other participants in traffic and pay special attention accordingly. There is a special provision requiring buses for transport of persons in public transport to have two to six seats closest to the entrance reserved for persons with disabilities. On the other hand, this law does not contain any provisions requiring provision of low floor buses or access ramp or elements for provision of availability of public persons to persons with sensory impairments (Art. 115). Additionally, the Law lays down a possibility of

¹⁹⁰ „MN Off.Gaz.“, no. 42/04, 21/09 i „MN Off.Gaz.“, no. 54/09, 40/10, 73/10, 36/11, 40/11

¹⁹¹ „MN Off.Gaz.“, no. 033/12-1

training persons with disabilities for a driver, in a vehicle specially adapted for the needs of such person (Art 230).

4. Law on Transport in Road Traffic promulgates availability of transport services to all participants. This Law lays down a requirement according to which persons with disabilities should be provided access to road traffic that is conducted as regular line, through a special line transport (Art 42). The said regulation requires that „access for persons with disabilities“ be provided for issuing a license to offer services of a bus station, and failing to do that, a responsible inspector is required to take measures in accordance with the Law on Inspection Supervision. This regulation is not in line with the Convention as it treats the persons with disabilities through a medical model.

Rulebook on Transport/Technical Requirements for Bus Stations¹⁹² requires that at least 3 seats in a waiting room must be designed for persons with disabilities, and that one toilet with running water be adjusted to persons with disabilities. This Rulebook does not meet a requirement of complying with the accessibility standards for persons with disabilities in reference to other elements (counter, telephone booth) either, and its terminology is not adjusted with the Convention.

Rulebook on Special Conditions for Vehicles by which Public Transport in Road Transport and Transport for own Needs are Performed¹⁹³ contains provisions requiring at least two free seats and a handrail. The Rulebook is not compliant with other standards providing persons who are users of wheelchairs and persons with sensory impairments the use of public transport. Terminology is not in line with the Convention.

Rulebook on Requirements to be Met by Vehicles in Traffic on Roads in Terms of Dimensions, Total Weight, axle weight, protection of the environment, devices and Equipment¹⁹⁴ contains requirements to be fulfilled by wheelchairs as a participant in road traffic, all of relevance for safety of traffic.

5. Law on Contractual Relations in Railway Traffic¹⁹⁵ provides an obligation of the carrier or an entity ordering transport, or a person who sells tickets to provide the information to persons with disabilities on access to railway traffic, conditions for access and use of railway vehicles and other facilities

¹⁹² „MN Off.Gaz.“, no. 15/06

¹⁹³ „MN Off.Gaz.“, no. 62/06

¹⁹⁴ „MN Off.Gaz.“, no. 040/10-25

¹⁹⁵ „MN Off. Gaz.“ no. 41/10

on a train (Article 10). Carrier is required to reimburse the damage incurred on the movement equipment or other special equipment during transport and to provide information on availability of facilities and means of transport (Art 13).

6. Law on Air Traffic¹⁹⁶ contains anti-discriminatory provisions requiring service providers to offer services to persons with disabilities by making sure that such persons are transported in air traffic under equal conditions and without discrimination (Art 54).

7. Law on obligations/contractual relations and basis of Property-Legal Relations in Air Traffic¹⁹⁷ identifies persons with disabilities as a special category of passengers entitled to reimbursement of damage on the grounds of denial boarding on, cancelling the flight or longer flight delays (Art 93).

Analysis of legal enactments in the field of access to services intended for public

1. Law on Public Procurements¹⁹⁸ requires a client to, when determining technical characteristics or specifications in bidding documents, provide for obligatory application of technical standards for accessibility of persons with disabilities (Art 50).

2. The Law on Travel Benefits for Persons with Disabilities¹⁹⁹ provides for the right to travel benefit in road and railway transport. The basis for determining the said right is the right to other person's care and assistance. A person with disability and his/her companion, are entitled to 12 journeys during one year, in railway and road transport.

3. Law on Postal Services²⁰⁰ in its basic provisions promulgates equality and non-discrimination of postal service users, as well as accessibility for all users of postal services in the whole territory (Art 7). This Law enables the persons with impaired or partly impaired vision free access to universal postal service (Art 13).

4. Law on Contracts in Transport in Road Transport²⁰¹ separately regulates transport of persons with disabilities, by mandating that a carrier cannot

¹⁹⁶ "MN Off.Gaz.", no. 30/12

¹⁹⁷ "MN Off.Gaz.", no.18/11

¹⁹⁸ "MN Off.Gaz.", no. 42/11

¹⁹⁹ "MN Off.Gaz.", no. 80/08, 40/11

²⁰⁰ "MN Off.Gaz.", no. 57/11

²⁰¹ "MN Off.Gaz.", no. 53/09, 36/13

refuse issuing of reservation or transport of a person with disabilities, except in a case where the design of a vehicle does not ensure safe boarding, exit and transport of a person with disabilities, which represents a discriminatory provision. This act specifies that a person with disability may have a company for whom transport is free of charge (Article 71). This act also defines the responsibility of a carrier for the damage caused due to a loss or damage of the equipment of a person with disability, up to the amount of new equipment or repair of the existing (Art 23).

5. Law on Contractual Relations in Railway Traffic²⁰² regulates contractual and other obligation relations arising in transport of passengers, items and the baggage and vehicles in internal and international railway traffic. In addition to the definition of the term „a person with a disability“ that is treated through a social model, this law contains provisions laying down a responsibility of the carrier for the damage on the walking equipment and other specific equipment used by persons with disabilities or persons with impaired mobility. The Law recognizes an obligation of the carrier to inform a person with disability who is a passenger about general conditions of transport provided for under the contract on transport, about the availability of facilities and carrier's means of transport for persons with disabilities, as well as for persons with decreased mobility, and in case where a passenger is a person with sensory impairment, to provide the information appropriate to the needs of such persons (Art 10 and Art 13).

... with a special overview of accessibility in education

General Law on Upbringing and Education lays down that instruction for persons using the sign language, i.e. a special script or other technical solutions shall be carried out in sign language and by the means of that language. This Law envisages that a separate part of the education program includes the manner of adjusting the program to persons with special educational needs (Art 21).

Law on Upbringing and Education of Children with Special Educational Needs²⁰³ lays down an obligation of a preschool institution, school and of a resource centre to make sure that the area, equipment, teaching aids as well as adequate educational technologies (enlarged format, texts in Braille script/alphabet) are adjusted to the children with special educational needs (Art 8). This legal enactment defines a possibility of providing a service of a teaching assistant as a provider of technical assistance (Art 30a).

²⁰² „MN Off.Gaz.“, no. 41/10

²⁰³ „MN Off.Gaz.“, no. 80/04, 45/10

... with a special overview of accessibility of employment

Starting from the **Law on Professional Rehabilitation and Employment of Persons with Disabilities**, as a legal basis, a Rulebook on Conditions to be Met by a Provider of Professional Rehabilitation, Working Centre, protection workshop and protection plant in terms of access to working area, equipment, professional staff providing for conditions for access, staying and movement of persons with disabilities.

... with a special overview of accessibility of healthcare

The Law on Health Insurance²⁰⁴ provides for special conditions providing certain categories of persons with disabilities in the full amount the prices from the resources of the Health Insurance Fund, while the **Law on Health Protection** (Art 18 and 20) provides for priority provision of health protection to persons with disabilities as well as participation of their representatives in management bodies. By-laws that more closely govern the conditions in terms of the area, especially regulates that the sanitary block must be adapted to the persons with disabilities²⁰⁵.

... with a special overview of accessibility to services of social protection for performing regular activity²⁰⁶

The Decision on Conditions to be Met by the institutions of social and child protection, lays down the conditions that the institutions of social and child protection should have in terms of access by persons with disabilities, who are users of wheelchairs, with a ramp slope of up to 15%, hand rails and certain aids for use by these persons.

INSTITUTIONAL FRAMEWORK IN ACCESSIBILITY FIELD

Institutional framework for accessibility of physical environment

The authorities bodies at the national level responsible to provide observance of accessibility in terms of the physical environment are the following: Ministry of Sustainable Development and Tourism, Ministry for Human and Minorities' Rights, Assembly with Boards, Administration for Inspection Affairs of Montenegro, Council for Care of the Persons with

²⁰⁴ „MN Off.Gaz.“, no. 39/04, 23/05, 29/05 and „MN Off.Gaz.“, 12/07, 13/07, 73/10, 39/11, 40/11, 14/12.

²⁰⁵ The Rulebook on Closer Conditions in Terms of Area, Staff and Equipment to be fulfilled by the units and sub-units for emergency medical assistance, the manner of work and number of emergency medical help teams („MN Off.Gaz.“, no. 28/09)

²⁰⁶ „MN Off.Gaz.“, no. 48/90

Disabilities, Ombudsman, Directorate for Property, Chamber of Engineers, Local Administrations with Secretariats Responsible for the Issues of Spatial Development, Public Utility activities, Community/ of Municipalities

Institutional framework for accessibility of information and communication, including public TV services and the Internet

Authorities bodies at the national level responsible for providing accessibility of information and communications including public TV services and the Internet: Ministry of Information Society, Ministry of Culture, Agency for Electronic Communication and Postal Activity, Agency for Electronic Media, Radio-Diffuse Centre, Montenegro Post Office.

Institutional framework for accessibility of public transport

The authorities bodies at the national level responsible to provide observance of accessibility in the field of public transport are the following: Ministry of Transport and Maritime Affairs, Ministry of Human and Minorities' Rights, Ministry of Internal Affairs, Directorate for Traffic/, Administration for Inspection Affairs, local administrations through the secretariats responsible for transport affairs, Railway Transport of Montenegro, a.d. Podgorica, Montenegro Railway infrastructure. AD Montecargo administration, Montenegro Airports, Agency for Civil Aviation, Montenegro Union of Drivers.

Institutional framework for accessibility of services intended for public

The authorities bodies at the national level responsible to provide observance of accessibility in the field of services intended for public are the following: Ministry of Labour and Social Welfare, Ministry of Transport and Maritime Affairs, Ministry for Information Society and Telecommunications, Directorate for Transport, Railway Transport of Montenegro AD Podgorica, Centre for Social Work, Administration for Inspection Affairs, local administrations responsible for social and welfare issues, Administration for Inspection Affairs, Montenegro Post Office.

COMPLIANCE OF LEGISLATIVE AND INSTITUTIONAL FRAMEWORK WITH THE CONVENTION OF RIGHTS OF THE PERSONS WITH DISABILITIES

Generally speaking, normative acts in the field of accessibility of persons with disabilities (OSI) are not harmonized with the UN Convention on the Rights of the Persons with Disabilities.

Law on Physical Development and Building Construction is not harmonized with the UN Convention on the Rights of the Persons with Disabilities.

Law on Ban of Discrimination has been partly harmonized.

Law on Ban of Discrimination of Persons with Disabilities has been partly harmonized.

Law on Transport in Road Transport is not harmonized.

Law on Railways is not harmonized.

3.A.2 ANALYSIS OF APPLICATION – COMPLIANCE WITH LEGAL FRAMEWORK IN THE ACCESSIBILITY FIELD

A great deal of regulations in the field of construction, transport and maritime affairs, PTT and telecommunications has been promulgated in the previous period by Montenegro.

The report on implementation of legislative framework in the „accessibility“ field is an indicator of application of regulations adopted in practice by June 2013. In order to obtain the results on the level of application in practice, we conducted a survey at the level of Montenegro. Survey was directed toward the persons with different types of disabilities and was carried out by the method of questionnaire.

The following disabilities types have been covered by a survey: 61 persons with difficulty walking, 13 persons with impaired vision, 9 persons with hearing impairment, 1 person with intellectual disabilities.

The number of respondents by municipalities was as follows: Podgorica 8, Bar 3, Ulcinj 1, Pljevlja 7, Cetinje 10, Rožaje 5, Plav 2, Berane 6, Danilovgrad 1, Tivat 3, Bijelo Polje 10, Budva 3, Nikšić 18, Kotor 6.

A total of 84 questionnaires have been delivered.

The results obtained in a survey that was conducted are the following:

To the question: „To which degree is Montenegro accessible for persons with disabilities“, 4 respondents said that it was totally accessible, 41 said

that it was mostly inaccessible, 14 respondents said that it was partly accessible while 22 respondents said that it was inaccessible.

Remark:

Persons with sensory impairments largely said that Montenegro was partly accessible, while the persons with difficulties walking said that Montenegro was not accessible.

Based on the analysis of the results obtained for the first question, we may determine that, depending on the region, Montenegro is the least accessible in the north, while in the central and southern regions it is more accessible.

To the question: „Have you ever been discriminated in exercising some right, due to inaccessibility“, 41 persons with disabilities said that they had been, 26 persons said that they had not been discriminated while 17 persons with disabilities did not give any answer.

Remark: There is an ignorance of the term „discrimination“ by the persons with disabilities.

To the question: „Have you ever brought a lawsuit on the grounds of discrimination in the accessibility field“, 83 respondents said no, while 1 respondent brought a lawsuit on the grounds of discrimination in the field of physical access to public facilities.

To the question: „Are the facilities in public use in your municipality accessible to persons with disabilities“, 5 respondents answered affirmatively, while 63 answered negatively.

To the question: „Which accessibility elements do the most facilities in public use contain“, of total number of respondents, 31 persons said that most facilities in public use had a marked parking crossing, 17 respondents said that the facilities in public use had access ramp in accordance with the regulations, 5 respondents said that they had accessible internal communication, 7 respondents said that they had an accessible toilet, while 17 persons in the field 'other' stated that the institutions did not have a persons engaged as a gesture interpreter who could make their services accessible to the persons with impaired hearing. Additionally, the respondents said that most facilities did not have either of the accessibility elements.

To the question: „Are the public areas accessible to the persons with disabilities“ 10 respondents answered affirmatively, while 35 respondents answered negatively.

To the question: „Which accessibility elements do the public areas in your municipality contain“, 21 respondents answered that it was „inclined pavement“, 19 said that it was traffic lights with sound signalization“, 31 respondents said that it was „marked parking area“, while 13 respondents made some other comment. Some of the comments were that none of the above was available; there were no traffic lights with sound signalization.

To 8th question: „Are the services of communication, public TV service and the Internet are accessible to you as a person with disabilities in terms of format and price more favourable compared to the consumers who are not persons with disabilities“ 30 respondents answered positively, 49 respondents answered negatively, while the other respondents did not answer.

To the question: „To which degree is the road transport in your municipality accessible for persons with disabilities“, 15 respondents said that the line transport was accessible to persons with disabilities, 17 respondents said that the bus station was accessible to the persons with disabilities with regards to the access ramp and the toilet, 14 respondents said that they were entitled to the sticker for marking the vehicles for transport of the persons with disabilities, 10 respondents said that the training for operating a motor vehicle was provided for persons with disabilities, while 15 persons made some other comment.

To the question: „When using the services of railway traffic were you informed by the carrier about the rights you are entitled to in railway traffic“, 12 respondents said that they had been informed about general conditions of transport, 5 respondents said that they had been informed about the availability of facilities and means of transport for persons with disabilities, 2 persons with sensory impairment said that they had been informed by a carrier in the format appropriate to the type of disability, while no-one answered that they used the right to the compensation of damage on the walking equipment that they suffered during transport.

To the question: „Do you use the right to services of 12 free rides with a companion in road and railway traffic“, 72 respondents answered positively, while 9 respondents answered negatively.

To the question: „Are the services intended for public (PTT etc.) accessible to your needs“, 26 respondents answered positively, while 32 respondents answered negatively.

As to the question „How do you think is possible to improve the exercise of the rights of persons with disabilities in terms of accessibility“ most respondents recognized the state that should take the activities in the direction of compliance with the law and removal of architectural barriers, i.e. observance of the rights with persons with disabilities.

3.B EDUCATION

Article 24 of the UN Convention deals with education in the sense of exercising this right without discrimination and on equal basis with the others, by ensuring inclusive education system at all levels and all-life learning.

Article 24 of the Convention lays down that the State Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunities, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

- a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- c. Enabling persons with disabilities to participate effectively in a free society.

In realizing this right, States Parties shall ensure that:

- a. Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- b. Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- c. Reasonable accommodation of the individual's requirements is provided;
- d. Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- (e) be provided effective individualized support measures in environments that maximise academic and social developments, according to the objective of full inclusion.

States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in

education and as members of community. To this end, States Parties shall take appropriate measures, including:

(a) facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication, orientation and mobility skills, facilitating peer support and mentoring among persons in a similar situation;

(b) facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) ensuring that the education of persons, and in particular children who are deaf, blind or deafblind is delivered in the languages and modes of communication that are most appropriate for the environment that maximises academic and social development.

In order to help ensure the realisation of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language or Braille, and to train professionals and staff who work at all levels of education. Such training and shall incorporate disability awareness, the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training and education, adult education and lifelong learning without discrimination and on equal basis with others. To this end, States Parties shall ensure that persons with disabilities are provided with reasonable adaptations.

Education of persons with disabilities

The education system in Montenegro comprises: pre-school education and upbringing, elementary education, secondary adult education (grammar school), vocational education, university education. Adult education is part of the general system; it is implemented at all levels of education

When persons with disabilities are concerned, education is organised in three basic forms: classes of regular schools, special classes in regular schools (elementary schools), resource centres (special institutions transformed into resource centres).

The education system reform in Montenegro began by the establishment of basic principles defined in document "Book of the education system changes in the Republic of Montenegro", (Ministry of Education and Science, 2001), which served as a foundation for the education system creation. A result of the inclusion introduction into education system was a

change in the mode of work with the children at which inclusion was aimed. They began to take part in the regular education system; special curricula were prescribed²⁰⁷, professional services and parents were included in the process at a much higher level. Since the second half of 2008, commissions for orientation of children with special educational needs in the upbringing-educational system (in eighteen municipalities) were formed at a local community level. Attention was paid to the activity of publishing. Several manuals dealing with aid in inclusive education were published since 2010. Inclusion is a process; it is necessary to continually work on its improvement. A good inter-sector, as well as horizontal and vertical flow of information on children with developmental impairments is essential. It is necessary to provide funding for additional professional and technical support and accessibility; provide necessary infrastructure in schools to be completely accessible to children with developmental impairments; provide permanent education and support of teachers, professionals and orientation commissions; develop and implement a professional orientation programme etc.

During the elaboration of this report, the education system underwent some changes which contributed to the development of inclusion in schools. Namely, the first audio book, a Reader for the fourth elementary school grade was published in February 2014. It was recorded in the DAISY format. The book was produced in the "Recording elementary school books in audio technique" project that is implemented by the Resource centre for children and youth Podgorica supported by the Office of UNICEF in Podgorica, Ministry of Education, the Institute for School Books and Teaching Aids and the Faculty of Dramatic Arts from Cetinje. This novelty will make Montenegro recognisable in this field throughout the world. Five more books are foreseen for recording in the audio format during the current year.

Pursuant to the data of the Montenegro Bureau of Statistics²⁰⁸ the number of pupils enrolled in elementary schools in Montenegro was 68,696 in the 2012/13 school year and 68,133 in the 2013/14 school year.

At the beginning of the 2012/2013 school year, 31,858 pupils enrolled in secondary schools in Montenegro. The total number of children enrolled in pre-school institutions in the 2012/2013 school year was 15,317.

²⁰⁷ IROP: Individual educational-development program-regular educational plans and programs are being modified and adapted through individual educational-development programs.

²⁰⁸ Data taken from the web site: www.monstat.org, on 16.04.2013

Resource centres and special classes for the education and upbringing of children with special educational needs in elementary schools in Montenegro had 184 pupils in the 2012/13 school year; this represents a decrease by 8.9% compared to the previous 2011/12 school year.

Data on the number of institutions by education levels

The system consists of: 21 public and 13 private preschool institutions; 163 public elementary schools (8 with special classes); 47 public secondary schools (grammar school, vocational and mixed schools) and one private Grammar School; 3 resource centres, 67 licensed teachers for adults; 1 state-owned and 2 private universities; 7 private faculties.

Annually, 4-4.5% is allocated from the gross domestic product for all education levels in Montenegro.

3.B.1 ANALYSIS OF THE INSTITUTIONAL AND LEGAL FRAMEWORK IN THE FIELD OF EDUCATION

LEGISLATIVE FRAMEWORK IN THE FIELD OF EDUCATION

Disability definitions

Anti-Discrimination Act²⁰⁹ contains expression "a person with disability" but does not define it (Article 2). **Disability Discrimination Act**²¹⁰ provides the meaning of this expression as follows: "a person with disability is a person who has long-lasting physical, mental, intellectual or sensory impairments, which can aggravate, together with various barriers, a full and effective participation of this person in society based on equality with others" (Article 4).

The terminology relating to persons with disabilities used in the laws in the field of education does not conform to the UN Convention; a terminological discrepancy is present within the laws themselves.

Legislation in the field of education uses with the following terms: "pupils/children with special educational needs", "a person with special needs", "children with special needs (developmental impairments)", "children with developmental impairments", "a pupil with learning difficulties", "children from the most vulnerable groups of society", "children with developmental difficulties and disabilities", "pupils with

²⁰⁹ Anti-Discrimination Act, Montenegro Official Gazette, No. 46/10

²¹⁰ Disability Discrimination Act, Montenegro Official Gazette, No. 39/11

handicaps", "persons with disabilities – students", "students with special educational needs".

Upbringing and Education of Children with Special Educational Needs Act²¹¹ provides a definition of term "children with special educational needs": children with development disabilities – children with a bodily, mental and sensory disability and children with combined disabilities; children with developmental difficulties – children with behavioural disorders; severe chronic diseases; long-lasting diseased children and other children with learning difficulties and other difficulties caused by emotional, social, language and cultural obstacles.

Anti-discriminatory provisions

The Constitution of Montenegro²¹² prohibits any direct or indirect discrimination, on any ground (Article 8); persons with disabilities are guaranteed special protection (Article 68).

Anti-Discrimination Act²¹³ (Article 2) and **Disability Discrimination Act**²¹⁴ (Articles 15, 18) include anti discriminatory provisions in the field of education.

General Education and Upbringing Act²¹⁵ prohibits any form of discrimination, but no prohibition of discrimination against persons with disabilities is mentioned (Article 9a).

Higher Education Act²¹⁶ incorporates a provision (Article 7) prohibiting discrimination on grounds of "disability".

Other laws in the field of education contain no anti-discriminatory provisions on grounds of disability.

LEGAL FRAMEWORK IN THE FIELD OF EDUCATION

The Constitution

The Constitution of Montenegro²¹⁷, as the highest legal act, prescribes the right to education under equal conditions and elementary education is compulsory and free (Article 75).

²¹¹Upbringing and Education of Children with Special Educational Needs Act, Republic of Montenegro Official Gazette, No. 80/04 and Montenegro Official Gazette, No. 45/10

²¹² Montenegro Official Gazette, No. 21/07

²¹³ Montenegro Official Gazette, No. 46/10

²¹⁴ Montenegro Official Gazette, No. 39/11

²¹⁵ Republic of Montenegro Official Gazette, Nos. 64/02, 31/05 and 49/07 and Montenegro Official Gazette, Nos. 45/10, 45/11 and 39/13

²¹⁶ Republic of Montenegro Official Gazette, No. 60/03 and Montenegro Official Gazette, Nos. 45/10 and 47/11

Laws

The laws regulating the field of education in its parts or whole are:

- Anti-Discrimination Act²¹⁸;
- Disability Discrimination Act²¹⁹;
- General Education and Upbringing Act²²⁰;
- Elementary Education and Upbringing Act²²¹;
- Preschool Education and Upbringing Act²²²;
- Education and Upbringing of Children with Special Educational Needs Act²²³;
- Grammar School Act²²⁴;
- Law on Vocational Education²²⁵;
- Higher Education Act²²⁶;
- Adult Education Act²²⁷;
- National Professional Qualifications Act²²⁸

The law prescribing the participation of local self-management in the public interest activities improvement is:

- Local Self-Management Act²²⁹.

The law that regulates professional building of persons with disabilities, besides the part relating to self-employment is:

²¹⁷ Idem

²¹⁸ Montenegro Official Gazette, No. 46/10, 40/11, 18/14

²¹⁹ Montenegro Official Gazette, No. 39/11

²²⁰ Republic of Montenegro Official Gazette, Nos. 64/02, 31/05 and 49/07, and Montenegro Official Gazette, Nos. 45/10, 45/11 and 39/13

²²¹ Republic of Montenegro Official Gazette, Nos. 64/02 and 49/07 and Montenegro Official Gazette, Nos. 45/10 and 39/13

²²² Republic of Montenegro Official Gazette, Nos. 64/02 and 49/07 and Montenegro Official Gazette, No. 80/10

²²³ Republic of Montenegro Official Gazette, No. 80/04 and Montenegro Official Gazette, No. 45/10

²²⁴ Republic of Montenegro Official Gazette, Nos. 64/02 and 49/07 and Montenegro Official Gazette, Nos. 45/10 and 39/13

²²⁵ Republic of Montenegro Official Gazette, Nos. 64/02 and 49/07 and Montenegro Official Gazette, Nos. 45/10 and 39/13

²²⁶ Republic of Montenegro Official Gazette, No. 60/03 and Montenegro Official Gazette, Nos. 45/10 and 47/11

²²⁷ Montenegro Official Gazette, No. 20/11

²²⁸ Montenegro Official Gazette No. . 80/08, 14/09, 80/10

²²⁹ Republic of Montenegro Official Gazette, No. 42/03, 28/04 and 13/06 and Montenegro Official Gazette, Nos. 88/09 and 3/10

- Professional Rehabilitation and Employment of Persons with Disabilities Act²³⁰.

Anti-Discrimination Act²³¹ incorporates provisions that recognise discrimination against persons with disabilities if they are denied the right to education (Articles 15, 18). The Act prescribes that everybody who finds himself discriminated (on any grounds) by a body, legal or physical entity is entitled to seek protection from the Protector of Human Rights and Freedoms of Montenegro (Ombudsman) (Articles 21, 22,) and from the court (Articles 24-30). Discrimination is punishable as a misdemeanour (Article 34), fines range from EUR 500.00 to EUR 20,000.00.

Disability Discrimination Act²³² prescribes the prohibition of discrimination against children and persons with disabilities in the field of education at all levels (Article 11). The law incorporates no penal provision, but refers a discriminated person to the inspectorate in charge of certain fields.

General Education and Upbringing Act²³³ provides general principles for upbringing and education of individuals at all levels, thereby persons with disabilities, meaning "persons with special needs" (Article 1). Preschool institutions, schools and resource centres perform the upbringing and educations of these persons (Article 27, paragraph 10). Classes for the persons who use sign language, meaning special script or other technical solutions are conducted in sign language or by means of that language (Article 11, paragraph 3). The provision that refers to education programme prescribes that education curricula have a specific part apart from general part. Among other things, this specific part comprises a mode of adjusting the programme to "pupils with special educational needs" (Article 21). Curricula are issued by the Ministry upon a proposal of the National Education Council (Article 22).

Elementary Education and Upbringing Act²³⁴ prescribes that "elementary education and upbringing of children with special educational needs are conducted at school in line with this law and regulations in that field of education" (Article 9). The law gives a possibility to organise home schooling (Article 37), and "pupils with special educational needs" who

²³⁰ Montenegro Official Gazette, Nos. 49/08, 73/10, 39/11

²³¹ Montenegro Official Gazette, No. 46/10, 40/11, 18/14

²³² Montenegro Official Gazette, No. 39/11

²³³ Republic of Montenegro Official Gazette, Nos. 64/02, 31/05 and 49/07, and Montenegro Official Gazette, Nos. 45/10 and 45/11 and 39/13

²³⁴ Republic of Montenegro Official Gazette, Nos. 64/02 and 49/07 and Montenegro Official Gazette, Nos. 45/10 and 39/13

exercise this right must acquire educational standards of knowledge according to adjusted curricula (Article 38, paragraph 3).

Preschool Education and Upbringing Act²³⁵ prescribes that preschool education and upbringing are performed at: a preschool institution, an educational centre, a resource centre and a daily centre, as well as in the family; it can be exercised in elementary schools and other legal entities (Article 5) depending on the educational curriculum and length of children's stay. For "children with developmental impairments and difficulties" special curricula are prescribed in line with the special regulation (Article 18), i.e. in line with the Education and Upbringing of Children with Special Educational Needs Act. Educational groups are organised at an institution, depending on children's age; the number of children in an educational group where "children with developmental impairments and difficulties" are included can be reduced in line with the consent of the Ministry (Article 24, paragraph 5); the social work centre in whose territory the child, meaning the parent, resides pays the costs of stay for these children at the institution (Article 35, paragraph 3).

Education and Upbringing of Children with Special Educational Needs Act²³⁶ regulates the provision of equal possibilities of upbringing and education for all children. This is achieved by: the provision of appropriate conditions that allow an optimal development, timely orientation and inclusion into appropriate curriculum of upbringing and education, individual approach, inclusion of parents in the process of habilitation, rehabilitation and upbringing and education, provision of suitable educational technology, provision of technical support to children with special educational needs. The law considers the inclusion into regular system as the first option in all justified cases. Children are orientated into resource centres when it is their best interest. Education of children can be conducted in daily centres as well. Education of pupils with special educational needs in regular schools is conducted in a way that a school adapts its methods and forms of work, allowing inclusion into additional classes and other forms of individual and group support. A request instigates the procedure for the orientation of children with special educational needs; this request can be submitted by a parent, a primary health care institution, an educational and upbringing institution, a social

²³⁵Republic of Montenegro Official Gazette, Nos. 64/02 and 49/07 and Montenegro Official Gazette, No. 80/10

²³⁶Republic of Montenegro Official Gazette, No. 80/04 and Montenegro Official Gazette, No. 45/10

work centre or a body of local self-management that is in charge of education activities, parents are notified thereof. Children are orientated by a body of local self-management in charge of education affairs: a commission. A parent, i.e. a teacher of a child that is orientated participates in the work of the commission. Upon a parent's proposal, the commission can orientate a child to acquire preschool or elementary education and upbringing at home. Methods, conditions and procedures for the orientation of children with special educational needs are prescribed by the Ministry, with the consent of the Ministry of Health. For children who are treated at a health care institution for a longer period, education is organised at that institution. In order to aid the upbringing and education of children with special educational needs the Bureau for Education Services organises mobile teams that cooperate with preschool institutions, schools, parents and health care institutions with the aim of providing additional and other professional aid in line with a decision on orientation. This act introduces a possibility to employ an assistant in education whose role is to technically aid a child during the education process. The commission for orientation issues a decision that regulates which children are entitled to a personal assistant. The law defines that the assistant provides this aid voluntarily.

Grammar School Act²³⁷ defines that "education of pupils with special educational needs (pupils with developmental impairments and difficulties) in grammar schools is performed in line with this act and other regulations" (Article 10). This act specifies that candidates with special educational needs, who meet the enrolment criteria prescribed in this Act, enrol in the grammar school based on a decision on orientation (Article 13).

Law on Vocational Education Act²³⁸ prescribes that candidates with special educational needs have an advantage in enrolment if the number of the pupils who applied is higher than requested in advertisement; they are enrolled based on a decision on orientation (Article 20, paragraph 4).

Higher Education Act²³⁹ defines that high education is accessible to all people, under the conditions prescribed in this Act and the statute of the institution (Article 6). The law prescribes that the Government of

²³⁷Republic of Montenegro Official Gazette, Nos. 64/02 and 49/07 and Montenegro Official Gazette, Nos. 45/10 and 39/13

²³⁸Republic of Montenegro Official Gazette, Nos. 64/02 and 49/07 and Montenegro Official Gazette, Nos. 45/10 and 39/13

²³⁹Republic of Montenegro Official Gazette, No. 60/03 and Montenegro Official Gazette, Nos. 45/10 and 47/11

Montenegro must provide special means to institutions in order to create equal conditions for exercising the right to high education to "persons with disabilities – students" (Article 9).

Adult Education Act²⁴⁰ identifies the most vulnerable groups of population through diverse forms of education as one of the objectives. Adult education is based on principles: accessibility and freedom in selection of education under equal conditions for all citizens in accordance with the possibilities and needs (Article 4, item 2). Adults with disabilities participate in the educational curriculum that is adjusted with regard to conditions, contents and modes of execution in line with this Act and special regulations. (Article 22, paragraph 3). Adult education can be conducted in an institution for accommodation and care of "persons with special educational needs" in addition to other institutions (Article 27, paragraph 1).

National Professional Qualifications Act²⁴¹ incorporates a provision that adjusts the form and duration of tests for a "candidate – person with special needs", as well as the examination commission members in line with special provisions (Article 11).

Local Self-Management Act²⁴² establishes that a municipality participates in the provision of conditions and improvement of education according to its possibilities.

Professional Rehabilitation and Employment of Persons with Disabilities Act²⁴³ prescribes the measures and activities comprised by professional rehabilitation (such as: aid in the selection of adequate professional objectives, social skills and abilities development, monitoring and professional aid in the qualification and education and others), a procedure and conditions for exercising the right to professional rehabilitation and the method and conditions for the selection of a professional rehabilitator (Article 12,13,14).

By-laws

By-laws regulating the field of education of persons with disabilities are:

²⁴⁰Montenegro Official Gazette, No. 20/11

²⁴¹Montenegro Official Gazette, Nos. 80/08, 14/09, 80/10

²⁴²Republic of Montenegro Official Gazette, Nos. 42/03, 28/04 and 13/06 and Montenegro Official Gazette, Nos. 88/09 and 3/10

²⁴³Montenegro Official Gazette, Nos. 49/08, 73/10, 39/11

- Rulebook of the method, conditions and procedure for orientation of children with special educational needs²⁴⁴;
- Rulebook of the method and procedure for testing pupils' knowledge at the end of education²⁴⁵;
- Rulebook of the norms and standards for acquiring funds from public income for the institutions that implement public valid curricula²⁴⁶;
- Rulebook of the method, procedure and time of taking the grammar school final examination²⁴⁷;
- Rulebook of the criteria, method, conditions and amount of a fee to exercise the right to accommodation and sustenance at a dormitory, student loan, scholarship and participation in transport²⁴⁸;
- Rulebook of the method and procedure of taking a vocational examination for pupils that discontinue education²⁴⁹.

Rulebook on the method, conditions and procedure for orientation of children with special educational needs²⁵⁰ ensued from the Education and Upbringing of Children with Special Educational Needs Act. The Commission for orientation of children with special educational needs issues a proposal for orientation into an appropriate educational curriculum and institution, into which the child is integrated, based on preserved abilities and special educational need. The institution (elementary school, secondary school – general and vocational and resource centre) provides conditions according to the special educational need of a child in a way that it adjusts space, equipment and teaching aids.

Rulebook on the method and procedure for testing pupils' knowledge at the end of education²⁵¹ provides a method to test pupils' knowledge at the end of the first, second and third cycle. The method and procedure of knowledge testing are adjusted to "pupils with special educational needs" in line with a decision on orientation into the appropriate educational curriculum and individual developmental educational curriculum (Article 2).

²⁴⁴ Republic of Montenegro Official Gazette, No. 80/04 and Montenegro Official Gazette, No. 45/10

²⁴⁵ Montenegro Official Gazette, No. 62/12

²⁴⁶ Montenegro Official Gazette, Nos. 36/09, 66/10 and 41/13

²⁴⁷ Montenegro Official Gazette, No. 34/09

²⁴⁸ Montenegro Official Gazette, No. 25/2011

²⁴⁹ Montenegro Official Gazette, No. 58/13

²⁵⁰ Republic of Montenegro Official Gazette, No. 80/04 and Montenegro Official Gazette, No. 45/10

²⁵¹ Montenegro Official Gazette, No. 62/12

Rulebook on the norms and standards for acquiring funds from public income for the institutions that implement public valid curricula²⁵² in an institution of preschool education and upbringing, elementary education and upbringing, general secondary education and upbringing, vocational education defines that if "children with special educational needs" take part in a group or class, the number of children or pupils in the group or class can decrease by up to 10% in relation to the lowest number of pupils in a class, i.e. a group established in this Rulebook. A maximum of two children with special educational needs can be assigned to an educational group, i.e. class; generally, out of these two one is with minor impairments and the other with aggravated disability (Article 5, 6, 7, 8).

Rulebook on the method, procedure and time of taking the grammar school final examination²⁵³ prescribes that the method, procedure and time of some parts of the final examination are adapted to "candidates with special educational needs", who have decisions on orientation, within the prescribed time and schedule of examinations (Article 4).

Rulebook on the criteria, method, conditions and amount of a fee to exercise the right to accommodation and sustenance at a dormitory, student loan, scholarship and participation in transport²⁵⁴ prescribes that a dormitory allocates up to 5% of its accommodation capacities to "students with special educational needs", vulnerable groups of population and beneficiaries of social welfare in line with social welfare regulations (Article 8, paragraph 2).

Rulebook on the method and procedure of taking a vocational examination for pupils that discontinue education²⁵⁵ prescribes that the method, procedure and duration of some parts of the vocational examination are adapted to a "candidate with special educational needs within the prescribed term and schedule of examinations, pursuant to a Decision on orientation into the educational curriculum and developmental educational curriculum" (Article 4). This candidate is allowed to use electronic aids (Article 20).

Strategies and action plans

Strategies:

- **Strategy for Inclusive Education in Montenegro (2014-2018), Ministry of Education, 2013;**

²⁵² Montenegro Official Gazette, Nos. 36/09, 66/10 and 41/13

²⁵³ Montenegro Official Gazette, No. 34/09

²⁵⁴ Montenegro Official Gazette, No. 25/2011

²⁵⁵ Montenegro Official Gazette, No. 58/13

- **Strategy for Persons with Disabilities Integration in Montenegro (2008-2016), Ministry of Health, Labour and Social Care , 2008;**
- **Strategy for Early and Preschool Education and Upbringing (2010-2015);**
- **Strategy for Elementary Education Development (2012-2017);**
- **Montenegrin Vocational Education Development Strategy (2010-2014), Government of Montenegro, 2009;**
- **National Strategy for Lifelong Career Orientation (2011-2015);**
- **Strategy for Higher Education Development and Funding (2011-2020).**

Through their objectives, strategies emphasise the facilitation of accessibility to education and capacitation, as well as the openness of the system for everyone, including persons with disabilities.

Strategies give the education system guidelines and recommended measures and actions that must be taken with the aim of providing education to persons with disabilities pursuant to their interests, possibilities and needs

Local action plans in the field of disability and/or local action plans for youth/children only partially tackle the field of education. A number of these action plans only show a need for education and upbringing of persons with disabilities and state that inclusive education is implemented in schools. Some action plans also show a need for: the support service development (a stronger engagement of mobile teams, a need for personal assistants) at educational institutions, the education of teaching personnel at schools, the provision of appropriate equipment and didactic aids.

INSTITUTIONAL FRAMEWORK IN THE FIELD OF EDUCATION

The Ministry of Education is in charge of the education policy implementation at all levels.

Besides the Ministry, advisory bodies are significant segments of the education system: **National Council** with its task forces: General Education Centre, Vocational Education Centre, Adult Education Centre. Pursuant to their jurisdiction each of the Councils issues the following: educational curriculum for the education of "children with special educational needs", standards for preparation of books for "children with special educational needs", approves books and teaching aids for these children, issues instructions for the implementation of adjusted curricula (Article 29,30,

31b²⁵⁶). **Higher Education Centre** also exists; its role is to improve higher education²⁵⁷.

Also, professional institutions, over which the Ministry of Education has administrative control, play a significant role in the education system. These institutions are²⁵⁸: Bureau for Education Services, Institute for School Books and Teaching Aids, Vocational Education Centre and Examination Centre.

Bureau for Education Services manages the establishment and assurance of quality educational and upbringing works at institutions, performs developmental, advisory, researching and professional activities at all levels up to the university, also in the field of education and upbringing of "children with special educational needs" (Article 38).

In order to aid the education and upbringing of "children with special educational needs" regular system organises **specialised and mobile teams** that cooperate with preschool institutions, schools, parents and health care institutions, providing additional and other professional aid. Mobile team members are experts from resource centres or special classes at schools (Article 17, Education and Upbringing of Children with Special Educational Needs Act).

Vocational Education Centre has jurisdiction over the issues of vocational education and adult education (Article 39, 41).

Examination centre has jurisdiction over the external testing of pupils' accomplishments (Article 41a, 41b).

Several elementary schools (8 schools) have **special classes** in which the educational and upbringing process is conducted for children with developmental impairments.

A body of local self-management competent for the affairs of education conducts the orientation of "children with special educational needs" in the education and upbringing system, upon a proposal of the **Commission for the orientation of children with special educational needs**²⁵⁹. The commission consists of: a paediatrician and physicians of corresponding specialisation, a psychologist, a pedagogue, a defectologist of corresponding specialisation and a social worker. The Commission issues a

²⁵⁶Republic of Montenegro Official Gazette, No. 64/02, 31/05 and 49/07, and Montenegro Official Gazette, Nos. 45/10, 45/11 and 39/13

²⁵⁷Republic of Montenegro Official Gazette, No. 60/03 and Montenegro Official Gazette, Nos. 45/10 and 47/11

²⁵⁸Republic of Montenegro Official Gazette, Nos. 64/02, 31/05 and 49/07, and Montenegro Official Gazette, Nos. 45/10, 45/11 and 39/13

²⁵⁹Republic of Montenegro Official Gazette, No. 80/04 and Montenegro Official Gazette, No. 45/10

proposal for orientation to define the curriculum, additional professional aid, personnel, spatial, material and other conditions that must be provided (Articles 19, 20, 21).

A special institution that is significant for education and upbringing of children with developmental impairments is a **resource centre** (Article 18²⁶⁰). The resource centre²⁶¹ provides other educational and upbringing institution with advisory and professional support for education and upbringing of children with certain developmental impairments and conducts the training of teachers who implement the education and upbringing of "children with special educational needs" (Article 10, item 7).

Daily centre is an institution for a child and social protection to support children with developmental impairments and difficulties, which can conduct educational and upbringing activities (Article 10, item 8²⁶²).

COMPLIANCE OF LEGISLATIVE AND INSTITUTIONAL FRAMEWORK WITH THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Normative acts in the field of education have been revised and amended after the UN Convention on the Rights of Persons with Disabilities was adopted, however, it is necessary to improve them to be completely harmonised with the Convention. The institutional framework was also changed with the aim of allowing the inclusive system in the field of education, however, it is necessary to improve it as well and completely harmonise.

²⁶⁰ Republic of Montenegro Official Gazette, Nos. 64/02, 31/05 and 49/07, and Montenegro Official Gazette, Nos. 45/10, 45/11 and 39/13

²⁶¹ Resource centre for the education and rehabilitation of children with hearing and speech impairment – Kotor; Resource centre for children and youth – Podgorica; Resource centre for children and persons with intellectual impairments and autism "1. June"

²⁶² Republic of Montenegro Official Gazette, No. 80/04 and Montenegro Official Gazette, No. 45/10

3.B.2 THE ANALYSIS OF APPLICATION – ABIDING BY THE LEGAL FRAMEWORK IN THE FIELD OF EDUCATION

With the aim of observing the current condition in the application of laws in the field of education we implemented a survey in twelve municipalities in Montenegro. We used two types of questionnaires: one questionnaire was filled in by persons with disabilities, however minor persons filled it in with the consent of parents, and the other questionnaire was filled in by the parents of children with disabilities of preschool, elementary school or secondary school age, who were not able to answer the questions independently.

The survey comprised persons with diverse types of disabilities: bodily, sensory, intellectual and combined. We processed seventy questionnaires for the analysis' needs.

Inclusion of persons with disabilities in the education system

Children with intellectual and combined disabilities are included in the regular education system (elementary school) in a higher number than children with some other disabilities.

Children with sensory disabilities are least included in the education system (elementary and secondary school).

Special classes at regular schools have the highest number of children with intellectual and combined disabilities.

Special institutions (resource centres in Podgorica and in Kotor) educate children with diverse disabilities.

There is a resource centre (in Kotor) which schools only children (elementary and secondary school) with hearing and speech impairment.

Home schooling of children is extremely uncommon.

A reason pointed out by the respondents who discontinued education, i.e. were not able to continue education was: inaccessibility of the education system to their needs and a lack of support by their families. They pointed out that their discontinuation of education had an inconvenient impact on their life, because they were not able to be completely accomplished.

Adults with disabilities, who are not involved in education, and wish to make use of this possibility, do not know in which institution they can exercise this right

Abiding by the legal framework

The questionnaire analysis showed that the legal framework is partially applied.

When it comes to the application of legal solutions, persons with disabilities most frequently face challenges as follow: unadjusted space, inadequate equipment and teaching aids, insufficiently developed support system (adapted work methods, assistants in classes, mobile teams).

Problems with the application in practice

Persons with bodily disabilities, which are involved in the regular education system, pointed out the following challenges that they face most frequently: inaccessible physical environment and undeveloped support system (primarily lack of an assistant in classes).

Persons with sensory disabilities, who educate in special institutions (resource centres) in higher number than in regular schools, mentioned the missing supports in regular schools as follow: a lack of adequate equipment and teaching aids (primarily a lack of books in adequate format), undeveloped support system (lack of classes in languages and forms of communications that are adapted: Braille, sign language etc; lack of an assistant in classes).

Persons with intellectual and combined disabilities who are involved in the education system, mention the following challenges they faced most frequently: underdeveloped support system (unadapted work methods, lack of mobile teams, lack of an assistant in classes), inadequate equipment and teaching aids (primarily due to the inexistence of books in adequate format: reduced materials from the existing books are used most frequently), inaccessible physical environment.

The activity of the commissions for orientation of children with special educational needs is not equally appraised. Some respondents are satisfied with the work of the Commission in their local community, whereas some are not.

A high number of respondents, especially persons with intellectual and combined disabilities pointed out those teaching personnel in regular school are not sufficiently educated to work with these pupils. They also

pointed out that there are difficulties in the application of adapted/special educational curricula; they do not have adequate literature for pupils or adequate teaching aids.

The respondents who are educated in special institutions (resource centres) mentioned that the education conditions are mostly good, but the children are not educated in their local community (unless the resource centre is located in their local community), they are separated from their families, they do not socialise with children without disabilities.

When it comes to internal-external tests of knowledge, the respondents, primarily persons with intellectual and combined disabilities, consider that the method of knowledge testing is not satisfactory.

When it comes to the number of children in classes in regular school, which include children with disabilities, the number of pupils is lower than in other classes. Only some respondents pointed out that the number of pupils in these classes is not lower because the school has a high number of pupils and cannot find other solution.

Some respondents pointed out that classes have pupils (pupils who attend the second and third cycle of elementary school) with some impairment, but do not have a Decision on the orientation of children with special educational needs.

We had no replies of the respondents who were treated at a medical institution for a longer period and attended classes at that institution.

Respondents – students with disabilities pointed out that higher education is not accessible to persons with diverse disabilities. Students with bodily disabilities pointed out the inaccessibility of physical environment and a lack of assistants. Students with sensory disabilities also pointed out the unavailability of books and how examinations are taken. One female respondent (the questionnaire was only filled in by one female student with hearing and speech impairment – she uses a hearing aid) pointed out the inaccessibility of lectures and testing to students with hearing and speech impairment.

Education for adult persons with disabilities and lifelong education are not developed in practice.

Observed deficiencies of the existing legal solutions

Many legal solutions satisfy the needs of persons with disabilities, but unfortunately are not sufficiently applied. Some needs of persons with disabilities have no support in legislation.

Respondents pointed out the following lacks in legal solutions:

- The appointment of assistants in classes exists as a possibility; his role is a technical aid to a child during classes; his work is voluntary. The position of an assistant must be systematised in classes; his role should be both technical and professional aid to a child during classes. Assistance should be present at all education levels.
- The lack of sign interpreters' service at all education levels.

Recommendations

The respondents mentioned the following recommendations:

- Abide by the law.
- Implement the measures given in action plans, relating to the inclusion improvement.
- Systematise the position of an assistant in education as an expert and technical support.
- More education for teaching personnel.
- Provide necessary infrastructure to make schools completely accessible to persons with disabilities.
- Adapted books.
- Adapted equipment.
- Employ experts of diverse profiles at schools.
- Introduce categorisation as an obligation.
- Introduce a service of sign interpreters at all levels.
- Possibility of education for persons with hearing impairments under equal conditions.
- Create conditions for the education of adult persons with disabilities.

3.C HEALTHCARE PROTECTION

Article 24 of the Convention envisages that signatory states recognize that all persons with disabilities have the right to enjoy the highest possible standard of health without discrimination on the basis of disability. The signatory states shall take all appropriate measures to ensure the access to health and rehabilitation services related to the health care, which will take into account the gender aspects. The signatory states shall in particular:

- (a) provide the persons with disabilities with the same range, quality and standard of free or affordable health care services that are provided to other persons, including services related to sexual and reproductive health and the public health care programmes intended for the general population;
- (b) provide the persons with disabilities with those health services that they particularly need because of their disabilities, including early identification and intervention when it is appropriate, and services intended to minimize and prevent further disabilities, including children and older persons;
- (c) try to provide the said health services for the persons with disabilities as close as possible to the communities in which these people live, including rural communities;
- (d) require from the health care workers to provide the persons with disabilities with the same quality of care which is provided for the other persons, including on the basis of free and informed consent by, among other things, raising awareness of the workers concerned on human rights, dignity, autonomy and needs of the persons with disabilities through trainings and the promotion of ethical standards for public and private health care;
- (e) prohibit discrimination against the persons with disabilities in the provision of health insurance and life insurance in cases where national legislation allows such insurance, which will be provided under fair and reasonable terms.
- (f) prevent discriminatory denial of health care or health care services, food or fluids on the basis of disability.

„Montenegro will directly spend an average of 250EUR per person on the health of its citizens, and that is the penultimate place in Europe, ahead of Albania. Serbia allocates 280 EUR, Croatia 700 EUR, Slovenia 1600 EUR, Austria 2800 EUR, Germany 5200 EUR, Switzerland 7000 EUR. In the budget for 2009 around 160 million EUR were planned for the Pension and Disability Insurance Fund, which represents 4.62% of the GDP and this is the

lowest share in the GDP for the needs of health care in Europe, except Albania, and I simply do not understand the policy that lead to this. We do not finance only the health care from such a small allocation, but also the procurement of equipment, construction works, adaptations and even solving some housing problems.”²⁶³

Each next year, the percentage of the allocation for health care was smaller. Last available data regarding allocation for the health care and social welfare are 4.4% for the year 2010 and 4.1% for the year 2011.

3.C.1 ANALYSIS OF INSTITUTIONAL AND LEGISLATIVE FRAMEWORK IN THE FIELD OF HEALTH CARE IN MONTENEGRO

LEGISLATIVE FRAMEWORK IN THE HEALTH CARE IN MONTENEGRO

Definitions of disability

There is no definition of disability in the health care area in Montenegro.

Anti-discrimination provisions

There are no direct anti-discrimination provisions concerning health insurance.

Law on Health Care, Article 4 states: "In the exercise of the rights to health care, all citizens are equal, regardless of nationality, race, gender, age, language, religion, education, social origin, financial situation or other personal characteristics." However, this provision does not precisely define the prohibition of discrimination on grounds of disability either, but depending on the interpretation it may or may not imply the "other personal characteristics".

Law on Protection and Exercise of Rights of Mentally Ill Persons, Article 3 states:

"Discrimination against the mentally ill persons is prohibited."

"Discrimination against persons with disabilities, on the basis of disability in the health care sector, is considered:

"1) refusal to provide health care services to a person with a disability on the basis of the disability;

²⁶³ <http://fzocg.me/print.php?id=368> (MINA Agency) Interview with Mr. Ramo Noalić, director of the Health Care Insurance Fund of Montenegro

"2) establishing special conditions for providing health care services to a person with disability on the basis of the disability;
"3) denial of information on current health status, taken or intended measures treatments and rehabilitation for persons with disabilities, on the basis of the disability.
"Harassment, abuse or humiliation of persons with disabilities, on the basis of disability by employees during their stay in a medical institution are considered discrimination in health care."

Law on Prohibition of Discrimination against Persons with Disabilities in

Article 10 speaks about discrimination in the health care sector and says:
"Discrimination against persons with disabilities, on the basis of disability in the health care sector, is considered:

"1) refusal to provide health care services to a person with a disability on the basis of the disability;
"2) establishing special conditions for providing health care services to a person with disability on the basis of the disability;
"3) denial of information on current health status, taken or intended measures treatments and rehabilitation for persons with disabilities, on the basis of the disability.

"Harassment, abuse or humiliation of persons with disabilities, on the basis of disability by employees during their stay in a medical institution are considered discrimination in health care."

The aforementioned article does not define indirect discrimination in terms of lack of access to health care facilities, and lack of access to information and communication in health care facilities, as well as denial of access to and of stay in a medical institution

The health care system in Montenegro has been established in the national legislation and documents as follows:

- Strategy for the Development of Health Care of Montenegro (2003),
- Strategy for the Integration of Persons with Disabilities (the health care sector)
- Law on Health Care²⁶⁴,
- Law on Health Insurance²⁶⁵,

²⁶⁴ „Official Gazett of the Republic of Montenegro“ 39/2004, 14/2010

²⁶⁵ „Official Gazett of the Republic of Montenegro“ 39/2004

- Regulation on the more detailed conditions and the manner of exercising certain rights under the compulsory health insurance²⁶⁶,
- Regulation on the manner and procedure of exercising the rights to medical-technical aids²⁶⁷,
- Regulation on the indications and the method of using medical rehabilitation in health care institutions that perform specialized rehabilitation²⁶⁸,
- Protection and Exercise of Rights of Mentally Ill Persons,
- Master plan for health care development in Montenegro for the period 2010-2013,
- Programme of Health Care in Montenegro for the year 2012,
- Millennium Development Goals in Montenegro (July, 2005),
- Law on Patients Rights²⁶⁹,
- Law on Health Care Data Base²⁷⁰,
- Strategy for the Mental Health Improvement in Montenegro (January 2006),
- Law on Emergency Medical Service²⁷¹,
- Strategy for the Prevention and Control of Chronic Non-Communicable Diseases (November 2008),
- Law on Protection of Population from Communicable Diseases²⁷²,
- Strategy for optimization of secondary and tertiary health care level with an action plan for implementation (June, 2011).

The aforementioned acts define, partially refer to or regulate the health insurance and/or health care. Some of the provisions of these acts refer to the persons with disabilities, but also to general provisions which may or may not be applied to the persons with disabilities.

The following acts regulate the citizens' rights in the health care sector only with general provisions.

²⁶⁶ „Official Gazett of the Republic of Montenegro“ no. 69/06, 74/06

²⁶⁷ " Official Gazett of the Republic of Montenegro“, no. 74/06, " Official Gazett of Montenegro ", no. 28/08

²⁶⁸ „Official Gazett of the Republic of Montenegro“, no. 74/06

²⁶⁹ „Official Gazett of Montenegro“ 40/2010

²⁷⁰ „Official Gazett of Montenegro“ 80/2008

²⁷¹ „Official Gazett of Montenegro 49/08“

²⁷² „Official Gazett of Montenegro 14/10“

- Law on Health Care of Patients²⁷³,
- Regulation on the scope of rights and standards of health care of the compulsory health insurance²⁷⁴,
- Law on Treatment of Infertility by Assisted Reproductive Technologies²⁷⁵,
- Strategy for preservation and improvement of the reproductive health in Montenegro (September 2005),
- Strategy for Safe Blood (April 2006),
- Decision on the Health Care Institutions Network²⁷⁶,

Article 69 of the **Constitution** guarantees the right to health care to every one. In addition to that the norms of this Article say that "children, pregnant women, elderly persons and persons with disabilities are entitled to health care from public funds if that right of theirs is not covered on other grounds"

The Constitution, Article 68, "Special care for persons with disabilities is guaranteed."

The Article 10, item 11 of the **Law on Health Care** mentions "healthcare of the persons with physical and mental disabilities in development (handicapped persons)" in the priority health care measures while Article 20 says that the priorities in the provision of health care is based "solely on medical indications, taking into account the degree of disability, the severity of the illness or injury and other circumstances related to the medical condition of the citizen." Article 33 states that: "Health care that is performed at the primary health care level, as a rule, also include the medical rehabilitation of children and the young with disabilities in physical development and health."

Article 60 which also speaks about the bodies of health care institutions says that "the representatives of non-governmental organizations whose main goal is to protect handicapped, disabled, and ill persons may be appointed members of the Board of Directors."

²⁷³ „Official Gazett of Montenegro“ no. 25/2010

²⁷⁴ „Official Gazett of the Republic of Montenegro“ no. 79/2005

²⁷⁵ „Official Gazett of Montenegro“ no. 74/09

²⁷⁶ „Official Gazett of Montenegro“ no. 52/2010

Law on Medical Insurance, Article 16 envisages that the health care comprises "medical-technical aids (prostheses, orthopedic aids, dental prosthetic aid and dental materials and fees), and the scope of rights and standards of health care is determined by the Government, at the proposal of the Ministry of Health, taking into consideration ", among other things," children who are permanently incapable of independent living and work ", " the handicapped persons with significant physical impairment of at least 70% determined in terms of specific regulations and persons suffering from infectious disease, rheumatic fever and its complications, diabetes mellitus ", and other diseases. Furthermore, the Law envisages that "the blind and deaf-mute persons, persons suffering from paraplegia and quadriplegia, muscular dystrophy, multiple sclerosis, and cerebral palsy, as well as handicapped persons with significant physical impairment of at least 70% determined in terms of specific regulations are not subject to the personal participation in the cost of health care,."(Art. 61).

The Law on Medical Insurance provides that the insured persons, among others, are considered persons with disabilities and mentally underdeveloped persons (Article 8). The right from the compulsory health insurance includes the right to health care, compensation for the salary during temporary inability to work and reimbursement of the transport costs related to use of health care. The right to health care, among other things, includes the prevention, examinations and treatment of diseases, dental examinations and treatments, rehabilitation, drugs and medical devices and medical-technical aids. The compulsory insurance for the insured persons envisages the 100% coverage of the examinations, treatments and rehabilitation in the event of injury and illness of persons with severe mental or physical disabilities, for examinations and treatments of multiple sclerosis, progressive neuro-muscular diseases, cerebral palsy, paraplegia and tetraplegia, as well as for medical-technical aids in connection with the treatment of injuries and diseases. It also envisages the coverage of at least 100% of the cost of health care services for home care and rehabilitation in in-patient facilities. It is envisaged that the health care in full without the participation, among others, is provided for disabled veterans and civilian war invalids, the blind, permanently immobile persons and persons who are entitled to compensation for other people's care and assistance.

According to the **Law on Protection and Exercise of Rights of Mentally Ill Persons**, a mentally ill person is entitled to be treated in the least restrictive

environment and with the least restrictive, intrusive and coercive methods, and it envisages the mandatory inclusion of family members or legal guardian of a mentally ill person. Treatment and care of a mentally ill person must be based on individually determined plan, about which this person is informed and his/her opinion is heard (Art. 8). Underage mentally ill persons shall enjoy special protection (Article 10). Thus, they have the right to be cared for in the community, unless it is objectively impossible. In addition, the mentally ill person, i.e., his/her legal representative, if he/she is not capable, have the right to choose his/her doctor who will treat him/her in a mental health or psychiatric facility that is closest to his/her place of residence or the place of residence his/her relatives or friends and they have the right to return to the community as soon as it is established that his/her health allows it (Article 13).

The Law on Health Insurance provides that a child of the insured person is entitled to the compulsory health insurance under the terms of this Law, until the completion of his/her compulsory education according to the provisions in the education sector, and if he/she attends full-time or part-time education until the end of the period prescribed for full-time education, and at the latest until the age of 26 (Article 12).

In accordance with this Law a child, who stopped going to school due to an illness, is entitled to the compulsory health insurance for the duration of the disease, and if he/she continues the education, he/she is entitled to the compulsory health insurance even after the age limit specified in paragraph 1 of this Article, but not longer than the duration of his/her dropping out of school due to illness. Justification to leave school due to illness shall be determined in accordance with the general act of the Fund. If a child becomes incapable of independent living and work, in terms of specific regulations, prior to the lapse of the deadline for regular education, he/she is entitled to the compulsory health insurance while such incapacity continues. The right to the compulsory health insurance also belongs to a child who becomes permanently incapable of independent living and work in terms of specific regulations after the age specified in the Law, if he/she has no own means of subsistence and if he/she is financially supported by the insured person. Children without parents or children for whom the guardianship authority found that are without parental care have the right under the compulsory health insurance. Children who have one or both parents have the right to the compulsory health insurance, as well as children whose parents are not able to care for and support them due to a

medical condition of the parents or other circumstances, in terms of specific regulations (Article 13).

The Health Insurance Fund determines the indications for medical-technical aids (prostheses, orthopedic and other aids, dental and prosthetic assistance, dental materials and compensations) and the standards for materials used for making these aids, the terms of use as well as the conditions for making new aids before their expiration date.

The criteria and procedure for exercising the rights to aids are regulated by the **Regulation on the manner and procedure of exercising the rights to medical-technical aids**, which provides that an insured person is approved repaired and service aid as follows, "the wheelchair when used for temporary use; prosthetic devices, orthotic devices, orthopedic shoes, orthopedic inserts, wheelchairs, assistive devices to facilitate movement, glasses with glass contact lenses, ocular prostheses, ocular prisms and typhlo-technical aids." According to the Regulation, "the insured person exercises the right to orthopedic aids and medical rehabilitation on the basis of the findings and opinion of the First instance medical commission of the Republic Health Insurance Fund. If the insured person is immobile and when he/she is not capable to use the public transportation due to medical reasons, the medical commission approves ambulance transportation to medical facilities, which is provided from the funds of the compulsory health insurance." (Art. 14).

According to the **Rulebook on more detailed conditions in terms of standards, norms and methods of exercising primary health care through chosen team of doctors or a chosen doctor**, there are Centres for children with special needs and they are intended for children under 15 years of age. **Law on Social and Child Protection**, Article 38 also partially envisages the possibility of covering health care, the right which is provided to a beneficiary: "financial support, personal disability benefit, placement in an institution or placement in another family, if this right is not exercised on other grounds."

INSTITUTIONAL FRAMEWORK IN THE HEALTH CARE SECTOR

The Ministry of Health, the Health Insurance Fund (HIF), as well as public and private health care institutions are included in the organization and provision of health care services in Montenegro.

Healthcare system of Montenegro is organized as a single health care region and is predominantly based on the public sector. Public health care services are organized through a network of primary, secondary and tertiary health care, which consists of 18 health centres, seven general hospitals, three specialized hospitals, the Clinical Centre of Montenegro, the Institute of Emergency Medical Services, the Institute of Public Health and the Pharmaceutical Institute of Montenegro, 'Montefarm' consisting of 41 pharmacies in all municipalities in Montenegro. The private sector, which is not integrated into the health care system at the moment, consists of a number of offices, dental offices, wholesale drugstores and pharmacies.

Health Centre is a reference centre of primary health care that provides or allows the support the chosen doctor's team. A health centre has three basic organizational parts: the chosen doctor's outpatient department, i.e., teams of chosen doctors (a chosen doctor pediatrician, a chosen doctor for grown-ups and a chosen doctor gynecologist); centres for support to chosen doctors who are organized at the local and regional levels for: lung diseases and tuberculosis, diagnostics, mental health, children with disabilities, the prevention, etc. and support units in domiciliary care, primary level physiotherapy and ambulance transportation. Financing of health care institutions, i.e., health care is carried out in accordance with the Law on Montenegro Budget on the basis of the approved and agreed work plans of health care institutions and allocated funds for health care activities.

COMPLIANCE OF THE LEGISLATIVE AND INSTITUTIONAL FRAMEWORK WITH THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Normative acts and institutional framework absolutely do not comply with the UN Convention on the Rights of Persons with Disabilities. This is particularly obvious in the part regarding the terminology and the method of defining the rights. Some rights are very discriminatory against the persons with disabilities (OSIs). The term "disability" is used very rarely but for the most part, the terms "disease" and "illness" are used even where the term "disability" would be appropriate, and in the places that define the rights of certain disability categories, these terms are inadequate and exclusively related to medical or biomedical approach to disability. Due to such starting point in defining this area, several acts have discriminatory measures which are not in compliance with human rights principles nor

with the UN Convention on the Rights of Persons with Disabilities (the right to reproductive health, rights of persons with intellectual disabilities and the mentally ill persons who are restricted by laws in many situations, certain categories of disability in some acts have been omitted ...).

None of the health care institutions in Montenegro is fully in compliance with accessibility standards adapted for the OSI. Health care facilities are partially adapted and it is mainly related to the accesses and entrances.

The internal infrastructure of health care facilities is not adapted to the needs of OSIs. Here beside toilet, we think about the accessibility of rooms and clinics, especially beds, tables ... and other ancillary diagnostic facilities. Persons with hearing impairments encounter numerous problems in exercising their rights to health care. No medical institution in Montenegro has a service that would enable persons with hearing impairments to communicate with medical staff without difficulties. The training of medical staff to communicate with the hearing impaired persons started only in the last year²⁷⁷. Health care staff is not trained for a quality communication with the OSIs, or for people with all kinds of disabilities.

Private practices usually do not respect the regulation on having accessible toilets for the OSI. There is not a specialized dental service for dental interventions for the OSIs.

Services of domiciliary health care services, as well as services of physical therapists are often not available to the OSIs, although there are legal grounds for that.

There are no legal obstacles to exercise the rights to services for sexual and reproductive health of women and men with disabilities, but in practice there are very few available health care institutions in which they can exercise those rights. Gynecology offices are rarely available to women with disabilities, both state and private. Only in Pljevlje, for now, there is a gynecological table accessible to women with disabilities. The only clinic for IVF in Montenegro, "Danilo I" Cetinje is inaccessible to the OSIs.

The only specialized hospital for people with mental illness is the Special hospital for the treatment of psychiatric patients in Kotor.

²⁷⁷http://www.gov.me/sjednice_vlade/62

A very important part of the health care for the OSIs is an exercise of their rights to aids.

Although the Regulations on the procedure for exercising the rights to medical-technical aids is improved compared to the previous period, it still has some shortcomings. For example, a person who is in need of an electric wheelchair and also needs a toilet wheelchair, in practice, he/she can exercise the right to only one. This is very discriminatory and reduces the quality of functioning as well as life of the wheelchair users. In addition to that, the procedure of exercising the rights is very long and complicated. Procedure for exercising the right to, so called, consumable materials (tires, anti-bedsore mattresses, belts, handles, batteries etc.) is almost the same as for getting a wheelchair and one has to wait for the delivery more than a month. Also, the wear and tear period for aids is too long.

3.C.2 IMPLEMENTATION ANALYSIS – OBSERVANCE OF LEGAL FRAMEWORK IN THE FIELD OF HEALTH CARE

The verification of how much the health care laws concerning persons with disabilities are applied was carried out in a qualitative survey. These data were obtained through the method of anonymous questionnaires that were conducted with persons with disabilities.

Questions in the questionnaire were created in relation to Article 25 of the UN Convention on the Rights of Persons with Disabilities (health care) and referred to the views and experiences of persons with disabilities in practice, in relation to the measures, the conditions and rights guaranteed by the Convention.

Socio-demographic information on respondents

When it comes to the structure and gender of the respondents from a total of 86 respondents, 54 of them, or 62.8%, were male, while 32 of them, or 37.2% were females. Eleven respondents, or 12.8% are younger than 18 years of age, 24 of them, or 27.9% is between 19 and 35 years of age, 25 of them, or 29.1% is between 36 and 50 years of age, 25 of them, or 29.1% are between 51 and only 1 respondent was over 70 years of age. This question was structured in two separate question of the closed type, with multiple choices.

The third question related to the type of the respondents' disability was freely answered by the respondents, so the answer could be objectively

based on the determined status (medical records, decision, etc.) and / or based on a personal belief and experience of the respondents. So we got the same number of respondents with physical disabilities as well as with hearing and speech impairment - 16.86% of them, i.e., 14 respondents. Somewhat fewer number of them indicated the cerebral palsy (13.25%), i.e., 11 of them, which is again a kind of physical disability. 9.63% of them, i.e., 8 of them are persons with paraplegia (also a physical disability). Close to the previous result, 7.22%, i.e., 6 of them have visual impairment. Dystrophy was indicated by 6.02% or 5 of the respondents, and multiple sclerosis was indicated by 3.61% or 3 of them (which is also a type of physical disability). The 26.50% or 22 of them is under the category "other".

Seventy eight (out of 86) of the respondents answered the question: Do you use any of the aids? Respondents were also able to circle more than one offered answer. So we came to the conclusion that:

- 27.9% of respondents use the aids;
- 25.6% use a wheelchair;
- 14% use crutches or a walker;
- 1.2% of respondents use some of prosthetic and orthotic aids;
- 10.5% of them use glasses with glass contact lenses, ocular prosthesis, ocular prisms and typhlo-technical aids, and
- 5.8% of respondents use a hearing aid;

Five comma eight percent of them use the other aids not listed among the offered answers.

The open type question in which respondents were asked about how they exercised their rights to the aids and whether they were satisfied with the standard and quality of the aids used by them was answered by 60 out of a total of 78 respondents who used aids. Thirty seven respondents gave concrete answers. Most of the respondents, 40% of them reported that they exercised their right to aids through the Health Insurance Fund, 8.33% of them reported that they themselves had bought the aids. Six comma sixty-six percent of the respondents reported that they got their aids by means of referrals. The 6.66% of them stated that they got their aids through the social welfare system.

Health care facilities are rarely visited by 27, i.e., 31.4% of the respondents, 29 of them, i.e., 33.7% sometimes visited health care facilities, the health care facilities are often visited by 22 respondents, i.e., 25.6%, and very

often by 5.8% or 5 respondents. Three respondents did not answer this question.

Forty two respondents visit the health care facilities due to the nature of their disabilities to the extent stated in the previous question. On the other hand, we have 41 respondents whose visits to the doctor are not caused by the type of their disability.

The closed type question that the members of the organization were asked: Do you use medical rehabilitation in specialized medical institutions and in which situation? was answered by 82 out of 86 of them.

- 23.3% of the respondents used rehabilitation once after an injury, surgery or illness;
- only 15.1% uses rehabilitation once a year
- 57% of them does not use rehabilitation.

35 out of the 49 of them who do not use the rehabilitation answered why they do not use or does not have the right to rehabilitation. The 26 out of 35 of them, i.e., 50.98% stated that they had no right to rehabilitation. The 7.84% of them used rehabilitation only once. The 9.8% of the respondents indicated that their type of disability does not require medical rehabilitation. Twenty-one comma Fifty-six percent of the respondents indicated other reasons. The question for the members if they are satisfied with the level and quality of rehabilitation was answered by 15 of them, or 17.4%, out of the 52 who responded to this question that they were fully satisfied with the level and quality of rehabilitation; the 19 of them, or 22.1%, were partially satisfied, and the 20.9% was not satisfied, i.e., 18 respondents.

When asked for further explanation, the most important of all answers of the respondents were: insufficient staff expertise (6.66%), i.e., 3 respondents, dissatisfaction with rehabilitation was reported by 13.33% of them, i.e., 6 respondents. The lack of availability of rehabilitation was indicated by 15.55% of them, i.e. 7 respondents.

To the question: Are you provided the health care services that are also provided to other citizens, including services related to sexual and reproductive health and the public health care programmes intended for the general population on the basis of equality with others?, the 59.3% out of a total of 73 who answered responded affirmatively, while 25.6% of them responded negatively.

The respondents unfortunately did not explain their answers in more details.

To the question from the questionnaire which was made with the members of the organization of the OSIs: Are and how much are the healthcare facilities, services, and information they receive in health care institutions accessible and adapted to their needs.

- 18.6% of the respondents said that the healthcare facilities, services, and information were completely inaccessible to them, while
- 61.6% reported that the healthcare facilities, services and information were only partially accessible to them,
- 17.4% of respondents stated that the services and information they receive in healthcare institutions accessible to them.
- 4 respondents did not answer this question.

In analyzing the answers to the previous question, the structure and type of disability of the respondents should be taken into account.

To the question posed to members of the organization: Are you provided those healthcare services that you specifically need because of your disability, including early identification and intervention when appropriate, as well as the services aimed at minimizing and preventing further disability and how?

- out of the 83 respondents who answered this question, 24.4 of them answered that they were always provided with such services;
- 15.1% indicated that they were often provided such services;
- such services are rarely provided for 38.4% of the respondents
- the necessary services are not provided for 18.6% of the respondents.

Healthcare services are provided in or near the place in which respondents live for 46.4% of the respondents, while only some services are provided in or near places of living for 41.9 % of them. The 5.8% of them said that the services were not provided in the place where they live. This question was answered by a total of 81 respondents.

Eighty comma two percent of the respondents answered that their medical workers provided the medical care of the same quality that is provided to other persons, 17.4% of the respondents reported that their health care workers did NOT provide the same quality of service as provided to other people. The respondents did not explain their answers to this question. Two respondents did not answer this question.

The health care services are provided to 53.5% of the respondents on the basis of free and informed consent, and the services are almost always provided to 36% of the respondents on the basis of free and informed consent. While the services are not provided on the basis of consent for 7% of the respondents.

This question was answered by 83 out of a total of 86 respondents.

Out of a total of 84 respondents who answered the question: "Do the healthcare workers have a satisfactory level of awareness of human rights and do they respect your dignity, autonomy and needs?", 50% of them said that the majority of healthcare workers had a satisfactory level awareness of human rights and that they respected their dignity, autonomy and needs; 41.9% of them stated that it was the situation with a certain number of health care workers, while 5.8% said that the healthcare workers did not have a sufficient level of awareness of human rights and that did not respect the dignity, autonomy and needs of the participants, i.e., persons with disabilities.

Sixty nine comma eight percent of the respondents stated that they had not experienced unequal treatment and discrimination in the use of healthcare services. However, 10.5% of them stated that they had experienced a refusal to provide healthcare services; 3.5% experienced setting special conditions for the provision of healthcare services; 5.8% experienced denial of information on current health status, measures taken or intended treatment and rehabilitation, while 7% of the respondents stated that they had experienced discrimination in other aspects of the use of healthcare services. This question was not answered by 6 respondents.

It is important to point out that a very small number of the respondents, 64% of them are not familiar with the bodies that are obliged to prevent denial of healthcare, healthcare services, food or drinks on the basis of disability, while only 30.2 % of them are familiar with the bodies for protection of rights. 5 respondents did not answer this question.

However, on the basis of the respondents' answers to the following question in which they were asked to list the bodies obliged to protect from discrimination against persons with disabilities in the healthcare sector, it was clear that the respondents actually were not at all familiar with it, because a total of 62 of them did not answer this question. Although 17 of them answered this question and listed the concrete bodies, on the basis of their answers it was clear that the respondents were not aware of all the bodies of protection, or the sequence of bodies / institutions to which, in

such situations, they should turn. The respondents indicated as bodies of protection: the Ministry of Labour and Social Welfare, the Ombudsman, the Government, while, for example, no one mentioned the Protector of patient rights, healthcare inspections, etc.

The 47 respondents answered the additional question for those who are not informed to give reasons for being uninformed .

- 8.5% of them said that they did not understand the question
- 6.38% said that they did not know.
- 57.44% said that they had not been informed.
- 13 of them gave different reasons for being uninformed.

Thus, most of the respondents did not give a concrete answer to this question.

- Only 5.8% of the respondents complained to someone or initiated proceedings for protection from discrimination and exercised their rights. The 84.9% of 78 respondents who answered this question did not complain.

When asked to state the reasons for not complaining, 36 respondents did not answer, while 32% answered that their rights were not violated. Sixteen percent were not informed. 4% of them are not familiar with the law ... So, in answering this question the respondents contradicted their previously given answers and experiences, which may mean that the were uninformed, afraid and so on.

When asked to indicate the way in which they believe that it is possible to improve the exercise of the rights of the persons with disabilities in the healthcare sector, i.e., to give recommendations, the 24 out of the total number of the respondents did not made any concrete recommendations to improve the situation.

- 22.50% of the respondents gave the recommendation to amend Law on Social and Child Protection, and that is applied as such;
- 9.67% of the respondents said that it was necessary to amend the Regulation on medical rehabilitation.
- 14.51% of the respondents said that a larger number of specialist doctors was needed, as well as their training.
- 3.22% of them said that more domiciliary visits were needed.
- 14.5% of them made a recommendation that the accessibility of facilities was needed
- 12 respondents made recommendations which could hardly be categorized into the sector about which they were questioned.

3.D LABOUR AND EMPLOYMENT

The Convention on the Rights of the Persons with Disabilities lays down the right to work and employment of persons with disabilities in its Article 27, which reads:

States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

- (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
- (c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
- (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training
- (e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
- (f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
- (g) Employ persons with disabilities in the public sector;
- (h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures
- (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace
- (j) Promote the acquisition by persons with disabilities of work experience in the open labour market

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour

Within domestic legislation, the field of labour and employment of persons with disabilities (OSI) is regulated by a number of legal regulations. Some of the regulations address the labour and employment related rights of OSI only in some clauses; in 2008 the Montenegro Assembly adopted the Law on Professional Rehabilitation and Employment of Persons with Disabilities as a *lex specialis* which entirely deals with these rights. A key institution dealing with the issues of employment of citizens, including OSI is Montenegro Employment Institute. According to the Institute's data, as of 31 December 2012, the records showed 31.232 unemployed persons. Of this number there were 1.500 unemployed persons with disabilities. Although the Law on Professional Rehabilitation and Employment of Persons with Disabilities is one of better laws in this field in the countries of the region, employment of OSI is not at the satisfactory level. According to the work of the Employment Institute for 2012, only 31 employers exercised their rights to subsidies of wages under the valid law, by 31 December 2012, for 42 employed OSI. Of this number 23 were employed based on a contract for an indefinite time period, while 19 of them were employed based on the contract for a definite time period. Non-governmental organization, i.e. mostly OSI organizations are the biggest employers of OSI, while only very few of them are employed in the private sector. Despite the expectations for most OSI to be employed in the public sector, i.e. state institutions, the practice has shown that an unjustifiable small number of them are employed in this sector. One of the reasons for that is impossibility to apply the Law to state institutions, with regards to payment of the subsidies from the Employment Institute account, as well as inability to collect special contributions to be paid by the employers who do not hire sufficient number of OSI, in the sense of quota employment system. Besides, a considerable number of employers still have prejudices toward OSI, so that rather pay fines in the form of special contribution than employ these persons. On the other hand, the employers who are willing to employ OSI face the barriers in exercising benefits provided under the Law as there are certain difficulties and delays in the procedure of implementing the rights to furnishing a work place, as well as to co-financing an assistant in work. Namely, professional rehabilitation contractors who should engage

a work specialist to evaluate justifiability and the level of furnishing of a work place, as well as the justifiability of using a work assistant, do not carry out these evaluations, among other, due to a significant delay of beginning of work of the Disability Degree Evaluation Committee, upon the functioning of whom the exercise of the rights under this Law will depend. Namely, a percentage of the wage subsidy depends on whether a person employed by an employer has more or less than 50% of disability, so that the employers who employ the OSI for more than a year receive decreased wage subsidy also for those OSI with disability degree evidently higher than 50%, which is a condition to exercises higher amount of subsidy.

Non-dedicated expending of the fund paid by the employers as a special contributed to the Montenegro budget represents a particular serious problem when it comes to employing OSI. Namely, since 2009 when the application of the Law started to the end of 2012, 19.163.105,72 EUR, was paid in by the employers, while 885.018,39 EUR or 4,62% was spent for the needs of rehabilitation and employment of OSI during the same time period. In 2012 the employers paid 7.931.921,86 EUR on the same basis, of which 268.521,65 or 3,39% was spent for the needs of employment of OSI. A reason for such a low dedicated realization of the funds is in the fact that the Fund for Professional Rehabilitation and Employment of the Persons with Disabilities does not have an adequate status of a separate legal entity, but was formed as part of the Montenegro Employment Institute. On the other hand, there is no special budget line for the needs of the Fund in the Fund budget, but the payment is made directly to the Montenegro budget, and then the funds are transferred to the Employment Institute by the Finance Ministry in extremely limited amounts, as mentioned above.

The OSI organizations have continuously pointed out to the omissions in the implementation of this Law especially emphasizing non-dedicated expending of funds paid in the state based on non-hiring of OSIs, which are used for the purposes that have nothing to do with this population.

3.D.1 ANALYSIS OF INSTITUTIONAL AND LEGISLATIVE FRAMEWORK IN THE FIELD OF LABOUR AND EMPLOYMENT

LEGISLATIVE FRAMEWORK IN THE FIELD OF LABOUR AND EMPLOYMENT

Definitions of disability

A definition of a person with disabilities in the regulations dealing with the right to labour and employment is provided in the **Law on Professional Rehabilitation and Employment of Persons with Disabilities**²⁷⁸ in its Article 3, which reads:

„A person with disabilities in the sense of this Law is a person with permanent consequences from physical, sensory, mental or psychological damage or disease, which cannot be detected through treatment or medical rehabilitation, and who is faced with social or other impediments, which have certain influence on working ability and employment opportunities, maintenance of employment and advancement in it, and who has no possibilities or has decreased possibility to be involved in a labour market on equal basis.“

This definition is fully in line with the definition of a person with disability (OSI) provided in the Convention on the Rights of Persons with Disability, so that in this segment the Law is fully compliant with the Convention.

Anti-discriminatory provisions

Ban on discrimination of persons with disabilities in the field of labour and employment has been mandated in a number of legal regulations.

Law on Ban of Discrimination²⁷⁹ in Article 18 which refers to the discrimination of OSI, lays down, inter alia, that specific denial of rights to work and employment-related rights are considered as discrimination against persons with disabilities, which rights are in accordance with the needs of that person.

Two Articles in the **Law on Discrimination against Persons with Disabilities**²⁸⁰ are dedicated to the field of employment and labour. Article 12 relates to the field of employment and reads as follows:

„It is forbidden to exercises discrimination against persons with disabilities in the field of employment, with regards to the following:

- „1) a person with disabilities looking for a job;

²⁷⁸ „Montenegro Off.Gaz.", no. 49/08, 73/10, 39/11

²⁷⁹ „MN Off.Gaz.", no. 46/10, 40/11

²⁸⁰ „MN Off.Gaz.", no. 39/11

„2) a guardian of a person with disabilities looking for a job.
„Prior checking of psychological and physical abilities for a position for which checking is not envisaged is also considered discrimination of a person with disabilities on the basis of disability in the field of employment.
„The following is not considered discrimination of a person with disabilities on the basis of disability, in employment:

- „1) a selection of the candidate who has shown the best result in a prior test of psychological/physical abilities, in relation to the requirements set for a specific workplace;
- „2) taking incentive measures for faster employment of persons with disabilities as envisaged by the Law.“

Article 13 lays down ban of discrimination in the field of labour; the Article reads:

„No discrimination is allowed against persons with disabilities based on disability in the field of labour, toward:

- „1) an employed person with a disability;
- „2) an employed guardian of a person with disabilities.

„The following is considered discrimination of a person with disabilities, based on disability and of a guardian of a person with disabilities in exercising labour-related rights:

- „1) determining lower salary, i.e. wages for work of equal value;
- „2) determining special work conditions, if such conditions have not been defined for such work place;
- „3) defining special conditions for exercising other labour-related rights.

„Harassment, insulting and belittling of employees working with an employer is also considered discrimination of a person with disabilities based on disability and against a guardian of a person with disabilities.“

Besides anti-discriminatory provisions, Law on Labour, Law on Volunteer Work and Law on Professional Rehabilitation and Employment of the Persons with Disabilities contains anti-discriminatory norms providing for the ban of discrimination based on disability.

The **Law on Labour**, in its Article 5, stipulates, among other, that: „direct and indirect discrimination against the persons seeking employment is forbidden, as well as of the employed persons ... given the health condition, i.e. disability...”

The Law on Volunteer Work in its Article 10 lays down that „Direct and indirect discrimination of volunteers and volunteer work users is forbidden, given the health condition, i.e. disability. “

Likewise, Article 5 of the **Law on Professional Rehabilitation and Employment of Persons with Disabilities** states:

„Direct and indirect discrimination during professional rehabilitation, employment, as well as during the employment of a person with disability is forbidden.“

The Constitution of Montenegro²⁸¹ lays down the right to work and employment in its Articles 62-67. According to Article 62, anyone is entitled to work, to free choice of occupation and employment, to just and humane work conditions and to protection during unemployment. In Article 63 forced labour is forbidden, while Article 64 deals with the employees' rights, and inter alia lays down that employees are entitled to a salary, limited working hours and paid vacation, as well as to protection at work. In this same Article it is stated that the young, women and persons with disabilities enjoy special protection at work. In Article 65 an existence of the Social Council is determined the task of which is to adjust social position of employees. Article 66 deals with the right to workers' strike and Article 67 mandates obligatory social insurance of all employees.

Besides these Article that directly lay down the right to work, Article 68 states: „Special protection of the persons with disabilities is guaranteed“.

LEGAL FRAMEWORK IN THE FIELD OF LABOUR AND EMPLOYMENT

Laws

The right to work and employment of persons with disabilities (OSI) is governed under the following Laws: Law on Labour²⁸², Law on Professional Rehabilitation and Employment of Persons with Disabilities²⁸³, Law on Volunteer Work²⁸⁴, Law on Records in the Field of Labour and Employment²⁸⁵.

The Law on Labour as the main system law in the field of labour, lays down, in a number of its Articles the right of OSI to work. Article 11 which relates to employees' rights, lays down, inter alia that the employees younger than 18 years of age as well as a person with disabilities are entitled to special protection under this Law.

Article 16, which deals with the requirements to make an employment contract, lays down that a person with disability, who is capable of working in terms of health condition at certain jobs, may make a work

²⁸¹ „MN Off.Gaz.“, no. 01/07

²⁸² „MN Off.Gaz.“ no. 49/08, 26/09, 88/09, 26/10 i 59/11

²⁸³ „MN Off.Gaz.“, no. 49/08, 73/10 od 10.12.2010, 39/11

²⁸⁴ „MN Off.Gaz.“, no. 26/10

²⁸⁵ "Sl. list RCG", no. 69/03, i "MN Off.Gaz.", no. 73/10, 40/11

contract/employment contract on the conditions and in the manner stipulated by this Law, unless a special law provides otherwise.

Article 42 lays down that an employed parent who has a child with severe developmental disabilities as well as an employed person with a disability may not be assigned to work to a place other than their place of residence, i.e. temporary residence.

In case that it is decided that an OSI is employee for whose work there is no need any more, he/she is entitled to a severance pay under more favourable conditions compared to other employees. Article 94 lays down that an employee with a disability is entitled to a severance pay at the level of 24 average salaries if disability arose due to an injury or disease outside the work, i.e. to 36 average salaries if disability occurred as a consequence of an injury at work or a professional disease.

In this Law, in addition to the said Articles, Article 107 lays down the protection of persons with disabilities. This Article states, among other, that an employer is required to assign a person with disabilities to tasks that suit its remaining working capacity in the vocational degree, in accordance with the job classification rulebook.

If this is not possible, an employer is required to provide other rights to him/her, in accordance with the law governing training for work of persons with disabilities and in line with the collective agreement.

This Article states again that a person with disability is entitled to a severance pay in case that he/she is declared an employee whose work is no longer needed.

Article 114 lays down that a parent, an adoptive parent or a person to whom a child with disabilities was entrusted to custody and care by a responsible guardianship body, i.e. a person taking care of a person with severe disability in accordance with special regulations, is entitled to work half-time that is considered as full time in terms of exercising labour and work-related rights.

In July 2008, the Assembly of Montenegro promulgated the **Law on Professional Rehabilitation and Employment of Persons with Disabilities** as *lex specialis*. This Law went through two amendments, one in 2010, and another in 2011. The latter year is of special importance, as essentially better solutions were adopted. The subject of this Law is the manner and procedure of exercising the right to professional rehabilitation of persons with disabilities, measures and incentives for their employment, manner of financing and other issues of relevance for professional rehabilitation and employment of persons with disabilities. The goal of the Law is to create conditions for increased employment of persons with disabilities and their

participation in a labour market on an equal basis, with removing of the barriers and creation of equal opportunities. Beneficiaries of the right from this Law include the persons who have a status of a disabled worker in the sense of pension and disability insurance, persons with developmental disabilities categorized into a certain disability category and degree, in accordance with special law, and who completed education in special or regular school, persons to whom disability i.e. physical damage occurred in a way that is envisaged by the regulations on veteran-disability protection and persons who completed education, with adjusted performance of curriculum and provision of additional expert assistance or special educational program, in accordance with a separate law.

The same Article lays down that a person, who has not acquired any of the above status, is entitled to a status of a person with disabilities depending on the percentage of disability, in accordance with this Law.

Determining a degree of disability is done in a way envisaged by Article 8 of the Law which lays down that the percentage of disability, remaining working capacity and possibility of employment are decided upon by the manager of an organizational unit of the Employment Institute in the first degree, i.e. by the director of the Institute in the second degree, based on the evaluation, findings and the opinion of the first-instance, i.e. second-instance Commission for Professional Rehabilitation of Persons with Disabilities..

Articles 12-14 relate to professional rehabilitation by defining which measures and activities are included in the professional rehabilitation in the sense of this Law, as well as the conditions for entitlement to professional rehabilitation, as well as the procedure and conditions for selection of and entity in charge of professional rehabilitation.

This Law lays down that persons with disabilities may be employed under general or special conditions, with general conditions implying employment with an employer without adjusting the tasks, i.e. the work place and special conditions implying employment with an employer with adjusting of the tasks, i.e. the work place and employment in special employment organizations.

Article 21 of the Law provides for a quota system of employment of persons with disabilities. According to this system, an employer who has between 20 and 50 employees has to hire one person with disabilities, while an employer who has more than 50 persons employed, must hire at least 5% persons with disabilities compared to the total number of employees. These requirements do not apply to a newly-established employer during the first 24 months. Also, if an employer has or hires a person with a

percentage higher than 80% of disabilities, he/she shall be considered as if hiring two persons with disabilities.

If an employer does not fulfil the above obligation of hiring a person with disabilities he/she is required to pay a special contribution which amounts to 20% of average monthly salary in Montenegro for each person whom he/she did not hire. An amount of a special contribution for employers who have less than 20 and more than 10 employees is 5% of average monthly salary in Montenegro. OSI organizations appearing as employers are exempted from the said contribution; however, they are entitled to subsidies envisaged by this Law.

Articles 24-35 address special organizations. Special organizations envisaged by this Law include the following: institution for professional rehabilitation, working centre, protection workshop and protection plant. The above Articles determine the status of individual organizations, manner of establishing, management bodies, privileged status and other issues related to work of special organizations.

The Law on Professional Rehabilitation and Employment of Persons with Disabilities lays down very encouraging subsidies for employers who hire persons with disabilities. Article 36 determines the types of subsidies, namely:

An employer hiring a person with disabilities is entitled to the subsidies relating to:

- Grants for adaptation of the work place and work conditions for employment of persons with disabilities;
- Loans on favourable conditions for purchase of machines, equipment and tools necessary for employment of a person with disabilities;
- Participation in financing personal expenses of an assistant for a person with disabilities;
- Salary subsidies of persons with disabilities employed by him/her.

The level of the above subsidies, except for the subsidy for salary, is at 100% of the justified expenses, in accordance with the regulations governing state assistance.

The level of subsidies for wages for an employed person with disabilities is as follows:

- 75% of paid gross salary throughout the period of employment, for an employer who hires a person with at least 50% of disability;
- For an employer hiring a person with less than 50% of disabilities, the subsidy is: 75% in the first year, 60% in the second year 50% in the third and in each subsequent year, of the gross paid salary.

Article 37 of this Law lays down that an unemployed person with disability

who is undergoing a professional rehabilitation or involved in the implementation of the active employment policy measures, is entitled to financial assistance for transport, food etc. The level of this assistance is 15% of average monthly income in Montenegro. It has been also regulated that a companion of a person with disability is entitled to cash assistance at the level of 50% of the amount awarded to the person with disability.

Articles 38-41 lay down the existence of the Fund for Professional Rehabilitation and Employment of Persons with Disabilities. These Articles also regulate the organization and the funds of the Fund. Article 39 defines the use of the Fund's assets and reads as follows:

„The Fund's assets shall be used for:

- „1) measures and activities on professional rehabilitation for unemployed and employed persons with disabilities;
- „2) co-financing of special employment organizations;
- „3) active employment policy programs in which the persons with disabilities participate;
- „4) subsidies from Article 36 of this Law;
- „5) financing grant schemes;
- „6) cash assistance referred to in Article 37b of this Law.“

In order to monitor realization of the measures and activities that are in the function of promoting professional rehabilitation and employment of persons with disabilities, as well as of purposeful expending of Fund's resources, the Institute forms the Fund's Council, as envisaged by Article 40 of the Law. The Council consists of five members, of whom two are proposed by associations representing persons with disabilities, and one by the Ministry, representative association of employers of Montenegro and representative organization of the trade union at the level of Montenegro, each.

The amendment to the Law of 2011 defines that a person with disabilities who was determined to be unemployable is entitled to be included in the program of social inclusion, in order to gain functional and social skills.

The Law on Volunteer Work governs the conditions and the manner of performing volunteer work. This Law defines that the persons with disabilities may be volunteers too. In Article 4 it is stated, inter alia, that:

A domestic or foreign physical entity who has working capacity or is a person with disability trained to perform certain volunteering work may be a volunteer.

The Law on the Records in the Field of Labour and Employment governs the types, content and manner of keeping records in the field of labour and employment, as well as the manner of collection, processing, using and

protection of the data contained in these records. Article 2 of this Law defines, inter alia that keeping the records on employees and beneficiaries of the rights from pension and disability insurance is obligatory, while the business companies and other legal entities, state bodies and local self-governance units, i.e. local administrations and physical entities that have employees are required to keep such records, unless a special law regulates otherwise.

Article 7 regulates the contents of the records on employees, which, among other, includes a data as to whether an employee is a person with disability with partial loss of working capacity or a pension beneficiary, i.e. a person with disability or physical damage;

Article 38 governs the contents of the records on beneficiaries of pension and disabled persons' insurance which includes the data on employed disabled workers who have been determined to have a partial loss of working capacity, i.e. persons with disabilities, as well as the data on employed beneficiary of the right to cash compensation for physical damage.

By-laws

With a view to implement the Law on Professional Rehabilitation and Employment of Persons with Disabilities, the Ministry of Labour and Social Welfare adopted a number of rulebooks defining in detail the conditions and the manner of exercising certain rights prescribed by this Law. All adopted Rulebooks rely mainly on social model of disability. Although the adopted Rulebooks are of satisfactory quality, there is a problem concerning the possibility of their implementation. Another thing that is missing is for the Ministry to adopt **the Rulebook on the Procedure and Methodology for Financing Special Employment Organizations and Financing Grant Programs**, in order to create conditions for higher realization of the funds collected in the Fund for Professional Rehabilitation and Employment of Persons with Disabilities.

Rulebooks adopted by the Ministry of Labour and Social Welfare are the following:

Rulebook on the Criteria and Conditions for Determining a Percentage of Disability, Remaining Working Capacity and Employability; Rulebook on the Manner and Conditions for Realizing the Right to Professional Rehabilitation; Rulebook on the Standards for Implementing Measures and Activities in Professional Rehabilitation; Rulebook on the Requirements to be Met by Professional Rehabilitation Provider, a Working Center, Protective Workshop and Protective Plant; Rulebook on

the Conditions, Criteria and the Procedure of Exercising the Right to Subsidies; Pricelist of Services of Professional Rehabilitation Measures and Activates; Institute's Rulebook on Composition and Method of Work of the Professional Rehabilitation Commission.

Strategic documents

With a wish to create better conditions for creation of new jobs and investment in human capital and to the end of raising the employment level and improving Montenegrin economic competitiveness, the National Strategy for Employment and Development of Human Resources for the Period 2012-2015 were adopted. This Strategy is a continuation of the same strategy from the period 2007-2011, with the analysis of the realized measures which is contained in the previous Strategy playing a very important role in the preparation of the valid Strategy.

In order to promote the field of employment and development of human resources for the period 2012-2015, three main priorities have been defined, and strategic goals within each of them. Priority III relates to Promotion of Social Inclusion and Reduction of Poverty, and within it, goal 2 relates to the integration in employing persons with disabilities.

INSTITUTIONAL FRAMEWORK IN THE FIELD OF LABOUR AND EMPLOYMENT

The key institutions dealing with the implementation of the regulations in the field of labour and employment include the following: Ministry of Labour and Social Welfare, Montenegrin Employment Bureau, Administration for Inspection Affairs at the National Level, i.e. Employment Bureaus at the local levels.

COMPLIANCE OF LEGISLATIVE AND INSTITUTIONAL FRAMEWORK WITH THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

Legislative framework in the field of labour and employment in Montenegro may be characterized as mostly harmonized with the Convention on the Rights of the Persons with Disabilities. A deficiency that may need a correction primarily relates to the Law on Professional Rehabilitation and Employment of Persons with Disabilities in the segment that it should envisage instruments to enable the application of the Law to the state sector and that it should redefine the status of the Fund for Professional Rehabilitation and Employment of Persons with Disabilities with an aim of

better employment of Fund's resources. Besides, the purpose of the Fund's funds should be enlarged. Finally, the missing by-laws should be passed as soon as possible in order to ensure full implementation of the Law.

As for the institutional framework, we can say that it is partly harmonized and that the main reason for that is that the Fund for Professional Rehabilitation and Employment is not formed as a separate institution. Forming the Fund as a separate institution would enable better utilization of the Fund's assets, and would significantly improve the position of OSI in the field of employment.

3.D.2 IMPLEMENTATION ANALYSIS – OBSERVANCE OF LEGAL FRAMEWORK IN THE FIELD OF LABOUR AND EMPLOYMENT

A survey was conducted by the method of questionnaire, and our goal was to get the opinions of the persons with disabilities (OSI) on situation regarding implementation of the regulations in the field of labour and employment of OSI in Montenegro.

67 persons took part in the survey – of whom 37 men and 30 women. Speaking of their age structure, it is as follows: 12 persons from 15 to 25 years of age, 22 persons from 26 to 37 and 19 respondents from 38 to 49 years of age.

As for the educational profile of the respondents, 5 of them have completed elementary school, 40 secondary school and 21 respondents' higher education.

Fifteen respondents are employed while 51 are jobless.

Asked about the manner of employment, the respondents said: „I got a job through an acquaintance with a person who works in an OSI organization and who is a person with disabilities herself; I own a private family company; employed through NGO sector; through the job vacancy announcement; there were no problems getting a job; I got a job outside of regular procedure through 'connections' and by an intervention of a public official.

Respondents who do not have a job stated the following as a reason for their unemployment: Discrimination of OSI by an employer who is suspicious about my ability and capacity to work; disability pension; the most important reason for me being out of job is my disability; the biggest reason for which almost all persons with disability who use a wheelchair are out of job is impossibility to access the place of work due to architectural barriers and lack of adaptation of the working area; none of the employers wish to have a person with disabilities as an employee; I go to college.

To the question which rights the employers with whom the respondents are employed use, the following answers were obtained: wage subsidies (5), an allowance for furnishing the working place (5) and assistant in work (3).

To the question: „Have you ever experienced some sort of discrimination when getting a job or during work?“, 17 respondents answered Yes, and 30 respondents answered No.

The respondents stated the following as the examples of discrimination: „They make me work hard. In this company we have a 10 hour working hours and we additionally work on Saturdays; After I finished school I wanted to apply for a job as a salesperson in a /kiosk/ but I was told not to because who would hire me, and this place has been taken anyway; When I was admitted for internship in Higher Court, the judges said that employing me leads to the degradation of the profession; I was indirectly told that the problem is communication with customers; I did not go for additional education because accommodation was not paid for a personal assistant; My working booklet was taken away from me, and my insurance benefits and salary were not paid; I worked occasionally in a workshop for OSI. The workshop was not adapted for people with handicaps. In another workshop with a better accessibility I did not get a job because of arm injury, which was of a short character, more precisely, because the employer did not want to give me a job; During the period when I worked my appearance 'made' many employees mock me; but I worked as a mechanic so that they did not look at me for a long time, because I spent most of the time around the machines.

To the statement „Persons with disabilities have an equal position in the field of labour, free choice of occupation and employment“, at the scale from 1 to 5 (1 = I disagree, 5 = I fully agree), the respondents answered as follows: 35 of them gave the mark 1, 10 gave the mark 2, 10 gave the mark 3 and 5 gave the mark 5.

The question: „What do you think are the barriers for persons with disabilities to realize the rights in the field of labour and employment?“, respondents marked the following answers:

- Insufficient promotion of the Law on Professional Rehabilitation and Employment in Practice (39);
- Employers' misconceptions/prejudices (56);
- Inadequate qualification structure and narrow choice of professions (26);
- Other, state what (2)

As far as the deaf persons are concerned, all stated above and especially a narrow choice of occupations and inadequate qualification structure.

There are small chances for a deaf person or a person with hearing impairment to get, for example, IV degree of vocational education, to choose some occupation to gain that degree. Among other things, this prevents them from continuing schooling at higher education institutions too.

All three previously stated answers contain specific problems that we face.

To the question: „What do you think the state should do to improve the realization of the rights in the field of labour and employment of persons with disabilities? “the respondents answered as follows: The state should open a company in which persons with certain necessary qualifications could get a job; The state should apply the laws and punish those who do not abide by those laws; The Law on rights of OSI should be amended; to pay some money into the rehabilitation fund. Employers must hire at least 1 OSI; awareness of OSI and their abilities should change; the state should found the companies which would only hire OSI; employers should hire persons with impaired hearing and speech; Laws that were passed should be applied in practice so that they do not just remain on the paper; More efforts should be put into raising awareness of OSI and equal rights and possibilities; Employers should be punished to the highest possible degree; The Law on professional rehabilitation and employment of persons with disabilities should be applied more; Employers should be included in hiring OSI as much as possible; Law on Labour and Employment of OSI should be fully observed; work places should be arranged and adjusted to the needs and possibilities of persons with disabilities who do appropriate jobs; High taxes should be imposed on employers to make them abide by the laws; All persons with disabilities should be treated equally as the other citizens and should have the same rights. I will ask for that when I finish high school for therapists; To inform the employer about the benefits of employing a worker with disabilities; The state has passed the laws and regulations , they are ok, but unfortunately this has not yielded any results in practice; so the state should take care of that part; There is a lot that the state should do because the way a law on OSI is regulated is a reflection of that state, and in this case this is not a nice picture; education of both the population and the employers, information through the media; Education for employers so that they can be rid of their misconceptions and realize that OSI can be useful for the society; The law should be defined even more precisely, persons with disabilities should be given a priority when searching for job; I think that employers should be involved as much as possible in hiring the OSI.

Insufficient awareness of both OSI and employers of their rights when hiring OSI.

Creation of jobs exclusively for OSI; Observance of the Law on professional

rehabilitation and employment of persons with disabilities; registering the Fund for Professional Rehabilitation as a Legal Entity so as to make sure that the Fund' funds are used purposefully (for persons with disabilities) and accumulated in the Fund, rather than being unallocated and returned to the budget, and used in a non-dedicated manner. Abiding by the Law on Professional Rehabilitation; control of the Fund for Professional Rehabilitation; education of OSI; More attention should be paid to professional rehabilitation and development of persons with disabilities; big attention should be paid to organizing seminars and workshops on the subject related to this problematic; timely directing for education for occupations that are necessary and competitive in labour market and suit the affinities and capacities of the person with disabilities. It happened that in Zabjelo a girl with impaired vision finished Commercial school which is absurd; Application of the existing laws; training of employers who could hire OSI; Promotion of laws, raising awareness in the society; Investment should be made in the schools and institutions for OSI; there should be an inspection that would check on the companies; I was not paid my pension program benefits in a private company where I worked; Raising awareness o the possibilities of OSI both with the employers themselves and at the level of the entire society and work as much as possible on adjusting the living environment so that OSI can work by themselves; provide more information on OSI.

3.E APPROPRIATE STANDARD OF LIVING AND SOCIAL PROTECTION

Article 28 of the UN Convention on the Rights of the Persons with Disabilities lays down that the States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

- To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
- To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
- To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
- To ensure access by persons with disabilities to public housing programmes;
- To ensure equal access by persons with disabilities to retirement benefits and programmes.

It is characteristic for Montenegro that social welfare services are at an unsatisfactory level, which is indirectly caused by low economic potential and the lack of interest of local government bodies for the needs of this population. Due to the lack of a database at the local level, we can only use the data in the database of the organizations of persons with disabilities, according to which it is estimated that over 70% of persons with disabilities live in hard economic and other conditions.

According to the Study on Poverty of Children in Montenegro, developed in 2011 by UNICEF, every tenth child in Montenegro (or 14.500 of them) live below an absolute poverty level.

About 2.000 persons with disabilities are registered in the employment services records.

Organizations of the persons with disabilities (OOSI) in Montenegro provide certain services to persons with disabilities through their occasional program and project activities. The services for persons with disabilities which are most frequently used in Montenegro include: centers for children with developmental difficulties, founded by local governance bodies, rest and recreation, treatment spas, supply of aids, sport, recreational and educational activities. A certain number of necessary services are provide through non-governmental organizations, most commonly through projects, such as: "Geronto"-housewives, personal assistants and teaching assistants, out-of-institutional work for the children with developmental disabilities; independent ambulation, orientation courses, etc.

3.E.1 ANALYSIS OF INSTITUTIONAL AND LEGISLATIVE FRAMEWORK IN THE FIELD OF APPROPRIATE LIVING STANDARD AND SOCIAL PROTECTION

LEGISLATIVE FRAMEWORK ON THE ADEQUATE STANDARD OF LIVING AND SOCIAL PROTECTION

Disability definitions

The Law on Social and Child Protection and the Law on the Prohibition of Discrimination against Persons with Disabilities define that a person with a disability is a person who has long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may impede the full participation of these persons in society on an equal basis with others.

Anti – discrimination provisions

The Constitution of Montenegro envisages that any direct or indirect discrimination on any grounds is prohibited. Article 68 of the Constitution also states: "Special protection for persons with disabilities is guaranteed."

The Law on the Prohibition of Discrimination against Persons with Disabilities envisages that any form of discrimination against persons with disabilities on any grounds is prohibited,

The Constitution of Montenegro envisages that the state shall provide financial safety to a person who is incapable to work and without means of subsistence

The Law on Social and Child Protection envisages that social and child protection aims to improve the quality of life and empowerment for independent living of individuals and families.

The Law on Professional Rehabilitation and Employment of Persons with Disabilities envisages the possibility for an unemployable persons with disabilities to be included in the social inclusion programme, in order to gain social and functional inclusion.

The Law on War Veterans and Disability Protection defines the rights of beneficiaries, lists the rights that the beneficiaries have and determines the amount of compensations received by beneficiaries.

The Law on Pension and Disability Insurance regulates the conditions of exercising the right to old-age and disability pension.

The Law on Local Self-Government envisages that municipalities participate in the provision of conditions and the improvement of social and child protection, regulate and provide resolving the housing needs of persons in need and persons with special needs and assist the work of humanitarian and non-governmental organizations in these areas.

LEGAL FRAMEWORK ON THE ADEQUATE STANDARD OF LIVING AND SOCIAL PROTECTION

Pursuant to the Law on Social and Child Protection, the following bylaws were adopted :

The Rulebook on more detailed conditions for the exercise of basic material benefits from social and child protection, the Regulation on more detailed conditions for the provision and use of services of family accommodation - foster care and family placement, the Regulation on the content and form of the individual activation plan and method of implementation of the measures of social inclusion of the beneficiaries of financial support who are capable of working, the Regulation on the content of the database and the content and manner of keeping records in the social and child protection, the Regulation on more detailed conditions and the standards for performing professional activities in social and child protection and the Regulation on organization, norms, standards and methods of work of the centres for social work.

POLITICAL ORIENTATION

The Constitution proclaimed the character of state of Montenegro as a social state. Programmes of the parliamentary and other parties contain

provisions that establish the care of and engagement in the protection of vulnerable population groups.

STRATEGIES, ACTION PLANS AND OTHER DOCUMENTS

Strategic documents are: the Strategy for the Integration of Persons with Disabilities, the Strategy for Development of the System of Social and Child Protection 2013-2017, the Strategy for Development of Fostering with the Action Plan for the period 2012-2016, the Strategy for Development of Social Protection of the Elderly and the Strategy Protection from Domestic Violence. These documents were adopted at the national level.

Resolutions, decisions, internal rules and guidelines are made at the local level.

Specific rights, services and forms of support to the persons with disabilities

The Law on Social and Child Protection envisages the rights from social and child protection:

The basic financial benefits of social protection are: financial support, personal disability benefit, allowance for care and assistance, health care, funeral expenses and lump-sum financial assistance.

The basic financial benefits from the child protection are compensation for a newborn child, allowance for children, costs of food in preschool institutions, support for the education of children and young people with special educational needs, refund of compensation for salaries and compensation for salaries for maternity leave, i.e., parental leave, compensation based on the birth of a child, and refund of the compensation of salary and compensation of salaries for working part-time.

The amounts of financial support from social protection are:

- a) The monthly financial support for individuals, i.e., families without any income amounts to: 64.00 Euros for an individual, 76.90 Euros for a family with two members, 92.30 Euros for a family with three members, 108.90 Euros for a family with four members, 121.70 Euros for a family of five or more members, 121,70 euro for a person who was a child without parental care;
- b) personal disability amounts to 109.70 Euros per month;
- c) allowance for care and assistance amounts to 63.50 Euros per month,
- d) costs of funerals amount to 317,70 euro.

The amounts of financial support from child protection are:

- a) compensation for a newborn child is 106,00 euro;
- b) monthly allowance for children amounts to: 19.20 euros for a child of the financial support beneficiary, 25.80 euros for a child of the beneficiary of allowance for care and assistance, 32.10 euros for a child of the personal disability beneficiary, 32.10 euros for a child without parental care;
- c) the compensation on the basis of the birth of a child for a person who is registered with the Employment Agency of Montenegro and full-time students amounts to 64.00 euros per month.

The Law on Travel Benefits for Persons with Disabilities envisages that a person with a disability and his/her carer are entitled to a rebate for 12 travels by road and rail during a calendar year.

RIGHTS FROM THE SOCIAL PROTECTION

Financial support

The right to a financial **support** can be exercised by an individual, i.e., a family provided that the average monthly income from the previous trimester did not exceed the basis for the exercise of the rights envisaged by law.

Personal disability benefit

The right to personal disability benefit has a person with severe disabilities.

Allowance for care and assistance

The right to an allowance for care and assistance has: a) a person who, due to physical, mental, intellectual or sensory impairment or changes in his/her medical condition needs care and assistance in order to have secured access to satisfying his/her needs; b) A beneficiary of the personal disability benefit.

Health care protection

The right to health care is provided to a beneficiary of: a financial support, allowance for care and assistance and services of accommodation, if this right was not exercised on other grounds. This right is in accordance with the law regulating health care.

Funeral costs

The Right to the funeral costs in case of the death of the beneficiary of: a financial support, allowance for care and assistance and services of accommodation is provided in accordance with the Law on Social and Child Protection.

Funeral costs are exercised at the Centre for Social Work.

Lump-sum financial assistance

Individuals, i.e., a families that, due to special circumstances affecting housing, financial and health status, finds themselves in need of social assistance may exercise the right to a lump-sum financial assistance. The amount of this assistance is determined by the centre for social work, depending on the needs of individuals, i.e., families and the financial resources of the state.

RIGHTS FROM THE CHILD PROTECTION ARE

Compensation for a newborn child

One parent, adoptive parent, guardian, foster parent, i.e., a person to whom the child was entrusted for the care, upbringing and education may exercise the right to a lump-sum compensation for a newborn child. The compensation can be exercised by the age of one year of the child.

Child allowance

The right to allowance for children can be exercised by a child of: a financial support beneficiary, an allowance for care and assistance beneficiary, a personal disability benefit beneficiary, a child without parental care; whose parent, adoptive parent, guardian, foster parent, i.e., a person to whom the child was entrusted for care, upbringing and education as a financial support beneficiary was employed under the Agreement on active overcoming adverse social situations.

The right to allowance for children have three children in a family. Exceptionally, the allowance for children is provided to children who were born as twins, triplets, etc. regardless of the specified number of children. A child beneficiary of the allowance for care and assistance; beneficiary of the personal disability benefit and without parental care exercises the right to the allowance for children regardless of the number of children.

Expenses of food in preschool institutions

The right to the costs of food in public pre-school institutions are exercised by children in accordance with the law regulating preschool education.

Assistance in upbringing and education

The right to assistance for upbringing and education of children and young people with special educational needs have children and young people who exercised their right to upbringing and education in accordance with the law. The right to this assistance includes: accommodation costs in the institution and transportation costs.

Refund of compensation for salaries and compensation for salaries for maternity leave, i.e., parental leave

The employer is entitled to refund the means on the basis of payment of compensation for salary to an employee for maternity leave, i.e., parental leave.

Compensation on the basis of the birth of a child

One of the parents who is registered at the Employment Office and a student may exercise to his/her right to a monthly compensation on the basis of the birth of a child.

The employer is entitled to refund on the basis of payment of compensation for salaries to an employee for part-time work in the amount of 50% of the employee's salary.

Harmonization of the amount of the financial support in the social protection of children

The amount of the basis of the right from social and child protection is harmonized semi-annually (January 1 and July 1 of the current year) with the cost of living and average salary of employees in Montenegro on the basis of statistical data for the previous semester in a percentage that represents the sum of half percent of increase, i.e., decrease in the cost of living and a half percent of increase, i.e. decrease in salaries.

SOCIAL AND CHILD PROTECTION SERVICES

Services in the field of social and child protection are: a) assessment and planning, b) support for living in the community, c) counselling and therapeutic, and social and educational services, d) accommodation e) immediate intervention if) other services.

The Law on Social and Child Protection determines the social minimum, as a condition for eligibility to apply for financial support. As long as the Law on War Veterans and Disability Protection is concerned, there is a threshold for the exercise of the right to financial support of veterans in terms that the beneficiaries do not have income from employment, pensions, self-employment, old-age allowances for farmers and family financial support.

Law on War Veterans and Disability Protection²⁸⁶:

The field of veterans and disability protection in Montenegro is regulated by the Law on War Veterans and Disability Protection, which is effective as

²⁸⁶ „Official Gazette of the Republic of Montenegro“ no. 69/03

of January 1, 2004. The Law defines the rights of soldiers, military invalids, families of fallen soldiers, civil war invalids and family members of the deceased beneficiaries of these rights. In accordance with this Law legal protection is provided to persons with disabilities, family members of fallen soldiers, family members of the deceased beneficiaries, financially unsupported persons as well as special of protection of the decorated participants of the People's Liberation War.

The rights in the sense of this Law are: personal disability benefits, allowance for care and assistance by another person, orthopedic allowance, family disability benefit and increased family disability benefit, cash compensation of financial support, family allowances, health care and other rights in connection with the exercise of health care, orthopedic aids, spa and climatic treatment, free and privileged transportation, funeral expenses.

The right to a personal disability benefit is exercised by military invalids (peace and war) and civilian war invalids divided into groups, depending on the degree of physical impairment.

Personal disability benefit of military and civilian war invalids amounts to 575.30 euros for war invalids with a disability percentage of 100%, to 34.50 euros for war invalids with 20% disability.

In addition to the right to personal disability benefit, military and civilian invalids of I to IV groups, depending on the physical impairment may also exercise the **right to allowance for care and assistance by another person** in the monthly amount of 287.70 euros.

A military invalid from the 1st group with 100% disability as well as a civil war invalid from the 1st group with 100% disability has **the right to allowance for care and assistance by another person**, in terms of this Law. Both military and civilian invalid from the 2nd, 3rd and 4th group of disability, with the total impairment of the body which is equal to the impairment of the body of the military invalid from the 1st group, i.e., civil war invalid from the 1st group have the right to an allowance for care and support by another person, in terms of this Law.

The right to an orthopedic allowance can be exercised by military and civilian invalids of the disability groups 1 to 4 whose disability is determined because of the damage to the body which is a direct consequence of

inflicted wounds, injuries, traumas or illnesses caused by the amputation of limbs, or severe impairment of the functions of the extremities, as well as complete loss of vision in both eyes. Orthopedic allowance is 143.80 euros per month

Members of the immediate family of a disabled veteran from the 1st to 7th group, after his death, members of the immediate family of a fallen fighters and members of the immediate family of a person who was killed or died of wounds, injuries, traumas or disease have the **right to family disability benefit**. The spouse of a deceased civil war invalids who until his death was the beneficiary of the allowance for care and assistance by another person also has the right to family disability benefit. Family disability benefit amounts to 57.80 euros per month on the basis of deceased military and civilian invalids of war.

Family disability benefit on the basis of the fallen fighter amounts to 345,50 Euro.

If the right to a family disability benefit on the basis of a deceased disabled veteran and family disability benefit on the basis of the fallen fighter are exercised by several family members, the amount of the family disability benefit is increased by 50% for each co-beneficiary.

Parents of a fallen fighter who had no other children, spouse of a fallen fighter who has no children, as well as a child of a fallen fighter, in addition to the right to family disability benefit, have the right to increased family disability benefit that amounts to 201.30 euro.

If several family members meet the conditions for recognition of the right to family disability benefit, increased family disability benefit belongs to each of them.

Family allowance belongs to family disability benefit beneficiaries who exercise their right to a family disability on the basis of the death of a disabled veteran, i.e., the death of a civil war invalid who had the allowance for care and assistance by another person until his death, if he and the members of his family do not have incomes envisaged by this law.

In addition to personal disability benefit, disabled veterans who are not financially supported are also entitled to financial support that amounts to 115.00 euros per month.

Other rights, such as health care and the free and privileged transportation are fully provided to these beneficiaries, in accordance with this law and in

accordance with the regulations in the field of health care and health care protection.

In case of the beneficiary's death, a family member or a person who bears the cost of the funeral is entitled to compensation for funeral expenses in the amount of 575.30 euros.

On the basis of the disability status, persons with disabilities enjoy the benefits in terms of exercising the right to subsidies for electricity, water, telephone services, the right to benefits in road and rail traffic, the right to import and register their car, the right to free car parking. Children under the age of 15 with certain diagnoses have the right to use the spa and climatic treatments.

The funds for basic financial benefits and social services and child protection are provided in the state budget. The funds for services of social and child protection are also provided through the participation of beneficiaries, i.e., their relatives who are obliged to support them, donations, gifts, legacies, foundations, etc. in accordance with the law.

Funds for the needs of the veterans and disability protection are provided in the state budget.

INSTITUTIONAL FRAMEWORK IN THE AREA OF APPROPRIATE STANDARD OF LIVING AND SOCIAL PROTECTION

Legislative authority

The Parliament of Montenegro is the legislative authority with jurisdiction over the adoption of laws, including regulations regarding social and child protection.

In the Assembly, there are committees consisting of the members of Parliament from all parties of the legislative authority who examine legal texts in their meetings. Central Committee for issues of social protection is the Committee on Health, Labour and Welfare.

Executive authority

Ministry of Labour and Social Welfare is competent for the administration jobs, which, through the Directorate of Social and Child Welfare also performs tasks related to the protection of families, individuals, children at risk and those in need, i.e., social exclusion, especially related to those

incapable to work and financially unsupported, children without parental care, children with physical, mental and sensory disabilities, abused and neglected children, children with behavioural disorders, persons with disabilities, elderly, persons and families who, due to special circumstances require an appropriate form of social protection as well as refugees and internally displaced persons.

Ministry for Human and Minority Rights is the administrative body that monitors the respect of human rights and freedoms, particularly when it comes to the rights of persons with disabilities.

Protector of Human Rights and Freedoms (Ombudsman) in Montenegro is an independent and autonomous institution whose mission is to protect and promote human rights and freedom, when they are violated by the act, action or lack of action of public authorities.

In addition to these bodies, two advisory bodies founded at the government level should particularly be mentioned and they are: Council for the care of persons with disabilities and the Council for Children's Rights. Both councils are composed of representatives of several ministries and representatives of NGO sector and they deal in the protection of persons with disabilities, i.e., the protection of children's rights. President of both councils is the Minister of Labour and Social Welfare

Institutions for social and child protection

According to the Law on Social and Child Protection, public institutions are: the Centre for Social Work; institution for children and youth; Institution for adults and elderly and Institutions for rest and recreation.

In accordance with the Law on Social and Child Protection the decisions on organizing public institutions²⁸⁷ were issued on :

- **Decision on Amendments to the Decision on organizing Public institution for children and youth accommodation**
- **Decision on Amendments to the Decision on organizing Public institution for rest and recreation for children**
- **Decision on Amendments to the Decision on organizing Public institution for accommodation of persons with special needs**
- **Decision on Amendments to the Decision on organizing Public institution for accommodation of adult persons with disabilities and the elderly**

²⁸⁷ „Official Gazette of Montenegro“ no. 13/14

- **Decision on Amendments to the Decision on organizing Public institution for accommodation of adult persons with disabilities and the elderly "Bijelo Polje"**
- **Decision on Amendments to the Decision on organizing Public institution for accommodation of children and youth without parental care and children whose development is hindered by family circumstances**
- **Decision on Amendments to the Decision on organizing Public institutions of centres for social work**
- **Decision on the Establishment of the Public Institution Centre for Social Work for Royal Capital of Cetinje.**

Daycare centres for children with developmental disabilities exist as public institutions of social and child protection, founded by municipalities. They are founded and they function on the basis of the state and public partnership. Their primary activity comprises protection of children with developmental disabilities. Eight daycare centres are currently founded in eight municipalities in Montenegro.

Within local self-governments, special professional services that perform tasks of ensuring the application of laws and other legal acts in the field of child and social protection.

Responsibility/activity of all relevant institutions

Ministries prepare the drafts of legislative texts and submit them to the Government for further action.

Ministries adopt regulations, resolutions, directives and decisions within their jurisdiction.

Ministry of Labour and Social Welfare in collaboration with the Ministry of Finance provides the funds for the payment of social benefits.

The Government of Montenegro defines the bills and submits them to Parliament for further action. The Government adopts decrees, resolutions, decisions.

The Parliament of Montenegro adopts the Constitution of Montenegro, all laws and occasionally other documents: declarations, regulations, recommendations, etc..

Local government within the competent secretariat for social and child protection affairs ensures the implementation of the Law at the local level.

COMPLIANCE OF THE LEGISLATIVE AND INSTITUTIONAL FRAMEWORK WITH THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The Constitution of Montenegro complies with the UN Convention.

The Law on Social and Child Protection partially complies with the UN Convention.

The Law on War Veterans and Disability Protection partially complies with the UN Convention.

3.E.2 IMPLEMENTATION ANALYSIS – OBSERVANCE OF LEGAL FRAMEWORK IN THE FIELD OF APPROPRIATE LIVING STANDARD AND SOCIAL PROTECTION

The questionnaire was completed by 100 people, of which 57 persons were males and 43 females. The largest number of respondents is from 20 to 30 years of age.

When asked about the knowledge of the basic rights of social protection, 17 respondents said that they knew all the rights, 41 respondents knew more than 50% of the rights, 12 respondents answered that they knew 50% of the rights and 28 respondents said that they were familiar with less than 50% of the rights.

When asked which rights from the social and child protection they use, 25 respondents said they did not use any of the rights, 59 of them use the allowance for care and support by another person, 29 of them uses personal disability benefit, and 17 respondents use allowance for children.

All 100 respondents answered that the amount of the allowance for care and assistance by another person was not sufficient.

When asked whether they had ever experienced discrimination in the field of social and child protection, 35 respondents said YES, 60 said to NO and 5 respondents did not answer the question.

When asked to specify the order which bodies they trust the most, 41 respondents answered that they had the most confidence in NGOs – organizations, 23 respondents trust the most their chosen doctor, 13 of them trust the most their centre for social work, 8 of them in somebody else, and 15 respondents stated that they had no trust in anyone.

When asked whether they encountered obstacles in the exercise of their right from social and child protection, 57 of them answered YES, 39 of them answered NO, and 4 respondents did not answer.

Depending on the analysed area, this part can be divided into segments, for example, when it comes to accessibility, accessibility of the physical environment, accessibility to public transport, access to information and communication, etc.

4. RECOMMENDATIONS FOR HARMONIZATION AND COMPLIANCE

RECOMMENDATIONS IN THE FIELD OF ACCESSIBILITY

Harmonization of the **Law on Spatial Development and Building Construction** in terms of anti-discrimination provisions and introduction of 2 new definitions in the list of terms, for „reasonable adaptation“ and „universal design“.

Introduction of the term „a person with disabilities“ in the **Law on Ban of Discrimination**.

Incorporation of the provisions defining the ban of discrimination of persons with disabilities in the field of information and communication technologies, including public TV services and the Internet in the **Law on Ban of Discrimination of Persons with Disabilities**. .

Prescribe conditions that will enable unimpeded access and transport of persons with disabilities without discrimination regarding the type of disability in the **Law on Transport in Road Transport**.

In terms of the **Law on Railway**, it is necessary to provide accessibility of railway transport to the persons with disabilities in terms of services and means of transportation and provide mechanisms to sanction offenders.

RECOMMENDATIONS IN THE FIELD OF EDUCATION

- Fully harmonize the normative acts in the field of education with the UN Convention on the Rights of Persons with Disabilities.
- Remove inconsistency with the laws themselves;
- Come up with a uniform definition for persons with disabilities who are involved in all levels of education.
- Adopt anti-discriminatory provisions based on disability.
- Introduce a legal obligation of providing personal assistance (as well as technical and professional help) to the students who are in need of this type of support. Create conditions for their engagement not to be based on volunteering.
- Create conditions to provide personal assistance to students with disabilities
- Introduce a service of gesture interpreter to all levels of education.

RECOMMENDATIONS IN THE FIELD OF HEALTH CARE

- Define the term of disability and persons with disabilities in the laws governing the health sector;
- All laws in the health sector should be harmonized with the UN Convention on the Rights with Persons with Disabilities, especially harmonization of terminology, harmonization of rights and removing discrimination based on disability;
- All healthcare institutions (both public and private) should be made accessible for all categories of persons with disabilities, through a legal norm;
- Provide for observance of Article 25 paragraph (b) of the UN Convention on the Rights of OSI, through a legal norm;
- Increase the number of mobile teams to work as domiciliary care for persons with disabilities and reinforce them in terms of staff;
- Reinforce and form (in the institutions where they do not exist) support services which will provide support to persons with sensory disabilities to exercise their rights to health care (especially gesture interpreters and accessible information);
- Implement additional training of medical staff on specificities of provision of healthcare services to persons with disabilities;
- Implement the programs of additional healthcare for persons with disabilities more promptly due to an increased risk of associated health problems;
- Create conditions for adequate dentistry and gynecological protection for persons with disabilities in all towns of Montenegro and provide accessibility of gynecological and dentistry equipment;
- Simplify procedures for obtaining orthopedic aids and supplies;
- Shorten the time for renewal and servicing the aid.

RECOMMENDATIONS IN THE FIELD OF LABOUR AND EMPLOYMENT

Adoption of the **Rulebook on the Procedure and methodology for Financing Necessary Organizations for Employment and Financing Grant Schemes**.

Establishing the **Fund for Professional Rehabilitation and Employment of Persons with Disabilities** as a separate institution.

Improving the **Law on Professional Rehabilitation and Employment of Persons with Disabilities** so that it can be applied to the public sector too.

RECOMMENDATIONS IN THE FIELD OF APPROPRIATE LIVING STANDARD AND SOCIAL PROTECTION

Introducing a special benefit for mothers with disability and parents of children with disabilities in the **Law on Social and Child Protection**. Additionally, increase the amount of cash benefits for other person's care and assistance in order to cover the disability-related expenses.

Law on Protection of War Veterans and War Disabled Veterans:

- An enlargement relates to the users of protection for the civilian war disabled in the VIII, IX and X disability groups.
- Equalizing the amount of the allowance for other person's assistance and care for the beneficiaries of this right.
- Recognizing the right to family disability benefit to spouses of all deceased beneficiaries of other person's care and assistance.
- Provision of the right to treatment in spas to the beneficiaries of military-disability protection.
- Provision of the right to travel benefits to the users of military-disability protection.

Note: the terms in this analysis used for the natural persons in masculine, refer to the same expressions in the feminine gender.

ANNEX 1

List of members of the working groups who discussed specific areas

Accessibility Group

1. Aleksandra Popović
2. Ivan Nedović
3. Radmilo Baranin
4. Dejan Bašanović
5. Radule Novović

Education Group

1. Nataša Borović, i.e. Slavko Vučićević
2. Tamara Milić
3. Andrija Marićević
4. Veselin Joketić
5. Radmila Bajković

Health Care Group

1. Milenko Vojičić
2. Andrijana Nikolić
3. Marina Vujačić
4. Zoran Kostić
5. Goran Macanović

Labour and Employment Group

1. Goran Macanović
2. Vesna Simović
3. Slavica Radusinović
4. Rumica Kostić
5. Milenko Vojičić

Group for Adequate Living Standard and Social Protection

1. Milisav Korać
2. Aleksandra Popović
3. Fadil Mučić
4. Vesna Cimbaljević
5. Irma Kalač

