



Hear Our Voices

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HOLISTIC REPORT ON PERSONS WITH DISABILITIES IN THE REPUBLIC OF MACEDONIA



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Holistic Report on the Persons with Disabilities in the Republic of Macedonia

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FOREWORD

Dear readers,

In front of you is the holistic report on the situation concerning the human rights of persons with disabilities in the Republic of Macedonia. The report presents the key findings and recommendations of three realized research works: Monitoring of personal experiences of persons with disabilities, Laws and policies of the Republic of Macedonia in the field of disability, and Media reporting on persons with disabilities in the Republic of Macedonia.

With the signing of the Convention on the Rights of Persons with Disabilities in 2007 and its ratification in 2011, the Convention's provisions have become a part of the national legislation and need to be directly implemented. This includes articles that refer to protection from disability-based discrimination, accessibility, education, employment, health, adequate living standard and social protection, which are subject-topics of this holistic report.

The Convention stipulates that civic society, in particular persons with disabilities and their organizations need to be involved and fully participated in the monitoring of its implementation. Bearing in mind this fact, as well as the principle "Nothing about us, without us", persons with disabilities researched, conducted interviews and are among the authors of three detailed reports, which have been summarized in this holistic report.

We would like to thank all individuals, teams, organizations and institutions that were involved in and contributed immensely to the preparations of the three separate and the holistic report. We express our gratitude to the Delegation of the European Union for their financial support that enabled this report's production and contributed to capacity strengthening of civic society and persons with disabilities themselves for their active involvement in monitoring the human rights of the persons with disabilities.

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INTRODUCTION

The holistic report on the human rights of the persons with disabilities in the Republic of Macedonia was produced within the Hear Our Voices project, funded by the European Union. Open the Windows is the implementer in the Republic of Macedonia, in partnership with the Center for Society Orientation from Belgrade. The report is part of the global Disability Rights Promotion Initiative – DRPI.

Report preparation followed the methodology of the Disability Rights Promotion Initiative, which includes the following features of the three separate reports:

The Report on the monitoring of personal experiences covered 105 in-depth interviews conducted on the territory of the Republic of Macedonia: the north-eastern (Skopje, Kumanovo and Kriva Palanka), the center-eastern (Veles, Shtip, Kavadarci, Strumica, Gevgelija and other settlements), and western part of the country (Tetovo, Gostivar, Kichevo, Debar, Ohrid, and Struga). In each of the three regions 35 interviews were conducted with equitable representation in terms of sex, ethnicity, and type of disability. Interviewees included persons with physical disabilities / mobility impairments, persons with partial or complete vision impairment, and persons with partial or completed hearing impairment.

Systematic monitoring was conducted over relevant current legislation and legislative modifications proposed until the end of 2014, as well as over the national strategies and programs of the government in seven areas: general provisions with horizontal appliance (including the definition of disability, equality and non-discrimination, and reasonable accommodation), accessibility (focusing on physical environment, transport, and information and communications), education, health, labor and employment, adequate living standard and social protection (social protection, housing, deinstitutionalization, and adequate living standard), and, finally, national implementation and monitoring.

Media reporting monitoring was conducted on the basis of press-clipping of 718 articles and reports collected in the period July 2014 – January 2015. For the needs of this research, five leading national daily newspapers were analyzed (Dnevnik, Večer, Utrinski vesnik, Vest, and Nova Makedonija), as well as three weekly magazines (Tea Moderna, Fokus and Kapital) and several monthly magazines. The reports of the six most relevant television channels were analyzed (Sitel, Kanal 5, Alfa, Telma, MRTV, 24 Vesti), one national radio (Macedonian Radio) and several regional and local television and radio broadcasters. Over 20 online media were monitored, too.

The Republic of Macedonia signed the Convention on the Rights of Persons with Disabilities (hereinafter: CRPD or the Convention) on March 30, 2007, and ratified it on December 5, 2011. Additionally, the state signed the Optional Protocol to the CRPD on July 29, 2009, and ratified it on December 5, 2011¹. The ratification instruments were submitted to the United Nations Organization on December 29, 2011.

According to article 118 of the Constitution of the Republic of Macedonia², ratified international conventions are part of the national legislation and cannot be amended by law. In other words, the Convention's provisions are directly applicable, including application by national courts that, through time, will create consistent case law, and development of legal institutes that refer to the protection of the rights of persons with disabilities in all aspects of social life, on an equal footing with other citizens. In this regard, one has to view the Convention as an integral document, as the rights foreseen with the CRPD are inseparable and interdependent.

¹ Law on Ratification of the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities, Official Gazette no. 172/11.

² Constitution of the Republic of Macedonia (and the XXXII amendments), *Webpage of the Assembly of the Republic of Macedonia*, <<http://sobranie.mk/WBStorage/Files/UstavnaRmizmeni.pdf>> Accessed on: 19.10.2014.

In addition to analyzing substantive rights in the areas listed above, this holistic report also refers to the issue of appointment of national monitoring mechanism in the Republic of Macedonia. Namely, the appointment of institutions that will have capacities to implement, as well as monitor the implementation of the Convention's provisions, is *condition sine qua non* for its ratification process.

I. I. GENERAL PROVISIONS WITH HORIZONTAL APPLIANCE

I.1. 1. Definition of disability

I: Let me firstly tell you that clerks in institutions in particular need to attend some training or seminar, which would raise their awareness, so that we could feel as all other people.

Male, 58 years, person with visual impairment

The definition of disability is an issue of particular importance because social protection is often not distinguished with creating conditions for ensuring equal rights and liberties for persons with disabilities. In the Republic of Macedonia, the Law on Prevention of and Protection from Discrimination³ does not define disability, nor does it define the protected group – persons with disabilities. The definition is presented within several other laws: Law on Social Protection⁴, Law on Employment of Disabled Invalid Persons⁵, Law on Invalid Persons' Organizations⁶, Law on Children Protection⁷, while the Law on Appliance of the Sign Language specifically defines the group of persons with partial or complete vision impairment⁸. Existing definitions (with the exception of that presented in the Law on Invalid Persons' Organizations⁹) reflect the medical paradigm of disability and do not correspond with the principles of dignity, non-discrimination, and equality. The protected group – persons with disabilities is narrowly defined and presented as helpless, i.e. the focus is largely on the effects of their disability, contrary to the CRPD.

The terminological confusion with regards to persons with disabilities can clearly be seen in media reporting, as media use numerous terms, most of which are based on the medical paradigm of disability.

Text number 1, Sloboden pechat, 16.12.2014

GARBAGE FEE DEBT COLLECTION LEAVES A FAMILY WITH THREE INVALIDS WITHOUT MONEY

“A family of four from the Skopje village of Miladinovci was left without their only income – the pension from abroad, when, without any announcement or warning, an executor blocked their account at the order of the public communal enterprise of the Municipality of Ilinden. Three members of the family are invalids taken care of Vase Tasev. He is repelled of this move and the lack of care of the municipal authorities.”

³ Law on Prevention of and Protection from Discrimination, Official Gazette no. 50/10, 44/14, Decision of the Constitutional Court: 15.09.2010.

⁴ Law on Social Protection, Official Gazette no. 79/09, 36/11, 51/11, 166/12, 15/13, 79/13, [Consolidated text: 148/13], 164/13, 187/13, 44/14, 116/14.

⁵ Law on Employment of Disabled Invalid Persons, Official Gazette no. 44/00, 16/04, 62/05, [Consolidated text: 87/05], 113/05, 29/07, 88/08, 161/08, 99/09, 136/11.

⁶ Law on Invalid Persons' Organizations, Official Gazette no. 89/08, 59/12, 23/13.

⁷ Law on Children Protection ara, Official Gazette no. 23/13, 12/14, 44/14, 144/14.

⁸ Law on Appliance of the Sign Language, Official Gazette no. 105/09.

⁹ According to article 5 of the Law on Invalid Persons' Organizations “[p]erson with invalidity... is an individual who, due to their injuries and disability from birth or obtained during their life or created by their physical or living environment, themselves cannot partially or fully accommodate their personal, family or vital needs for a live in the community where the individual lives (article 5 paragrph 2).

Recommendations:

- To enact legislative modification in order to define persons with disabilities in accordance with the CRPD and the social paradigm of disability.
- Inclusion of the concepts of discrimination on the grounds of assumed characteristic and of association with person with disabilities within the definition of disability.

I.2. Equality and non-discrimination

M: Could you describe a concrete situation of being discriminated against in that organization?

I: Well, I was the only one in the whole organization whose salary payment was delayed, only I was called to the office at 1 or 2 o'clock after midnight, I had to perform tasks that were not part of my job description, so...

M: Why do you think that happened to you?

I: That happened because these employers knew that persons with disabilities were disadvantaged compared to other persons in the society.

Male, 34 years, physical disability

I established my own company and I used all benefits offered by the Law on Employment of Invalid Persons foreseen for self-employment, not for employment. After 7-8 years of working, I employed a person with disability. Now, I do not let that person to go through the same things that happened to me, because I know discrimination... when the employer is a person without disability, they are less aware of the needs of a person with disability and of the possibilities for such a person to be discriminated against.

Male, 34 years, physical disability

In its article 9, the Constitution of the Republic of Macedonia foresees a general clause on equality that does not explicitly mention disability as a ground of discrimination. However, in accordance with article 8 of the Constitution and the ratification of the CRPD, as well as the case law of the European Human Rights Court, and following the principle *pacta sunt servanda*, this clause is applicable to persons with disabilities, as well. Citizens, according to article 110 paragraph 3 of the Constitution, are entitled to submit a *request for protection of human rights and liberties*, which *inter alia* refers to the ban of discrimination.

Additionally, the Constitution of the Republic of Macedonia uses the term invalid persons (article 35 paragraph 3), a term which the contemporary social model standpoint on disability perceives as old-fashioned and one that has to be abandoned. Therefore, the provisions of the Constitution need to be redefined in terms of both terminology and content. In fact, the terminology used reflects the perception of the society towards and its relations with the persons with disabilities.

National legislation began explicitly banning discrimination in general, including discrimination on the grounds of disability, with the enactment of several laws, in particular in the field of labor relations¹⁰, and culminated in 2010 with the enactment of the Law on Prevention of and Protection from Discrimination. The Law on Labor Relations explicitly forbids discrimination in general, including on the ground of *invalidity*, perpetuated by physical persons and legal entities in both the private and the public sector. In that sense, direct discrimination (article 7 paragraph 2), indirect discrimination (article 7 paragraph 3) and harassment (articles 9 and 9-a) of candidates and workers are forbidden. The law can be criticized for not containing provisions on instruction for discrimination and for the lack of explicit ban of discriminatory ads or statements on the ground of disability.

¹⁰ Law on Labor Relations, Official Gazette no. 62/05, 106/08, 161/08, 114/09, 130/09, 50/10, 52/10, 124/10, 47/11, 11/12, 39/12, 13/13, 25/13, 170/13, 187/13, [Consolidated text: 34/14]; Decisions of the Constitutional Court: 21.12.2005; 22.12.2005; 29.03.2006; 10.05.2006; 24.01.2007; 04.04.2007; 06.06.2007; 13.05.2009; 13.01.2010; 14.04.2010; 22.09.2010.

On the other hand, in its article 3, the Law on Prevention of and Protection from Discrimination explicitly mentions *mental and physical disability* as a ground of discrimination and refers to multiple discrimination in article 12. The same article bans all forms of discrimination. Also, there is a specific article that refers to discrimination against persons with disabilities, which stipulates that “[d]iscrimination of persons with mental and physical disabilities means deliberate obstruction or deterring of the access to health protection, or denying the right to health protection rights, regular medical treatment and medicaments, rehabilitation assets and measures in accordance with their needs, denying the right to marriage and creation of family and other rights related to marriage and family relations, denying the right to education, work and rights related to employment”. While this provision is positive for highlighting persons with disabilities as a specific vulnerable group in the society, it remains limited in the material scope of protection of economic and social rights.

With an aim to improve the status of the persons with disabilities and their inclusion in the society, the Government adopted the revised National Strategy for Equal Rights of Persons with Invalidity 2010-2018¹¹, the National Strategy for Equality and non-Discrimination 2012-2015 and the accompanying Operational Plan for non-Discrimination on the Grounds of Mental and Physical Disability 2012-2013¹². Yet, despite the existing legislation and policies, research works show that discrimination is widely spread phenomenon in the country. Perception of discrimination on the grounds of mental and physical disabilities is fairly high (42%). Such discrimination is more often perceived by women (44%) compared to men (40%), as well as by ethnic Albanians (51%) compared to ethnic Macedonians (39%). Additionally, 41.2% of all interviewees were not aware of their rights in case they were discriminated against, adding further to the seriousness of the situation¹³.

According to national legislation, there are two quasi-judicial mechanisms available to citizens in case their rights are violated due to discrimination: the Commission for protection from discrimination and the Ombudsman. In the period 2011-2013, of all complaints submitted to the Ombudsman, between 0.99% and 1.35% referred to discrimination. On the other hand, the Commission for protection from discrimination received a total of 20 complaints that refer to discrimination on the grounds of disability¹⁴.

Text no. 2, Vest, 02.07.2014

THOROUGH INVESTIGATION OF ALL INVOLVED IN THE CASE OF THE DEAF CHILD

“The Ministry of Labor and Social Policy launched disciplinary proceedings and initiatives to fine all professionals involved in any manner in the case of the deaf and speechless child who had been accommodated in and bounded to prevent escape at the Institution for Protection and Rehabilitation Banja Bansko. The child’s medical findings and the diagnosis concerning the level and type of disability will be reviewed, since the Helsinki Committee testified that the child had been diagnosed from severe cerebral palsy, despite looking physically healthy and being able to run and laugh during their meeting.”

¹¹ National Strategy for Equal Rights of Persons with Invalidity, Ministry of Labor and Social Policy, Skopje, 2010, page 15.

¹² Operational Plan for Implementation of the National Strategy for Equality and non-Discrimination on the Grounds of Ethnicity, Age, Mental and Physical Disability, and Sex 2012-2015, Ministry of Labor and Social Policy, Skopje, January 2013, <<http://www.mtsp.gov.mk/?ItemID=BD66FCC3A7FBCB47AB9150CBFEC2C96>> Accessed on: 20.10.2014.

¹³ See: Миша Поповиќ, и Јасмина Михаиловска, *Барометар на еднакви можности*, Macedonian Center for International Cooperation, Skopje, 2013, pages 12-29, <<http://www.mcims.mk/mk/za-nasata-rabota/istrazuvana-i-publikacii/istrazuvana/1542-barometar-za-ednakvi-moznosti.html>> Accessed on: 20.10.2014.

¹⁴ See: Жанета Попоска, Бежим Кадриу, Елена Грозданова, Рецепали Чупи, Елена Кочоска, *Анализата на дискриминациските практики во областа на образованието*, OSCE and the Ministry of Labor and Social Policy, Skopje, 2014, pages 109-112.

I.2.1. Reasonable accommodation

Persons with disabilities need additional services for on-the-job support, which are currently not provided in the required volume. On-the-job accommodation programs are not provided in the required volume.

As a young person, I have been employed many times. I have gone through bad things... sometimes there was no salary, sometimes there was no insurance... I've been employed in sheltered companies, that's right. Unfortunately, those companies were sheltered companies, but there were no conditions for us. So, the premises were inadequate for persons with disabilities. For example, there were situations when I've had to work on tiles, on a slippery floor. So, I couldn't move freely. You face problems with the toilette that did not fit me. You simply can't go to the toilette.

Female, 38 years, physical disability

I: Here, at work, my company procured everything for me: laptop, screen reader, mobile phone with an Android-based screen reader that enables me to use it. Maybe the organization is such, or maybe my position is such, but they do take care that I receive any assistive tool I might need and I haven't faced any problems.

Female, 28 years, person with vision impairment

Despite the importance of reasonable accommodation for persons with disabilities, this legal institute is not explicitly mentioned in the Law on Labor Relation, which is noted as a serious critique to this law. The Law on Prevention of and Protection from Discrimination overcomes this as it defines the reasonable accommodation, and considers the lack thereof as discrimination as per article 8 paragraph 2. Namely, this law states that “[a]ccommodation of infrastructure and services is undertaking appropriate measures as needed in certain situation to enable a person with mental or physical disability to have access, participate and progress in the working process, unless these measures impose disproportional burden for the employers”. *The Guidebook on Reasonable Accommodation*¹⁵ from 2014 criticizes this provision for its limiting nature, i.e. as it only refers to infrastructure and services.

Creating opportunities for employment of persons with disabilities inevitably includes provision of reasonable accommodation during interviewing within the employment process, as well as on-the-job accommodation. Therefore, article 7 paragraph 2 of the Law on Employment of Invalid Persons foresees that “[w]hen employing an invalid person, the employer is obliged to create conditions for working and adaptation with regards to the type of the working position, the type and degree of education and the degree of invalidity of the invalid person being employed”. The lawmaker does not explain this provision in details and does not specify which conditions the employer needs to create. For example: would such conditions include accommodation during interviewing within the employment process, accommodation of the working time and practices, or provision of professional vocational trainer.

Additionally, the lawmaker does not provide details on the adaptations of the working environment that need to be undertaken; this is however regulated in details within the Rulebook on the criteria for and manner of allocation of unreturnable assets from the special fund for improvement of the conditions for employment and work of invalid persons¹⁶. Namely, article 7 paragraph 2 of this Rulebook states that the adaptation includes accommodation of the working and auxiliary premises, equipment, working tools, devices, and other technical aids for working. It is positive that in addition to the obligation to provide reasonable accommodation, funds are also foreseen that are provided from the special funds for improvement of the conditions for employment and work of

¹⁵ See: Жанета Попоска, Звонко Шаврески, и Наташа Амдију, *Водич за соодветно приспособување*, OSCE and the Commission for Protection from Discrimination, Skopje, 2014.

¹⁶ Rulebook on the criteria for and manner of allocation of unreturnable assets from the special fund for improvement of the conditions for employment and work of invalid persons, Official Gazette no. 156/2008.

persons with disabilities (article 8 and article 20). It is worrying though that the available amount in this special fund continuously decreases. In the period 2000-2014, this law has been amended eight times, decreasing the available funds from the initial 15% to 5% of the total assets paid for fringe benefits. Furthermore, a person can only require reasonable accommodation if they are employed in the private sector and their disability is determined in a procedure prescribed by law.

Recommendations:

- To ensure terminological and essential modification of the Constitution's provisions which refer to persons with disabilities in the spirit of the social model.
- To amend the provision of the Law on Prevention of and Protection from Discrimination that refers to discrimination of persons with mental and physical disabilities in the direction of including its material scope of protection of economic and social rights.
- To further regulate the provision of the Law on Prevention of and Protection from Discrimination referring to reasonable accommodation in the direction of widening the personal scope of protection, i.e. the right of a person to demand reasonable accommodation should not be conditioned with their employment in the private sector and the determination of their disability in a procedure prescribed by law.
- To amend and harmonize the Law on Labor Relations with international standards by having the instruction of discrimination, expressly prohibiting discriminatory advertisements and the introduction of a provision for reasonable accommodation.
- To provide funding to implement the National Strategy for Equal Rights of Persons with Disabilities 2010-2018 and the National Strategy for Equality and Non-discrimination.

II. ACCESSIBILITY

II.1. Physical environment

People with disabilities in Macedonia encounter different barriers in performing everyday activities: entry and use of residential and public buildings, public transport, use of services and products.

I: And ramps are strangely built, too, so sometimes stairs are the better choice for me. They are steep, so literally stairs are better choice for me than those ramps with their strange geometry.

Female, 32 years, physical disability

I: I live in a small place where nothing is accommodated for an invalid person. So, the hospital has stairs, the social center has stairs, the police has stairs, the bank has stairs, the post office has stairs...

Female, 45 years, physical disability

I: I have another difficulty, too! Once at the elections, the state elections, I had difficulty voting, because as a blind person, a person with vision impairment, I have a problem to circle the ballot a candidate on the ballot and I have to be accompanied by an assistant, right? Now, that was a great difficulty and very embarrassing for me... The assistant was told to leave at the entrance into the voting room and they left me standing there alone in the middle of the room and they all directed me, the blind, left and right as if with a remote controller, forward and backward, they moved around, I felt like an instrument. That's a great burden for a blind person.

Male, 48 years, person with complete vision impairment

I: For example, when I know that I need to go the Health Insurance Fund or anywhere else with a million stairs up... They put a doorbell for invalids only; still, no matter how long you used it, they never come down to open.

Female, 29 years, physical disability

I: Cash machines also, they are not on the right height, they are all high and have a single stair to climb before you can approach them. Same goes for the police building – in order to get your personal identification card you need to go down the stairs and there is no handle on either side. And the stairs are old, totally gnawed, uneven.

Female, 45 years, physical disability

I: I am a religious person and we go with my husband to the church often for holidays. But to tell you the truth, it is difficult to enter the church. As religious persons, we need to have access... We do not even have a ramp to enter.

Female, 46 years, physical disability

In the Macedonian legislation, accessibility and availability of physical environment are regulated within several laws. The Construction Law¹⁷ regulates the right to physical accessibility and

¹⁷ Construction Law, Official Gazette no. 130/09, 124/10, 18/11, 36/11, 54/11, 13/12, 144/12, 25/13, 79/13.

accessibility to public buildings and public areas. Article 11 paragraph 1 indicates that "[o]bjects for public and business purposes and objects intended for housing in residential buildings, as well as objects for combined residential and business purposes must be designed and constructed in a manner that allows persons with disabilities to freely access, move, reside and work in and next to the building". In addition, within the latest modifications of the Construction Law¹⁸, article 11 paragraph 3 further regulates the issue of accessibility and availability of public areas and designing and setting of pedestrian paths for people with disabilities and people with impaired vision. The law sets a timelimit that stipulates that all constructed objects with public and business purposes will be made accessible by 2015 (article 170). At local level, the urbanistic planning and issuance of construction licences is regulated within article 22 paragraph 1 of the Local Self-government Law¹⁹, which, unfortunately, does not foresee the principles of accessibility and non-discrimination. Furthermore, problems occur at local level with regards to the auspices to realize the provisions of the Construction Law described above and with regards to the various interpretations of its article 11 presented above²⁰.

Despite existing legislation and policies, research shows that citizens with disabilities still feel limited with regards to their ability to move through the city streets (61 %), access public facilities (52 %), toilets (65 %) and services (74 %)²¹. Accessibility of institutions is listed as one of the obstacles in the realization of the rights of citizens with disabilities.

Speaking of accessibility, it is necessary to mention the Rulebook on the manner of providing unrestricted access, movement, residence and employment of persons with invalidity to and within buildings²², which sets minimum standards for the manners to provide access, movement, residence and employment of persons with disabilities to and within buildings of public, business, residential and residential-business use (article 5, paragraph 1). In addition, the Rulebook on standards and norms for urban planning²³ provides the right to parking spaces, reading "3% of the group parking lots must be provided for 'invalids', while parking lots with less than 20 seats are foreseen to ensure at least one reserved parking space for invalids. Parking spaces for invalids are to be located and visibly marked closest to the entrance of the building and the pedestrian area."

At the same time, the Rules for Classification of Facilities Carrying out Catering Activities²⁴ includes the following criterion for obtaining and classification of catering facilities, "[p]rovision of room for invalids" (obligation only for new facilities that are being built). This criterion applies to all objects of stars one to five.

Although the legal framework and policies adopted in this area are quite clear, the problem appears in their proper implementation in practice. Illustrative only, according to the findings of the Ombudsman in 2013, in terms of the accessibility of police station, it has been concluded that "[i]n most of the visited police stations, there was no ramp for persons with special needs at the entrance of the police station"²⁵. Additionally, in 2014, the Commission for Protection against Discrimination acted and determined discrimination in terms of accessibility on the grounds of mental and physical disability²⁶. In practice, although there is a legal obligation, most public and business entities act individually. An illustrative example is the Network for Non-discrimination²⁷, which filed a petition to all banks for failure to provide unhindered access for persons with disabilities, with an emphasis on visually impaired, in 2013. In response to this initiative, only one

¹⁸ Law Amending the Construction Law, Official Gazette no. 115/14.

¹⁹ Local Self-government Law, Official Gazette no. 5/02.

²⁰ See: *Хендикеп – слојувалка што недостасува, Извештај за состојбата на лицата со хендикеп*, Polio Plus, 2012, page 77, <www.polioplus.org.mk> Accessed on: 21.10.2014

²¹ See: *Пристапност*, Polio Plus, page 68, <www.polioplus.org.mk> Accessed on: 21.10.2014

²² Rulebook on the manner of providing unrestricted access, movement, residence and employment of persons with invalidity to and within buildings, <http://www.mtc.gov.mk/new_site/images/storija_doc/115/pravilnici/25-2010.pdf> Accessed on: 21.10.2014.

²³ Rulebook on standards and norms for urban planning,

<http://mtc.gov.mk/new_site/images/storija_doc/1353/Pravilnik%20za%20standardi%20i%20normativi%20za%20urb.planiranje%5B1%5D.pdf> Accessed on: 21.10.2014.

²⁴ Rulebook Amending the Rulebook for Classification of Facilities Carrying out Catering Activities, Official Gazette no. 62/04, 89/08, 115/10, 53/11.

²⁵ Annual Report of the Ombudsman 2013, page 20.

²⁶ Report of the Commission for Protection of Discrimination, Request for Freely Accessible Information, 2014.

²⁷ Report of the Network for non-Discrimination, 2013.

bank has initiated taking measures to overcome barriers and change the internal regulations exclusively for the person with visual impairment.

Text number 3, Nova Makedonija, 29.07.2014

ACCESSIBLE RAMPS AND ELEVATORS FOR PERSONS WITH SPECIAL NEEDS

“Within the project, accessible ramps, elevators and special toilets for students with special educational needs will be constructed in six of the seven schools in the region. It represents an opportunity to ensure improved inclusion of children with special needs from Kratovo, Kumanovo, Lipkovo, Staro Nagorichane, Rankovce, and Kriva Palanka, through the European funds.”

II.2. Transport

I: We have never travelled by bus either, because it is not adjusted. We always travel by car, by vehicle.

Female, 41 years, physical disability

The Law on Transport in Passenger Traffic²⁸ does not ensure formal and substantive equality of citizens with disabilities. In contrast, it provides benefits for preferential transport. Namely, “[t]he transporter and the bus station are obliged to issue a ticket in both directions (return ticket) without compensation to a blind person with visual impairment over 90% and its companion presenting membership card and transport card issued by the Alliance of invalid persons, and to register in the transport card that the blind person and its companion have used the transport” (article 33, paragraph 4), for a “maximum of six return tickets in the internal transport, at the expense of the carrier” (article 33, paragraph 5).

The Law on Public Roads²⁹ contains a similar solution, providing for exemption of payment of compensation for public roads use by persons diagnosed with disabilities eligible for such benefit and disability rate of 80% for physical injuries and over 90% for the blind, as determined by an act of the competent committee of the Pension and Disability Insurance of Macedonia. Additionally, the legislator determines: technical regulations on who should steer the vehicle, authorized institutions for issuing the special sign, provision of the benefit of toll exemption for persons diagnosed with disabilities eligible for such benefit and eligible percentage of disability, and the need of having a membership cards issued by authorized associations, signed and certified by the Public Enterprise.

Such a provision puts people with disabilities at a disadvantage and limits their right to association, leading to discrimination within the group of persons disabilities. On the other hand, the legislator, rather than allowing persons with disabilities to enjoy the right to transport / mobility on the principle of equality and non-discrimination, provides financial benefit, covering only a certain number of people with disabilities who must be members of the traditional organizations of persons with disabilities. The provisions of these laws, the principle of accessibility and availability is not mentioned in the requirements for obtaining a permit and license for bus, train or taxi transport, in order to meet at least minimum requirements for the provision of transport for passengers with disabilities.

On the other hand, the Law on Traffic Safety³⁰ lacks adequate solution concerning parking places as it does not define the parking place for people with disabilities, as well as the content and layout of the special sign that is to be placed on people with disabilities’ vehicles. At the same time, the legislator did not completely regulate the issue of the vehicles use by assistants of persons with disabilities, as well as parents of children with disabilities. This leaves space for a large part of the

²⁸ Law on Road Transport, Official Gazette no. 68/04, 127/06, 114/09, 83/10, 140/10, 17/11, 53/11, Decision of the Constitutional Court: 01.02.2006; 14.05.2008; 10.11.2010.

²⁹ Law on Road Transport, Official Gazette no. 84/08, 52/09, 114/09, 124/10, 23/11, 53/11, Decision of the Constitutional Court: 10.03.2010.

³⁰ Consolidated text of the Law on Traffic Safety, Ministry of Internal Affairs, <<http://www.mvr.gov.mk>> Accessed on: 23.10.2014.

persons with disabilities to be exempted from this solution. Furthermore, article 20 paragraph 1 of the Law stipulates that "[b]lind persons, when independently participating in the traffic, are obliged to wear a white stick - as a sign of recognition." Such a definition of the persons with visual impairment is limiting, bearing in mind that the persons with visual impairment can engage in traffic with a guide dog.

Based on the Law on Local Self-Government³¹, and in conjunction with the Law on the City of Skopje³² and the Law on Social Protection³³, the Skopje City Council adopts a program for preferential use of public transportation by persons with disabilities each year³⁴, where again the eligibility of persons with disabilities is limited to a pre-defined list of diagnosis, disease and level of disability, and an age limit of 26 years is imposed.

Text number 4, Dnevnik, 27.08.2014

BLIND PERSONS LIVE AS IF BEING IN HOUSE ARREST

"In order to enhance the mobility of this category of citizens, the Ministry of Labor will build two special pedestrian paths on the relation between 'Dare Dzambaz' and the Makedonija Square, and in the City Park."

II.3. Information and communication

Access to information and communications means access to all information of public character that are intended for all citizens, including the daily communication with other people. Our respondents shared many experiences that highlight situations when, at some point, they were denied access to certain information or were denied the right to obtain information.

I: All hospitals, pharmacies, almost all public institutions, all institutions in general, need to have sign-language interpreters, so that they can understand us, understand what we are looking for and our rights could be equal with all other categories of people"

Male, 46, person with hearing impairment

I: I go to the Public Revenue Office, I take the form... but what do I do with it? I kindly asked the clerck at the counter: "Please, I am a blind person, would you help me to fillout the form?" She was insolent, could not have been any ruder: "If you are blind, go and get an assistant, I couldn't care less. What would it be if I filled out forms for everyone here?!"

Male, 46 години, person with vision impairment

I: At the bank, they have never offered anything in Brialle to me. Everytime I need to personally fill out a contract, I demand assistance by the bank clerks, I ask them to fill it out. So far, I've been met with understanding.

Male, 46, person with vision impairment

I: Well, in that banking system, I really cannot go alone and independently operate my bank account, my money, they ask for an assistant who will be my witness, so we are limited in this regards, as well.

Male, 32, person with vision impairment

³¹ Law on Local Self-Government, Official Gazette of RM, no.5/02.

³² Law on the City of Skopje, Official Gazette of RM, no.55/04, 158/11.

³³ Law on Social Protection, Official Gazette of RM, no.79/09, 36/11, 51/11, 166/12, 15/13, 96/13.

³⁴ Program of the City of Skopje <<http://ipserver.skopje.gov.mk/e-skopje/sluzben%20glasnik%20so%20konverzija.nsf/82aa49069edfbbb780256a22004ba9e0/e69ecd07e217b8a3c1257c2700484027?OpenDocument>> Accessed on: 21.10.2014

The right to access to information and communications is regulated by the Constitution (article 16) and several other legal provisions. Namely, the Law on Free Access to Information of Public Character³⁵ obliges the holders of information to provide information about their work to the public. However, this provision lacks details to realistically expect its consistent application.

Since the enactment of the Law on the Use of Sign Language³⁶, sign language is recognized as a natural way of communicating at equal footing as voice communication. With this law, the persons with hearing impairment are ensured the right to use sign language as a party or participant in the proceedings before state bodies, local authorities, judicial bodies, public enterprises, institutions, agencies, funds and other institutions and organizations (article 4, paragraph 1). In addition, a person with complete or partial hearing impairment has the right to use sign language for other needs as well, if deafness is a barrier to satisfying his needs, but not more than 30 hours per year, with the right to an interpreter. On the other hand, the decision for the right to use sign language is to be issued by the Centre for Social Works, which only further restricts the use of sign language.

Despite the existence of the provision for learning the sign language by introducing the subject in the Institute of Special Education, the School of primary and secondary education for education of children with complete or partial hearing impairment, as well as by organizing trainings for citizens through the Association of the Deaf, in practice only a small number of public and business entities apply for learning and practicing such service for citizens with hearing impairment. This is further confirmed by the list of sign language interpreters in the Republic of Macedonia³⁷, which is composed of 12 people only, indicating the lack of interpreters in the country.

Unlike the Law on the Use of Sign Language, in the country there is no specific law, nor part of a law that would stimulate the study of the Braille alphabet, which would have to be foreseen in the future.

The Law on Electronic Data and Electronic Signature³⁸ states: "[e]lectronic signature with a qualified certificate presented with regards to electronic data regulates the issue of electronic signature, which is equal with the handwritten signature and has equal importance and strength as evidence, just as the handwritten signature on a paper document." Although this provision defines the electronic signature, it is still not in line with the CRPD and the use of facsimiles as the signature of the persons with visual impairment. In future amendments, provisions need to be included that would precisely define the facsimile, which, as the electronic signature, would be recognized by the State and would be treated as a signature of the persons with visual impairment with general validity.

The Law on Audio and Audiovisual Media Services³⁹ does not contain any specific provisions related to persons with disabilities. It is worrying that the prohibition of discrimination on the grounds of disability is not explicitly within the law referring to: affordability and availability of broadcasters, broadcasting of accessible and available information of different character. This should be overcome in the next amendment of this law.

The National Strategy for e-Inclusion⁴⁰ contains measures and activities that support aspects of social inclusion, which are defined through seven priorities. Within the Strategy for e-Inclusion of the Republic of Macedonia 2011-2014, disability is present in the context of priority 1. Notably, in 2009, a web portal for persons with disabilities (sakamznammozam.gov.mk) was created, improving their access to electronic content. But this portal is currently not operational. Additionally, this strategy is limited to 2014, and state electronic sites are still not accessible.

Concerning the public opinion on the manner of media informing about persons with disabilities (in terms of prejudice or inappropriate to the real situation), findings suggest that people with disabilities are not very interesting for the media and that the media often treat this issue by

³⁵ Law on Free Access to Information of Public Character, Official Gazette of RM, no.6/10.

³⁶ Law on the Use of Sign Language, Official Gazette of RM, no.105/09.

³⁷ National Alliance of the Deaf Persons of the Republic of Macedonia,

<http://www.deafmkd.org.mk/index.php?option=com_content&view=article&id=55&Itemid=80> Accessed on: 20.10.2014.

³⁸ Law on Electronic Data and Electronic Signature, Official Gazette no. 34/01, 6/02, 98/08.

³⁹ Law on Audio and Audiovisual Media Services, Official Gazette no. 184/13, 13/14, 44/14.

⁴⁰ National Strategy for e-Inclusion 2011-2014, Ministry of Information Society and Administration, Skopje, 2011, <http://www.mio.gov.mk/files/pdf/dokumenti/Strategija_za_e-vklucvanje.pdf> Accessed on: 21.10.2014.

presenting individual cases, often inappropriately, where their approach was sensational, full of pathos and pity⁴¹.

Text no. 5, Tea Moderna, 19.11.2014

AS A BLESSING OF GOD

“Inspirational and heroic story of Toma Dimovski, painter, musician, ethnologist with cerebral palsy who owns an atelier in the Old Skopje Bazar.”

Recommendations:

- Amend the Construction Law by introducing specific technical and protective measures to ensure full accessibility and availability of facilities. Additionally, it is required to establish a licensed body for accessibility and availability of facilities.
- Amend the legislation that regulates the issue of transport, in the direction of providing affordable and accessible vehicles, at national and local level. In addition, changes are required in the direction of unhindered exercise of the right to mobility and the benefits of preferential transport based on disability.
- Further regulation of the issue of parking places and ways of using the benefits of free parking place, with clearly defined technical elements.
- Amendments to the Law on Media and the Law on Audio Visual Media Services, aimed at introducing anti-discriminatory clause. In addition, the introduction of specific technical measures to ensure unhindered access, availability of information for citizens with disabilities, as well as providing training for journalists and program managers on the issue.
- Amendments to the Law on Electronic Data and Electronic Signature that would include recognition by the State of the facsimile as a handwritten signature.
- Amendments to the Law on Free Access to Public Information introducing provisions on ways in which the information-holder will be obliged to inform the public in an accessible and available manner for persons with disabilities.
- Introducing measures that would promote the learning of sign language, as well as taking measures to ensure a greater number of sign language interpreters. In addition, it is necessary to regulate the issue of the use of the Braille alphabet, such as introducing provisions that would stimulate the study of the Braille alphabet.

⁴¹ See: Хендикеп – слојувалка што недостасува, Извештај за состојбата на лицата со хендикеп во Р. Македонија, Polio Plus, 2012, page 145.

III. EDUCATION

The majority of respondents cited personal experiences, mainly negative ones, and emphasized education as a key segment in the lives of persons with disabilities, which, for a variety of reasons, is insufficiently available / accessible for these persons. Lack of adequate education for persons with disabilities creates a dual barrier because, by default, uneducated persons with disabilities stand absolutely no chance to compete in the labor market. However, it should be noted that there are a number of positive experiences that some of the respondents have encountered.

I: My invalidity occurred at the end of primary school... Now, when the time came for me to enroll in the gymnasium, I was impeded by one thing, it turned out that the gymnasium was not so close and that I couldn't reach it. There was no public transport for invalid persons then, I do not remember whether there was taxi service either back then... for this, I was impeded to educate... that's the direct reason. It was not a matter of studying or similar things, it was the lack of access to the school.

Male, 40, physical disability

I: Yes, and as far the final exam is concerned, it was, well, such an unorganized process when it came to taking the external testing, because for the external testing teachers from other schools come; there were no problems with the internal tests, people were present who knew me; it was the external testing that was a problem. For the test in Macedonian, they sent a teacher from the school for the blind that is here nearby, and she read the test to me, but for the test in English, well, that turned into a big problem, because they wanted to send the same teacher who did not speak English... So, the final exam is taken in June, and my mother went to them already in October to let them know that there would be a child taking the exam who cannot see and who needs to take the exam in regular school. There was a suggestion, because I use a screen reader on my laptop, that they would transfer the test on my laptop and I would take test using it and there would be a person next to me to observe me taking the test and monitor. But they did not accept that. A day before the exam, when my mother called again and said "how do you plan for her to take the test with a teacher who does not speak English", they said "well, ok then, let her bring the computer, let her write the essay only, it will be enough for her to pass the test". That was so humiliating for me, because passing the final test was not my goal; my goal was to show my knowledge.

Female, 20, complete vision impairment

M: During your education, I suppose you attended mainstream primary and secondary school, right?

I: Yes, I attended mainstream school, but that was not because the system was good; it happened thanks to my mother and my father and me personally, we all endured my admittance to the mainstream school, which was a dramatic case of convincing them. It is fortunate that I live in the very center of the capitol city, where people had somewhat better capacities to accept persons with disabilities, so I was somehow admitted.

Male, 34, physical disability

M: And how were you accepted by the professors, by the teachers?

I: Well, they accepted me well, I could say they usually pitied me, sometimes even turned a blind eye and lowered their criteria in terms of grades and the rest of it.

M: Do you think that is ok?

I: That is not ok, frankly, that bothered me then and it bothers me now because I think that the similar is happening nowadays, too... I think it's because of my disability. They would look at me in a strange manner, as if they were asking 'what the hell are you doing here'?

Male, 21, physical disability

The Constitution provides for the right to education. This right is general and provides that each person [including persons with disabilities] is entitled to education.

In the area of education of people with mental and physical disabilities key laws are the Law on Primary Education⁴², Law on Secondary Education⁴³, Law on High Education⁴⁴, and the Law on Vocational Education and Training⁴⁵, explained below.

The Law on Primary Education contains a general anti-discrimination clause, which, unfortunately, does not explicitly cover disability. Additionally, students with disabilities (referred to in the law as: students with special educational needs) are provided with appropriate conditions for the acquisition of primary education in mainstream and special schools, and are entitled to individual assistance in acquiring basic education. If this article is read in conjunction with article 10 paragraph 3 which states that "[t]he basic education for students with special educational needs is organized and conducted in special schools and special classes in mainstream schools", one will come to the conclusion that inclusion of these children is only declarative and that in fact the aim of the legislator is not to ensure education of children with disabilities together in the same classes with other children who do not have disabilities, but their rather subtle segregation. Where a child with special educational needs will obtain its education, largely depends on the choice of the parent, i.e. the parent has the right to enroll their child with special needs in the mainstream education system, "[e]xcept in cases when the special educational needs of the child are such that it needs to attend a special elementary school" (article 51, paragraph 1). One has to mention that in practice this exception should always be individualized and cannot be used as a *a priori* exclusion of all children with certain disabilities from the whole or part of the educational process. In addition, the law provides that special curricula will be used to organize and conduct the educational and instructional activities for students with special needs, tailored to their specific educational needs (article 30). Here, one should bear in mind that these adjusted curricula should be of equal quality as those used for the education of children without disabilities. According to the Ombudsman's suggestions, textbooks need to be provided for the instruction in special primary and secondary schools, such that would meet the needs of these students and help them develop their full potential⁴⁶. In addition, article 42 paragraph 9 of the Law on Primary Education foresees the opportunity to hire a person with completed studies in Special Education in classes with pupils with special educational needs. However, as long as this is an opportunity and not an obligation for the schools, the provision will not be fully respected. Article 61 paragraph 2 of the Law on Primary Education provides that "[s]tudents with special educational needs are entitled to free transport regardless of the distance of their place of residence to the primary school".

While primary education is at least declaratively inclusive, secondary education for persons with disabilities is far more segregated. Namely, according to the Law on Secondary Education, "[i]n secondary education for students with special educational needs, students are instructed according to tailored programs for relevant occupations or educational profiles or vocational training". When one takes into account that vocational training programs are outdated and the occupations in which students with disabilities often do not correspond to the labor market demand, the question is raised of the purpose of this education, as well as for the actual possibilities of equalizing the chances of persons with disabilities in the open labor market. So,

⁴² Law on Primary Education, Official Gazette of RM 103/08, 33/10, 116/10, 156/10, 18/11, 51/11, 6/12, 100/12, 24/13, 41/14.

⁴³ Law on Secondary Education, Official Gazette of RM, no.44/95, 24/96, 34/96, 35/97, 82/99, 29/02, 40/03, 42/03, 67/2004, 55/05, 113/05, 35/06, 30/07, 49/07, 81/08, 92/08, 33/10, 116/10, 156/10, 18/11, 51/11, 6/12, 100/12, 24/13, 41/14.

⁴⁴ Law on High Education, Official Gazette of RM, no.35/08, 103/08, 26/09, 83/09, 99/09, 115/10, 17/11, 51/11, 123/12, 15/13, 24/13, 41/14.

⁴⁵ Law on Vocational Education and Training, Official Gazette of RM, no.71/06, 117/08, 148/09, 17/11, 24/13, 137/13, 14/04.

⁴⁶ *Information on the situation regarding the inclusion of children with special needs in the special primary and secondary schools*, Ombudsman, Skopje, 2013, page 19.

regardless of the potential of the persons with disabilities, according to the legal framework, they are destined for manual and low-paying jobs. This provision should be redefined in terms of allowing people with disabilities obtain their secondary education on an equal footing as all other students. If mainstream education is not a possibility, one needs to provide educational programs that are directed towards contemporary and more sophisticated occupations that are demanded on the open labor market.

An additional problem arises from the inaccessibility of educational institutions for persons with disabilities. Given that primary and secondary education are compulsory, and only a small number of schools are accessible, the question arises about the real feasibility of this legal provision.

The Law on High Education stipulates that all citizens have, under equal conditions, the right to education in higher education institutions (article 7), while the anti-discriminatory provision applies only to the selection procedure of candidates. Namely, article 108 paragraph 5 of the law provides that the procedure for selection of candidates for enrollment in higher education institutions guarantees equality of all applicants regardless of *inter alia* disability (the law states: invalidity). The other two provisions of the law that mention persons with disabilities refer to protective measures that facilitate the studying of these people. General anti-discrimination clause does not exist. As for accessibility, according to the Law on High Education (article 150) all students are entitled to using the facilities, equipment, scientific and professional infrastructure of higher education institutions and university facilities for sports and cultural activities and services of the student standard etc., under equal conditions. However, if these facilities are not accessible and available, then this opportunity is largely relativized for students with disabilities. Another significant problem is the inaccessibility of the digital space, i.e. the inaccessible information and communication systems, which instead of being a tool to enhance the inclusion of persons with disabilities in the educational process, become an additional obstacle⁴⁷.

The Law on Vocational Education and Training regulates the rights and obligations of the institutions for vocational education and training, and employers involved in the practical training, in terms of organization and implementation of vocational education and training of different types, levels and duration. Also this law regulates the rights of contracting, the type and content of vocational education and training, post-secondary education and training, and verification examinations, diplomas, certificates, documents and records. In the law there is no anti-discriminatory clause and there are no specific measures for the inclusion of people with mental and physical disabilities.

The Law on Adult Education includes and regulates a segment of the lifelong learning, but it unfortunately does not present a solution for a comprehensive and coherent policy for lifelong education. This law does not cover the needs of persons with disabilities and the manner of their involvement in formal and informal education. In addition, there is no anti-discriminatory clause in the law.

Preschool education is regulated by the Law on Child Protection which provides that public kindergartens organize care and education of children with disabilities (the law states: children with obstacles in the mental development or physical disability), in accordance with the type and degree of disability. The care and education of children with mild disabilities are performed in mainstream groups with provision of additional assistance and tailored programs, while children with moderate disabilities are in separate groups that work according to special programs. Additionally, article 4 stipulates the principle of non-discrimination in the application of the provisions of this law, which has been further elaborated in article 12. Namely, article 12 paragraph 1 prohibits any form of discrimination on grounds of *inter alia* disability (the law states: inability) against the child, or their parent or legal guardian. Although the terminology is not appropriately used because inability is a term that is entirely based on the medical view of disability, a model which is outdated and contrary to the CRPD, this provision is still progressive in terms of foreseeing discrimination by association, i.e. against the parents or guardians of children with disabilities. In addition, it provides for prohibition of direct and indirect discrimination and harassment (the law states: bullying) in exercising the rights and forms of child protection, which

⁴⁷ See: *Извештај од истражување: Примена на асистивната информатичка технологија во редовните основни училишта во Македонија, тековни состојби и потреби*, Open the Windows, Skopje, March 2011, pages 9-12.

applies to all public and private institutions and individuals performing certain activities in childcare and education of children as a professional activity. It can be concluded that the legal framework is inclusive and pretty clear. However, the problem appears in its proper implementation in practice. The problem arises in some kindergartens that practically refuse to enroll children with disabilities or, once enrolled, force children with disabilities leave the kindergarten for minor problems⁴⁸. For illustration sake only, the data of the State Statistical Office⁴⁹ show that in 2010 there were 23,157 children enrolled in kindergartens, of whom only 52 were children with disabilities, and the majority among them were five years old - a total of 28 children. This is too small a number that confirms the conclusion stated above that that kindergarten, directly or indirectly, refuse the regular enrollment of children with disabilities.

Although the legislation is in place, in practice people with disabilities have lower levels of participation in all phases of the educational process, especially in secondary and higher education. People with mental disabilities are often those who do not continue their education at a higher level. This little involvement in the educational process is partly due to the lack of sufficient systems for assistance and support, physical inaccessibility and the existence of numerous prejudices about these people in the society. An additional difficulty is the inaccessibility of educational institutions. Several studies have confirmed this: Out of 334 primary schools in the country, the report *Assistive Technology Use into Mainstream Primary Schools in Macedonia: current conditions and needs* analyzed 238 schools (71.3%). Of these, 18.9% of the schools had access ramps at the entrance, 10.9% of the schools had adjusted interior premises (classrooms and toilets), and not a single school had an internal lift. 74.3% of the analyzed schools used computers in the instruction process, but only 40.8% of the students with disabilities in those schools used computers on an equal basis with other students, largely because of the lack of adequate computer equipment (assistive device) and software customization⁵⁰. As for vocational schools that educate persons with disabilities, research results show that 59% of schools do not have access ramp, 78% do not use assistive technology, and 65% of them do not have adapted premises⁵¹.

Children with disabilities included in regular primary education often do not complete it, but after studying for a few years, some children continue their education in special schools and some do not even continue at all. The most common cause of premature abandonment of primary education is requests by parents to stop the schooling of their children, but a large number of children drop out due to deteriorated health situation and lack of conditions and opportunities for further education in the mainstream educational system. Also, some children leave mainstream education because of the resistance of parents of other children, teachers' resistance or rejection by the other students. A particular problem which hampers the mainstream education of children with special needs is the lack of professional staff working with these children, i.e. only around 10% of schools have trained staff. At the same time, schools are not adequately technically and materially equipped, children with disabilities are instructed on the basis of inadequate and inconvenient curricula that they are not able to follow, there are no special textbooks, all of which would facilitate the education of these children.

⁴⁸ See: Мирјана Најчевска, Беким Кадриу, Кети Јандрџеска Јованова, Билјана Чавковска, Вјолца Мора Бајрами, *Невидливи за општеството, Проценка на подготвеноста за ратификација на Конвенцијата за правата на лицата со попречености*, Foundation Open Society Macedonia, Скопје, 2011, page 48.

⁴⁹ State Statistical Office, Number 2.1.11.01, 2011.

⁵⁰ See: *Извештај од истражување: Примена на асистивната информатичка технологија во редовните основни училишта во Македонија, тековни состојби и потреби*, Open the Windows, Скопје, March 2011, pages 9-15.

⁵¹ See: Ардијана Исахи-Палоши, Лидушка Василеска, Лепа Трпческа, Горан Спасовски, Радмила Стојковска-Алексова, David Crabtree, *Инклузија во средното стручно образование, прирачник за работа со ученици со посебни образовни потреби*, British Council, Скопје, 2014, page 69,

<http://www.britishcouncil.mk/sites/britishcouncil.mk/files/inclusion_in_secondary_vocational_education_handbook_mkd.pdf>

Accessed on: 29.10.2014.

Text no. 6, Netpres, 19.09.2014

TEACHERS FROM KARPOSH WERE TRAINED TO WORK WITH AUTISTIC CHILDREN

“Today, the professors from America Caren Robins and Rachel Neal and professor Emilija Simonovska-Stojanovska of the American high-school Nova in Skopje have completed the seven-day training on autism and dyslexia among students... The aim of the seminar is to train teachers into the methods and techniques that are used in the work with students suffering from autism and dyslexia, and to enable them to work with and help these children in the process of learning and mastering the educational plan.”

Text no. 7, Utrinski vesnik, 26.09.2014

FOURTY AUDIO RECORDINGS FOR DEAF PERSONS PROMOTED AT THE NUB

“The first 40 recordings for the needs of deaf persons – a selection of the most famous stories of Macedonian and world authors, radio plays in Macedonian and Albanian, as well as recordings with educational content, were promoted at the National and university library St. Clement of Ohrid yesterday. Within the project for increase of the available content of this type intended for deaf and persons with visual impairment, the recordings were produced by the Macedonian Radio – Radio Skopje and were printed by the Ministry of Labor and Social Policy.”

Recommendations:

- Individualization of the derogation under article 51 paragraph 1 of the Law on Primary School when the special educational needs of the child are such that it should attend the special primary school.
- Customized curricula for children with disabilities should be of equal quality as those used for the education of children without disabilities. In this regard, textbooks and other school materials should be available in electronic form and in accordance with the concept of e-accessibility.
- Introducing the obligation for schools to engage professional teams that will work with the children according to their individual needs, in classes attended by pupils with disabilities.
- Amendments to the Law on Primary Education and the Law on Secondary Education in the direction of explicitly prescribing prohibition of discrimination on grounds of disability referring to: enrollment and conditions of enrollment of students in the respective educational institution; access of students to any subject, institution or benefit provided by the educational institution; any other condition or criterion for the student's participation in the classroom; writing off (expelling) the student from the educational institution; or any other sanction taken against the student.
- Amendments to the Law on Secondary Education in the direction of allowing persons with disabilities to acquire their secondary education in the mainstream educational system and on an equal footing with others. In cases when opportunities for mainstream education cannot be provided, special curricula need to be made available for contemporary sophisticated occupations demanded by the open labor market.
- Education and training is needed of teachers who conduct in mainstream instruction for work with children with disabilities. Additionally, it is necessary to engage a professional team in each school for work with children with disabilities.
- Improvement of the accessibility of the educational institutions and intensification of the process of assistive information technology introduction in the mainstream educational system in a systematic and sustainable manner and in accordance with the needs of the students with disabilities.

IV. HEALTH

Health has emerged as a very important segment in the life of persons with disabilities, ranging from the physical inaccessibility of most health care facilities in the country, lack of proper internal infrastructure, inadequate services and treatments, to non-exemplary behavior of medical staff, all of which seriously undermine the right of persons with disabilities to exercise proper, timely and quality health care.

I: We are not discriminated against, we are gravely discriminated against... My tires are from last year, I recently bought them for 25 Euros each, internal and external tires. I can't find them here, those that are available on the market leave black marks all over my home. So I have to go to Nish to buy tires for 100 Euros and spend 100 Euros for the trip, so that's 200 Euros for a set of wheelchair tires. The ones that the states provide make your seating uncomfortable and, secondly, you damage your body.

Male, 38, physical disability

I: A few months ago, I scheduled an appointment for medical check and I called the clinic to ask whether it was accessible. They answered that they were and that was the reason I made the appointment. On the scheduled day, I went to the clinic and there was a ramp to enter the building, but in on the path to the doctor's cabinet there were two stairs without a ramp. The nurse came and asked us what we had come for, and I answered and then she said "but it's not accessible". I told her I had called beforehand and had been told it was accessible. Then she called the doctor. Even though I was there, they only talked to each other wondering which other place they should send me to, so I'd have to make an appointment all over again, be in in Bitpazar or in some other clinic that I could access. I told them that I had been waiting for the appointment for a month, that I had organized transport and that I would take the X-ray check. I asked them whether they would help me get down the two stairs or I would have to go outside to ask people random people outside, because I wanted to do the X-ray check. They refused to help me go down the stairs, I asked some people outside the clinic to help, they did, I went down the stairs with their help and they did the X-ray check.

Female, 36, physical disability

I: At the faculty they made us go for a systematic medical check in an ambulance that was in fact not accessible. I came in front of the ambulance and I could not climb the stairs because the premises were on the higher floor, and there was no lift. And I couldn't go, and later they had the work done without checking, they did not do the medical check on me, they simply stamped my students booklet without having conducted the necessary procedure. We only did the procedure, but I was not checked.

Male, 33, physical disability

I: I grew up in hospital and there, naturally, there are nurses, doctors. Nobody is allowed in, no companion or assistant or anybody, and it happened, for example, that I would be in a room with roommates who could all stand up and move, and I would be the only one who couldn't stand up, and you can't call the nurse, there was no way you could call the nurse. It is really bad, really unpleasant when you have to beg the sick person next to your bed who does not how to act, who does not know what to do... I therefore have very bad experiences from the hospitals... I don't know why they wouldn't allow, I really do not understand why they do not let companions in.

Female, 29, physical disability

I: My greatest obstacle is when I go to the doctor and I cannot communicate. I can never go alone, someone from the family or the secretary has to come along, because I can't establish communication with the administration or to talk to the doctor about my disease or about the medicaments that I need. We can barely understand each other with my family physician, although with some difficulties, but I cannot communicate with other doctors and specialists when I need to see them.

Female, 61, person with hearing impairment

I: As a person with invalidity, I need to take spa treatments several times a year... I come across a problem here – one has to stay at the hospital, they need to give you some document that you really have to go to the spa, and whether you go to the spa or not, now that is a question, because not everybody can stay at the hospital or to have that document issued.

Female, 38, physical disability

The right to health care and the availability of for anyone under equal conditions is provided for in article 39 of the Constitution⁵². If this article is put in correlation with the general prohibition of discrimination (article 9) of the Constitution, in which disability is not enlisted as a possible ground for discrimination, the exercise of the guaranteed right to health care on an equal basis with others becomes questionable for persons with disabilities.

In terms of the general principle of respect for human rights, the Law on Health Care⁵³ regulates the right of every citizen to the highest attainable standard of health care. The Law defines the principles that it is based on, namely, the principles of: accessibility, efficiency, continuity, fairness, comprehensiveness, as well as the principle of providing quality and safe health treatment. The principle of availability is correlated with the principle of fairness of health care, which the law determines to achieve by prohibiting discrimination in the provision of health care in terms of *inter alia* mental or physical disability.

Through the Law on Health Insurance⁵⁴, citizens are provided with health services in primary, specialist-consultative and hospital care (short-term and long-term) and health services through government programs for preventive and curative health care. Besides basic health packages, tertiary care is distant for people with disabilities⁵⁵.

The Law on Protection of Patients' Rights⁵⁶ in its article 2 and article 5 regulates the individual aspects of the right to health or the right of every citizen to the highest attainable standard of health care, and at the same time defines that the health care should be of good quality and continuous and consistent with the latest achievements in health care, adequate to the individual needs of the patient, ensure absence of psychological and physical abuse of the patient's personality, and with full respect for the dignity of their personality and in their best interest. The principle of non-discrimination in the exercise of rights is regulated in article 5 paragraph 2, where disability is not mentioned among the grounds for protection. In addition, a patient with permanently reduced ability for reasoning has the right to information, in conformity with his physical, mental and psychological condition and his guardian or legal representative (article 11). Such provision is positive, but due to the lack of training on communication and access to persons with disabilities, in practice, its realization is difficult⁵⁷.

The non-discrimination clause in the Law on Mental Health⁵⁸ points out that "[d]iscrimination is any isolation, exclusion, alienation or other treatment that has the effect of failure or violation of the

⁵² Constitution of the Republic of Macedonia (and its XXXII amendments), *Website of the Assembly of the Republic of Macedonia*, <<http://sobranie.mk/WBStorage/Files/UstavnaRmizmeni.pdf>>, Accessed on: 19.10.2014.

⁵³ [Law on Health Care, Official Gazette of RM, no. 43/12, 145/12, 87/13, 164/13.](#)

⁵⁴ Law on Health Insurance, [Official Gazette of RM, no. 65/12, 16/13, 91/13.](#)

⁵⁵ See: *Хендикеп – слојувалка што недостасува, Приказ на состојбата на лицата со хендикеп*, Polio Plus, 2012, pages 60-64.

⁵⁶ Закон за заштита на правата на пациентите, Official Gazette of RM, no.82/08.

⁵⁷ See: *Правата на пациентите со фокус на лицата со интелектуална попреченост*, ESE, 2011, page 6, <<http://www.esem.org.mk/pdf/Publikacii/ESE%20Intelektualna%20poprecenost.pdf>> Accessed on: 05.11.2014.

⁵⁸ Law on Mental Health, Official Gazette of RM, no.71/06.

equality in the enjoyment of rights, except in cases governed by this law (article 4 paragraph 4 in conjunction with article 7 b), the person with mental illness has the right to protection from any form of harassment, humiliation and abuse and should not be discriminated against because of the state of his mental health". The law stipulates the right "[t]o respect the personality, dignity and privacy of every person with mental illness. A person with mental illness is entitled to protection from any form of harassment, humiliation and abuse and should not be discriminated against because of the state of his mental health" (article 7).

In practice, the approach towards persons with mental disorders and their treatment in institutions shows a different picture. Namely, while visiting and inspecting the work of psychiatric hospitals in Skopje and Demir Hisar, the Ombudsman⁵⁹ came to the finding that there are "unsuitable premises to accommodate service users and lack of sufficient number of appropriate medical and other staff to ensure the application of modern manners of treatments and work with service users aimed at improving their ability for independent life and return to the family; insufficiently educated and trained staff for application of modern treatments of mentally ill persons; lack of funds to implement reforms to bring about a change of the classic way of treatment and to reduce the number of beneficiaries who remain to live in the hospital for a long period of time, forgotten by family and society, and without rehabilitation and enabling for independent life or life outside the hospital".

Equality and non-discrimination is envisaged by the Law on Prevention and Protection against Discrimination, described above, referring *inter alia* to the areas of health insurance and health care (article 4, paragraph 1, item 3).

The Rulebook on indications for exercising the right to orthopedic aids and other aids⁶⁰ regulates the rules based on which the right is exercised to prostheses, orthopedic and other aids, auxiliary and medical devices and materials, as well as dental aids, which are made of standard materials, the manner and the amount of participation of insured persons in the cost of procuring such devices (article 1). In terms of the right to a wheelchair, insured persons are entitled to only one room wheelchair (article 13 paragraph 1) if the person is employed, or if the child is regularly attending school until 18 or 26 years of age. Besides room wheelchairs, insured persons are also entitled to an outdoor manual wheelchair (article 13 paragraph 2). The need for an outdoor or electric-power driven wheelchair is determined by the medical commission of the Fund (article 13 paragraph 3), with the usage period of the wheelchairs set at 60 months at the minimum, and in the case of children under the age of 18 at 36 months (article 15). The usage period of the anti-decubitus cushion is set at 36 months. After the cessation of the usage period the wheelchair, the insured person or a member of their family is obliged to return the wheelchair to the Fund (article 16) within 30 days, as per the statement⁶¹ signed by the user on responsible use. If the person does not return the wheelchair, the person is obliged to compensate the damage to the Fund in the amount of 80% of the value of the aid on the date of endorsement. Conditions are similar for other aids.

The Rulebook for specialized medical rehabilitation as extended hospital treatment⁶² in its article 7, paragraph 1 provides that the insured person can exercise the right to specialized medical rehabilitation only as prolonged hospital treatment and in duration of up to 21 days. Exceptions are children with cerebral palsy to three years of age, for whom the medical rehabilitation can last up to 30 days and can be used up to four times a year (article 12 paragraph 1), and children between three years and fourteen years old, whose rehabilitation can last up to 30 days and be used twice

⁵⁹ See: *Извештај од извршен увид во Јавната здравствена организација Психијатриска болница „Скопје„ - Скопје, Одделение за вонболничка заштита и унапредување на менталното здравје “Пролет”- Скопје и Психијатриската болница “Демир Хисар”, Ombudsman, 2006, page 2 <<http://ombudsman.mk/upload/documents/JZO-mak.pdf>> Accessed on: 20.10.2014.*

⁶⁰ Rulebook on indications for exercising the right to orthopedic aids and other aids, <http://www.fzo.org.mk/WBStorage/Files/1.Pravilnik_za_indikacii_za_ostvaruvanje_na_pravoto_na_oropedski_i_drugi_pomagala_precisten_tekst_115_od_2007.pdf> Accessed on: 20.10.2014.

⁶¹ Information to the insured persons with regards to the manner of exercising the right to orthopedic and other aids at the expense of the FZIOM, <<http://www.zplrm.mk/Prevzemanja/Informacija%20osigurenici.pdf>> Accessed on: 20.10.2014.

⁶² Rulebook for specialized medical rehabilitation as extended hospital treatment, Official Gazette of RM, no.25/00, 34/00, 96/00, 50/01, 11/02, 31/03, 84/05, 37/06, 18/07, 36/07, 82/08, 98/08, 6/09, 67/09, 50/10, 156/10, 53/11, 26/12, 16/13, 91/13, 187/13, 43/14, 44/14, 97/14, 141/14.

a year (article 12 paragraph 3). The right to a companion is foreseen within the Rulebook on the content and manner of exercising the rights and obligations of the compulsory health insurance and only applies to children under three years of age (article 9-10). This provision only further restricts and / or prevents the exercise of the right to effective care and treatment.

As a result of the age limit and the treatment as children of people with disabilities to the age of 26, citizens with disabilities face limited access to free health care, cure, treatments, aids and medicaments. The Law on Health Insurance provides exemption from participating in covering the costs for using health care services for children or for people with disabilities up to 26 years of age only, but not for older persons.

Text no 8, Business, 29.12.2014

FZOM WITH NEW SURPRISES FOR ITS BENEFICIARIES

“Three orthopedic aids will be provided at the expense of the Fund for Health Insurance of Macedonia as of January 1. Electrical wheelchair – scooter will be introduced for persons aged between 7 and 26 years, as well as for persons with durable disability aged over 65.”

Text no. 9, Vistina.mk, 14.12.2014

SWIMMING FOR BETTER CARE AND HELP TO CHILDREN WITH DOWN SYNDROME

“The realization of the pilot-project for promotion of physical activity and development of sport and swimming skills among children with Down syndrome began at the beginning of 2015. The activities will be implemented through the Institute for Physical Medicine and Rehabilitation – Skopje through organization of swimming classes for children with Down syndrome. The children who will attend the classes need to conduct the relevant medical checks prior to beginning the training.”

One of the reasons for inefficient and ineffective use of health services by persons with disabilities is the physical inaccessibility of many health care facilities, including the Ministry of Health and the Health Insurance Fund, as emphasized by a large number of respondents involved.

Part of the findings in the research paper Patronage (visiting) service for children with special needs⁶³ suggest that visiting nurses require a higher level of education for the treatment and rehabilitation of children with special needs at home, as well as the need for greater coordination and cooperation of the patronage service with other health, social and educational institutions, in order to ensure high quality communication in the relationship health professional – client. 57% of the interviewed parents in the Research Report on the Situation regarding the Implementation of the UN CRPD⁶⁴ are not satisfied with the services of health care, while 100% of parents of people with other intellectual disabilities over 26 years of age indicate selective approach in providing free health care, cure, healing treatments and medicines, and that the system of assessment of specific needs of people with obstacles in the physical and psychological development is underdeveloped and outdated. Stereotypes and attitudes are additional obstacles⁶⁵ in the realization of the rights to health care for persons with disabilities, who are often humiliated and considered asexual. In addition to these findings, there are suggestions about the necessity of the separation of the services of habitation and rehabilitation that are necessary to support the provision of dignified and independent life of persons with disabilities, and that large costs are borne for low quality aids⁶⁶.

⁶³ See: Љиљана Ивановска, Специјалистички труд - Патронажна служба кај деца со посебни потреби, 2010, pages 4-5, <https://eprints.ugd.edu.mk/475/1/Specijalisticki_Liljana_Ivanovska.pdf> Accessed on: 26.10.2014.

⁶⁴ See: Извештај од истражување за состојбите во однос на имплементацијата на Конвенцијата на ОН за правата на лицата со попреченост, Порака, 2012, page 15.

⁶⁵ See: Сексуалното и репродуктивното здравје и лицата со телесна попреченост - Извештај од проценка за потреби од услуги, Нера, 2012, pages 61-62.

⁶⁶ See: Елена Кочоска, Звонко Шаврески, Истражувачки проект: Цена на чинење, Polio Plus, 2011, page 39, <www.polioplus.org.mk> Accessed on: 21.10.2014.

Recommendations:

- Amendment of the Law on Health Insurance and the Law on Health Protection in the direction of allowing persons with disabilities to use the tertiary health protection for free, in accordance with their needs stemming from disability.
- Amendment of the Law on Protection of the Rights of the Patients in the direction of explicit inclusion of prohibition of discrimination on the grounds of disability, as well as obligatory involvement of a person with disability in the patients' rights protection mechanisms.
- Development and enactment of regulatory framework for a variety of primary, secondary and tertiary health services that will enable high level of availability and support for persons with disabilities and persons with mental illnesses, aimed at their inclusion in the community, as well as separation and development of services for habitation and rehabilitation and provision of services of adequate quality.
- Provision of barrier-free access and availability of all health facilities, including the Ministry of Health, the Health Insurance Fund, all public health institutions, clinics, hospitals, health homes, bureaus, ambulances, pharmacies, etc. Additionally, it is necessary to involve persons with disabilities in the regulatory bodies for issuing licenses for work to health institutions.
- Amendment of the Law on Procurement of Medicaments and Aids by introducing standards for accessibility and availability of medicaments and aids that licensed to enter the market.
- Amendment of the Law on Health Insurance by enabling continuous use, without any age limitations, of orthopedic aids with high quality and functionality in accordance with the needs of citizens with disabilities.
- Obligatory education and training of health staff in adequate approach and communication with persons with disabilities, staff of patronage services, as well as those employed at psychiatric hospitals.
- Obligatory involvement of the issue of disability in new government programs such as "Alo doktore", "Mojot termin" and all new tele-medical services that are planned to be launched.
- Amendment of the provisions that regulate the civil procedure for accommodating persons in a psychiatric institutions, both voluntary and accommodation on the grounds of court decision.

V. WORK AND EMPLOYMENT

I: Concerning employment, they promise this and that, we will employ you as invalids, and after they employ you, they are only concerned with exploiting the subsidies for the invalids. To use those benefits that are intended for the employers, and the invalid is never asked if they are satisfied with their salary, their job... so, they only seek to exploit the invalid as much as they can.

Male, 34, physical disability

I: Mad, very man, because you can't work. You are not looking for social assistance, you are trying to achieve something yourself, yet there are millions of obstructions from all sides.

Male, 33, physical disability

I: I worked at a protection company for three years, from 2010 to 2013. It was good in the first year, I cannot complain, salaries were paid regularly. But then started the non-payment of fringe benefits and the salary, too. In the last year I had a problem – the employer did not want to let me leave the job, because he had an interest based on the law on employment of invalids.

Male, 32, physical disability

M: Tell me, what are the greatest barriers or challenges that you have faced in your life?

I: Well, there are a lot of barriers for invalids in this society – there is lack of accessibility, there is discrimination and there are problems in employment... In employment, persons with disabilities are not given any advantage, no conditions are created for them to be employed – they are ignored despite the advantages foreseen in the legal framework.

Male, 57, physical disability

When it comes to the right to work of persons with disabilities, among the international standards and in addition to the CRPD, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is of particular importance. Within the framework of the regular reporting on the Covenant, especially significant are the concluding observations of the Committee on Economic, Social and Cultural Rights adopted on the occasion of the initial reporting of the Republic of Macedonia for the implementation of the ICESCR in 2006⁶⁷. The Committee directs constructive criticism regarding the extremely high rate of unemployment, especially in relation to *inter alia* people with mental and physical disabilities (paragraph 15) and requires from the state to include statistics on unemployment desegregated per type of disability in the next report (paragraph 35).

Article 32 of the Constitution provides for the right to work and the related rights. This right is general and foresees that everyone (including persons with disabilities) have the right to work, free choice of employment, protection at work and material assistance during temporary unemployment (paragraph 1). In addition, it states that all working positions are available to every person (paragraph 2), and, thus, every employee is entitled to appropriate remuneration (paragraph 3) and are entitled to paid daily, weekly and annual leave, which cannot be waived (paragraph 4). They are further amended with the law and collective agreements (paragraph 5). Article 35 paragraph 3 foresees that the state provides particular protection to invalid persons, as well as conditions for their inclusion in the social life.

⁶⁷ Concluding observations of the Committee on Economic Social and Cultural Rights, UN Doc. E/C.12/MKD/CO/1, from 24 November 2006, <<http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.MKD.CO.1.pdf>> Accessed on: 29.10.2014.

Of particular interest are the Law on Labor Relations and the Law on Employment of Invalid Persons as *lex specialis*, which are explained below. Article 6 of the Law on Labor Relations explicitly prohibits discrimination in general, including on the grounds of *invalidity* conducted by individuals and legal entities in both the public and private sector.

It prohibits all forms of discrimination, including direct discrimination (article 7 paragraph 2), indirect discrimination (article 7 paragraph 3) and harassment (article 9 and 9-a) of the candidate for employment and the employee. Its shortage is that the law does not provide instruction on discrimination and does not expressly prohibit any discriminatory advertisements or statements on the grounds of disability. Namely, the law in its article 24 paragraph 1 explicitly prohibits discriminatory advertisements or statements only on the basis of sex, saying that "[t]he employer must not advertise vacancies for men or for women exclusively, unless the specified sex is a necessary condition for performing the work." This should be amended in the future and aligned with international anti-discrimination standards.

It is particularly interesting to consider the provision of the Law on Labor Relations stating that "[w]hen concluding an employment contract, the candidate is not obliged to submit proof of health fitness, unless the employer bears the costs of a health check" (article 25 paragraph 5). This is supplemented with the following paragraph which says: "[v]erification of the knowledge and the ability of a candidate or the establishment of the health fitness of the candidate may not refer to circumstances that are not directly related to working position for which the employment contract is concluded" (article 25 paragraph 6). These provisions fully satisfy the standards for protection of persons with disabilities from discrimination, but their importance is derogated taking into account the provisions of, for example, the Law on Administrative Servants (which refers to employment in the public sector), which foresees *the general health ability for the working position* as one of the conditions of employment (article 31 paragraph 1 item 4). Such a provision, although apparently neutral, has a disproportionate adverse effect on persons with disabilities because the group is *a priori* restricted in competing for employment. This criterion would be valid for some groups of persons with disabilities; however, for people with physical or sensory disabilities, this criterion is extremely discriminatory. Therefore, a distinction should be made between the health condition and working ability, on one hand, and ability of persons with disabilities, on the other, and these terms should not be equated.⁶⁸

Despite the anti-discrimination provisions, the law also provides special protection for *inter alia* persons with disabilities (articles 122, 161-162, 164, 169, 177-178). Besides the special protection of workers – persons with disabilities, the law offers protection to workers – parents of children with disabilities. For example, according to the law, a parent of a child with developmental disabilities and special educational needs has the right to work half-time, and such half-time engagement is considered as full-time (article 169). Also, in accordance with article 137 paragraph 3 of the Law on Labor Relations, *inter alia* person with disability – an employee with at least 60% physical or mental deficiency and an employee who nurtures and fosters a child with physical or mental disability is entitled to three additional days of annual leave.

Text number 11, Faktor, 07.10.2014

THE RIGHTS OF CHILDREN WITH DISABILITIES ARE PROVIDED ONLY ON PAPER

"The destiny of families with children with developmental difficulties is rough... Among them is the Donevski family with their 25-years old son with severe physical and mental developmental difficulties. The mother Olivera Donevska, employed, has never used the right to the 4-hours working day, because the parents in law have been assisting around the child. They could take care of the child while she worked. But after the death of the father in law, she decided to use her right to half-time work. She received a decision entitling her to half-time engagement for the first time when her son was a baby. Olivera says that her family renewed the documents in 2009, to be ready to exercise the right should the need be; however, until present day, she still has not managed to exercise her right."

⁶⁸ See: Жанета Попоска, *Вработување на лицата со хендикеп во Република Македонија (правна анализа)*, Polio Plus, Skorje, 2013, pages 23-24.

Here, one has to mention the Law on Employment of Invalid Persons. Article 1 of the Law states that "[t]his law regulates the special conditions for employment and working of invalid persons when they independently perform profession or activity, work for an employer or are employers, and the conditions for the establishment and the benefits of companies for employment of invalid people." Practice shows that it does not include all categories of persons with disabilities, especially those who independently perform profession or activity, or are engaged in independent occupations, such as: lawyer, doctor, notary, etc., and who are unable to use the benefits allowed within this law. It is positive that article 4 of the Law provides for a number of incentives to improve the conditions of employment of persons with disabilities, such as: awarding grants for the employment of a person with disabilities on an indefinite period, adapting, as necessary, the workplace for an employee with disabilities, supply of equipment, tax and fringe benefits exemption, and provision of financial support for the companies' operations. Incentives are expressed in number of monthly wages that are being paid as grant from the special fund established in accordance with this law. These are fundamentally good solutions that can be classified as affirmative measures. Yet, courts need to be given the right to review their purposefulness in concrete cases, especially bearing in mind that there are serious concerns about the possible misuse of these measures by employers, and in particular by protective companies.

The creation of employment opportunities for persons with disabilities inevitably includes providing appropriate adjustment for this group of persons in the interview process in the interviewing within the hiring procedure, and in the workplace (for more information see above section I. General provisions with horizontal application, 2.1. Reasonable accommodation).

The provision in article 4 paragraph 5 is questionable in terms of anti-discrimination. It, namely, foresees that "[a]n invalid person may be an employer or carry out the duties of a responsible person at an employer, if the person receives a positive opinion from the Commission at the Ministry of Labor and Social Policy...". Although it is considered that the aim of the legislator was not to discriminate against people with disabilities, but to act defensively on their behalf, yet, such a defined provision that requires finding and opinion on the ability of the person with disability performing managerial functions is discriminatory and should be abandoned. It represents a school example of discrimination in the form of harassment, based on the law.

Especially interesting for consideration is the issue of sheltered workshops. The Law and the two rulebooks arising from the law regulate the issue of employment of persons with disabilities in sheltered workshops. Sheltered companies are exempted from payment of income tax and all taxes related to the profits, their staff who are not persons with disabilities are exempted from paying personal income tax, and the funds for pension and disability insurance are provided by the state. It is positive to note that engaging in sheltered workshops is considered a regular employment in accordance with the national legislation. However, it should not be forgotten that the employment in sheltered companies should be a transitional solution to full employment in the open labor market for persons with disabilities; thus should not derogate the right to open labor market employment, as well as employment in the public sector.

Work is currently underway on amending the Law on Employment of Invalid Persons⁶⁹ in the direction of introducing a quota system for the employment of people with disabilities, as well as legal regulation of the professional rehabilitation of these people. Namely, it is proposed to oblige any enterprise in the public and the private sector with more than 35 employees to employ a person with a disability, with the quota of employees with disability set between not less than 2% and not more than 6% of the total number of employees, depending on the activity conducted by the employer (draft article 7). This obligation is not imposed on newly established enterprises until the expiration of 24 month of their establishment and the foreign, diplomatic and consular representative offices and associations. If an employer does not hire a person with disabilities and has such an obligation under the law, that employer will be obligated to pay cash compensation (draft article 8). It is also positive that in defining the persons with disabilities (called in the law: persons with *invalidity*), the law applies the approach based on the social model (draft article 2

⁶⁹ Draft-Law on Employment of Persons with Invalidity, MLSP, October 2014. According to article 40, the law is intended to be implemented as of January 1, 2015, while the provisions related to the quota system and the professional rehabilitation of persons with disabilities will be effective as of January 1, 2016.

paragraph 1). However, what remains a problem is the foreseen need to prove the disability (draft article 6 paragraph 1 item 1). Unfortunately, the bill does not overcome the disadvantages associated with the questionable provision in article 4-a paragraph 5, which requires a positive opinion from the Commission if the person with a disability wants to be an employer or to carry out the duties of a responsible person at an employer (draft article 11, paragraph 4). All provisions also remain related to sheltered companies, omitting the possibility of full integration of persons with disabilities into the open labor market.

Text number 11, Kapital, 25.12.2014

COMPANIES ARE SCARED OF THE PROPOSED CHANGES – EITHER TO EMPLOY PERSONS WITH DISABILITIES OR PAY 150 EUROS A MONTH

“Over 3,000 companies in Macedonia will be obliged to employ at least one person with disability of pay a monthly fee of 150 Euros. According to the latest data of the State Statistical Office, there are 3,278 companies in the country with more than 35 employees, for which the new legal provision will be compulsory as part of the newly proposed draft-law on employment of persons with disabilities. As per the proposed quota, persons with disabilities need to comprise between at least 2% and maximum 6% of the total number of employees in each company with over 35 employees.”

The basic document and framework which defines employment policies is the National Employment Strategy 2015, which, unfortunately, does not explicitly declare the increase in the employment rate of people with disabilities among its priority objectives. This simply once again shows the lack of a strategic approach towards this group of persons.⁷⁰

Despite existing legislation and national policies, the number of employed persons with disability compared to the entire employed population in the country is quite small. In fact, according to the data of the State Statistical Office, the number of employed persons with disabilities was 2.394 in 2011, of whom 814 were women. In addition, the number of persons with disabilities who were on rehabilitation was 147, of whom 42 were women.⁷¹ According to the data of the Employment Agency for 2010, employed persons with mental and physical disabilities were registered in all age groups (15 to 60 years or more), and most of them were with low qualifications, or 1,569 people, while only 35 employed persons with disabilities were registered with high and post-secondary education.

As explained above, people with mental disabilities followed by persons with physical disabilities are the most discriminated against in employment because of the existence of numerous prejudices towards these people. This is confirmed by other studies showing that people with disabilities are not recognized as employees on an equal basis with others, which is manifested by receiving less pay for equal work, less chance of promotion and harassment at the workplace⁷². Total of 25.9% of the persons with physical disabilities believed that they were discriminated against at the workplace, with the persons belonging to the age group of between 35 and 49 years of age most frequently reporting discrimination. What is interesting about this research is that it highlights the problem of multiple discrimination of women with physical disabilities and the elderly (over the age of 50 years) with physical disability⁷³. Available research studies on persons with physical disabilities show that 55.8% of the total employed persons with physical disabilities all employees in sheltered company, most of which are in the business of providing services (40 %). One of those studies found out that women with disabilities are often employed in sheltered companies (49.1%), followed by employments in the open labor market (27.8%), while most men

⁷⁰ See: Жанета Попоска, Бежим Кадриу, Ленче Коцевска, Елена Кочоска, *Анализата на дискриминациските практики во областа на вработувањето и работните односи*, OSCE and MLSP, Скопје, 2013, page 72.

⁷¹ State Statistical Office, Number 2.4.11.16, 2011, pages 28-29.

⁷² See: *Вработување на лица со инвалидност во услови на транзиција*, NGO Ergos, Скопје, 2003, <<http://www.nvoinfocentar.org.mk/event.asp?site=nvo&menu=3&lang=mak&id=92>> Accessed on: 30.10.2014.

⁷³ See: Весна Јованова, Сунчица Димитријоска, Стеван Томовски, и Миодраг Игњатовиќ, *Положбата на лицата со телесен инвалидитет на пазарот на трудот, студија од истражување*, supported by UNIFEM, Скопје, December 2009.

with disabilities are employed in the open labor market (33.3 %), followed by employments in sheltered companies (30%). Public employment is very low and amounts to 2.6% of all employed persons with disabilities.⁷⁴

Recommendations:

- To amend and harmonize the Law on Labor Relations with international standards by foreseeing the instruction of discrimination, expressly prohibiting discriminatory advertisements or statements on the basis of disability, and the introduction of a provision that would require reasonable accommodation for persons with disabilities.
- To distinguish between the health condition and working ability and abilities of persons with disabilities. These terms are not be equated.
- To review the criterion 'general health condition', which restricts the access of persons with disabilities to jobs in the state administration, judiciary and the lawyers practice, and its full individualization in accordance with Article 25 of the Law on Labor Relations, i.e. including this requirement in the context of the profession exclusively.
- According to the Law on Employment of Invalid Persons, the state should guarantee the provision of assets into the Special Fund that would be used for providing unhindered reasonable accommodation for persons with disabilities at the workplace.
- To amend the provision in article 4-a paragraph 5 of the Law on Employment of Invalid Persons which foresees that a disabled person can be an employer or to carry out the work of a responsible person at an employer only if the person received a positive opinion from the Commission at the Ministry of Labor and Social Policy, because the existing provision is discriminatory.
- To take measures to ensure that employment in sheltered companies is a transitional solution to full employment in the open labor market for persons with disabilities.
- To build a strategic approach towards persons with disabilities in particular in the National Employment Strategy, which unfortunately does not express the increase in the employment rate of persons with disabilities among its priority objectives.

⁷⁴ See: Весна Јованова, Сунчица Димитријоска, Стеван Томовски, и Миодраг Игњатовиќ, *Положбата на лицата со телесен инвалидитет на пазарот на трудот, студија од истражување*, supported by UNIFEM, Скопје, December 2009.

VI. ADEQUATE LIVING STANDARD AND SOCIAL PROTECTION

The Constitution defines the Republic of Macedonia as a social state based on humanism, social justice and solidarity. Article 35 states: “[T]he Republic provides for the social protection and social security of citizens in accordance with the principle of social justice”. Furthermore, the Republic guarantees the right of assistance to the powerless and citizens incapable for work and provides special assistance for persons with disabilities, and ensures conditions for their inclusion in social life (article 35 paragraphs 3). This article specifically categorizes the persons with disabilities (called: *the invalid persons*) as a specific group of citizens entitled to special protection. It implies that, given the specificity of the condition of persons with disabilities, special measures and affirmative actions are required in order to achieve formal equality, which is a constitutionally guaranteed category.

VI.1. Social protection

M: Do you receive the mobility allowance, those 7,000 Denars?

I: No, no, I have been waiting for a year now and nobody can convince me that there is no commission. There cannot be such a thing, that there is no commission. And I think that such a behavior is unfair and unjust.

Male, 46, person with physical disability

I. When I applied for the allowance for third-person care... they told me, yes, we provide the third-person care allowance for an assistant... and I told them, well, you find me someone who will work for 4,000 Denars and will come at 5 in the morning, because I have to be on the bus at 5.10, and will take me to work and will come to pick me up at 3 in the afternoon; you find me someone who will work for that amount. Thus, the amount is not serious... the state wants to help us, but wanting is not enough.

Male, 54, person with vision impairment

I. Now, I've reached this age and I haven't healed yet, so, what, am I expected to get healed now, is that so? So, each year I need to present papers, to collect them, whether I take pension or not, whether I have some property or not... Where would I get the property from? If I had property, I wish I had some property, I would sell it and I would have some money. I don't need you to give me 3,000 Denars, right?

Female, 55, person with physical disability

I. Without my parents, I can't move, so if they take me out, then, fine, I will go out; if they don't, then I won't. I am forced to stay at home, the psychological support is very important because there are a handful of persons who cooperate with us, and we get the entire support from our parents. It turns out that we are dependent on our parents for all our lives.

Male, 40, person with physical disability

I: Here, for example, my parents never complained that they needed to take me somewhere. But I sometimes feel that my mother is exhausted, and I have made an arrangement to go out somewhere that night. She won't say a thing, she'll take me there, but I feel bad, because I harass her, I harass her... it's not a problem for her to take me... but when I notice that she is tired, I'm sorry and I don't want to harass her, but that is the only way for me to get to the place where I want to go.

Female, 20, person with vision impairment

I: ...the apartment is mine, it's a gift from my dad. I could not apply for the state program for debt relief, I have debts at the bank. I couldn't apply because I live with my family, with my parents. They asked for the total income of the family. Me and my wife, my father and my dad are all a family... we are one family. So we exceeded the limit for about 10,000 Denars and we could not have had our debts relieved. I couldn't apply, I couldn't even think about applying.

Male, 46, person with physical disability

Social protection consists of services and benefits from tax-funded welfare system, such as: social prevention (which, according to the Law on Social Protection, includes educational counseling, developing forms of self-help, voluntary work etc.), institutional care, non-institutional protection and assistance, as well as the social security system based on contributions (pension and disability insurance, health insurance and unemployment). The Law on Social Protection⁷⁵ understands the person with disability as "[a] person with a mental or physical disability" (article 17). The law provides for a general anti-discrimination clause, but unfortunately disability is not covered as a separate basis of discrimination, which is a major drawback, given the large number of rights and benefits arising from this specific law.

The right to social assistance (article 45) can be exercised by a person capable of working and households that are not materially secured, that do not own property and hold property rights and that generate income lower than the amount of social assistance. The amount of social assistance for the right holder is 2,334 Denars (article 47). In exercising this right, the average monthly income of all members of the community is taken into account (article 46). The right to permanent financial assistance is foreseen for a person who is not capable of working and is not materially secured and who cannot provide for their existence on the basis of other regulations. The inability to work for persons with disabilities over the age of 26 (paragraph 2) is determined by finding, assessment and opinion of the expert commission. In addition to the inability to work, another important indicator that is considered is the material status, whereby the applicant or members of their family must not have a monthly income higher than 5,000 Denars per person (article 57). Allowance for care and assistance by another person, under article 72 paragraph 1, is provided for "[a] person over 26 years of age with moderate, severe and profound mental disabilities, persons with severe and excessive physical disability, totally blind person, as well as a persons with permanent changes in health status that require assistance and care from another person because the person cannot accommodate its basic vital needs, provided that this right cannot be exercised on the basis of other regulations".

According to article 84-a paragraph 1, the law provides allowances for blindness and mobility for "[a] totally blind person, a person with 100% physical disability who uses a wheelchair independently or a person with quadriplegia or a person with moderate, severe and profound mental disabilities who uses a wheelchair, over 26 years of age". The monthly amount of these allowances is 7,000 Denars, which is paid only if the annual net income of the person on all grounds is less than the total annual amount of average net monthly salaries for each month of the previous year (article 84-a paragraph 9). On the other hand, the allowance for deafness (article 84-b paragraph 1) is provided for "[a] totally deaf person over 26 years who has completely ceased listening perception and who cannot satisfy its vital needs without an interpreter in sign language".

⁷⁵ Law on Social Protection, Official Gazette of RM, no.79/09, 36/11, 51/11, 166/12, 15/13, 79/13, [Consolidated text: 148/13], 164/13, 187/13, 44/14, 116/14.

The amount of the deafness allowance is 4,000 Denars (article 84-b paragraph 5) and can only be ensured if the annual net income of the person on all grounds is less than the total annual amount of average net monthly salaries for each month of the previous year (article 84-b paragraph 4).

Funds from all forms of financial assistance in the field of social protection are not sufficient to cover the basic existential needs of people who use these types of protection. Because of this, users of financial benefits, despite being entitled to social protection rights, remain under social risk. In addition, the position of the user is further aggravated with the requirements for documentation and obtaining opinions from the same profile of specialists grouped into different committees responsible for different benefits, for which each user has to pay itself, in accordance with the law.⁷⁶

The disadvantaged position of persons with disabilities with regards to the age limitations, i.e. the different opportunities to use social allowances before and after the age of 26, was the subject of two initiatives in front of the Constitutional Court filed by the Network for Protection against Discrimination⁷⁷, which demanded from the Constitutional Court to rule whether mobility allowance should apply to all persons with 100% physical disabilities regardless whether under or over 26 years of age and regardless whether they use a wheelchair or do not use it at all. By decision of September 25, 2013, the Constitutional Court determined that it should not initiate proceedings for assessing the constitutionality of the contested provision on the age limitation. Concerning the second initiative on the wheelchair, the Court held that it is within the constitutional authority of the legislator to determine the level of social security of citizens.

The rights to cash assistance within the social protection are foreseen for the biological families and foster care-givers of the persons with disabilities. It is characteristic for this type of assistance that biological families are placed in a completely disadvantageous position⁷⁸. Namely, foster care-givers, in addition to allowances for care of children / persons with disabilities, also have the right to financial assistance in the amount of 8,000 Denars (article 71-a paragraph 3) and the right to a pension; biological families on the other hand cannot obtain any support from the state. That leads to slowing down the process of de-institutionalization, i.e. insufficient funds for living urge biological families to accommodate people with disabilities in institutions⁷⁹.

The Law on Protection of the Children⁸⁰ provided cash benefits for children with disabilities up to 26 years of age. Namely, rights to social protection include: 1) child allowance; 2) special allowance; 3) one-off financial assistance for a newborn; 4) participation; and 5) parental benefit for second, third and fourth child. Special child allowance is "[m]onthly allowance for a child with special needs and who has physical or mental disabilities up to the age 26 years" (article 24). The amount of the special allowance is 4,346 Denars per child (article 27). The age limit for children with disabilities put forward in this provision of the law restricts the right of persons with disabilities to use cash benefits provided within the Law on Social Protection, and which are foreseen for persons with disabilities over the age of 26 years.

Non-institutional protection is exercised either in or through the Centre for Social Work and includes the right to: first social service to users of social welfare, individual assistance, family assistance, home care and assistance to an individual and a family, daily and temporary accommodation and care to help an individual or a family, placement in foster care, placement in a small group home, and organized supported housing.

According to the Law on Local Government, municipalities have competencies in the field of social welfare and protection of children (kindergarten) and homes for the elderly and other responsibilities in the social sphere. This process was initiated only in the transfer of

⁷⁶ See: Елена Кочоска, Звонко Шаврески, *Истражувачки проект: Цена на чинење*, Polio Plus, 2011, page 35.

⁷⁷ Report of the Network for Protection from Discrimination, 2013, pages 37-39

http://www.soros.org.mk/CMS/Files/Documents/izvestaj-mreza_za_zastita_od_diskriminacija1.pdf Accessed on 01.11.2014.

⁷⁸ See: Хендикеп – слојувалка што недостасува, *Приказ на состојбата на лицата со хендикеп*, Polio Plus, 2012.

⁷⁹ See: Виолета Влаховиќ, Анита Војновска Наумовска, Елена Грозданова, Атула Касуми, Тања Кикерекова, Билјана Сајковска, Зорица Стаменковска, Владимир Стојановиќ, Јована Тренчевска, Ипек Усеинова, Нермина Факовиќ, Светлана Цветковска, *Водич за спроведување на националната стратегија за еднаквост и недискриминација врз етничка припадност, возраст, ментална и телеснаопреченост и врз полово основа*, British Council in Macedonia, 2013, page 50, http://www.britishcouncil.mk/sites/britishcouncil.mk/files/vodic_nsen_mk.pdf Accessed on: 21.10.2014.

⁸⁰ Law on Protection of the Children, Official Gazette of RM, no.23/13, 12/14, 44/14, 144/14.

responsibilities from central to local level in the field of protection of elderly and children. In other areas, the municipalities have been given the opportunity to offer social services, according to their plans and programs. But in practice, most municipalities lack both financial and administrative capacities to meet this challenge. At the same time, municipalities where day care centers are located have not yet taken jurisdiction over them due to lack of compulsory provisions in the law⁸¹.

Additional laws that also provide certain rights of the social protection and safety sphere and refer to persons with disabilities are the Law on Civilian Invalids of the War and the Law on Special Rights of Members of the Security Forces of the Republic of Macedonia and the Members of their Families. These laws provide various benefits for persons with disabilities, which are not based on the disability, but on the manner of obtaining the disability⁸².

Pension and invalidity insurance needs also to be mentioned in addition to the provisions stated above. Within the insurance relevant regulation, invalidity may occur as a consequence of illness, injury out of the working process, injury at work, or professional illness. The rights to pension on the grounds of invalidity are based on these definitions for occurrence of state of invalidity.

Text number 12, Kanal 77, 17.12.2014

SERIES OF ACTIVITIES FOR INCLUSION OF PERSONS WITH SPECIAL NEEDS

“Both teachers and parents of children with special needs use their own money to provide materials and tools for education, because the Day-care center for children with special needs functions within one of the kindergartens in Shtip, which often faces lack of funds.”

VI.2. Housing

The most important legislation documents in the field of housing are: the Law on Housing⁸³, the Law on Construction⁸⁴, the Law on Environmental and Urbanistic Planning⁸⁵, the Law on Managing Residential and Commercial Facilities⁸⁶, and the Law on Local Self-Government⁸⁷. The aforementioned provisions are operationalized through special programs for vulnerable groups (among them persons with disabilities) prepared by the Ministry of Transport and Communications. The Project for Housing of Vulnerable Groups - F / P 1674 (2009) foresaw the construction and distribution of a total of 1,754 apartments in 32 buildings in 26 cities all over the country.

The Law on Social Protection regulates the right to financial assistance for social housing (article 83). The manner of exercising this right by beneficiaries of financial assistance is determined within an act of the Council of the Municipality, the City of Skopje, and of the municipalities of the City of Skopje (article 83 paragraph 3), and for persons who until the age of 18 years had the status of a child without parents and parental care, and for the maximum period until 26 years of age, within a general act determined by the minister. Under the current system, there are no additional measures that will enable more efficient and effective process of housing for persons with disabilities. At the same time, this issue is connected to the standards for provision of unhindered access and their application in construction, in accordance with the needs of citizens with disabilities, as well as to the issue of provision of continuous training on the standards of accessibility, availability, and universal design.

⁸¹ See: *Механизми за обезбедување на социјални услуги во Македонија*, Ministry of Labor and Social Policy and GIZ, 2011, page 24,

http://www.nacionalnakomisija.gov.mk/sites/default/files/prikachyvanja/studija_mehanizmi_za_obebeduvanje_na_socijalni_uslugi_vo_makedonija.pdf Accessed on: 20.11.2014

⁸² See: *Хендикеп – слојувалка што недостасува, Приказ на состојбата на лицата со хендикеп*, Polio Plus, 2012.

⁸³ Law on Housing, Official Gazette of RM, no.99/09, 57/10, 36/11, 54/11, 13/12, 55/13, 163/13.

⁸⁴ Law on Construction, Official Gazette of RM, no.130/09, 124/10, 18/11, 36/11, 54/11, 13/12, 144/12, 25/13, 79/13, 137/13, 163/13.

⁸⁵ Law on Environmental and Urbanistic Planning, Official Gazette of RM, no.51/05, 137/07, 151/07, 91/09, 124/10, 18/11, 53/11, 144/12, 55/13, 163/13.

⁸⁶ Law on Managing Residential and Commercial Facilities, Official Gazette of RM, no.2/94.

⁸⁷ Law on Local Self-Government, Official Gazette of RM, no.5/02.

Furthermore, housing policies need to be defined in more details at national level in order to not provide for housing only, but also for adequate housing conditions as a precondition for social inclusion.

Text number 13, Dnevnik, 20.11.2014

FORCIABLY DISPLACED DUE TO THE LAW ON HOUSING

“Due to a power cut in our flat’s entrance and corridor, the elevators do not operate and a person with disability who lives on the eight floor cannot leave the building. To make things worse, when the person with disability reacted, the flat inhabitants responded that it would better for her to temporarily move at some other family members until the rest of the residents pay their bills.”

VI.2.1. Deinstitutionalization

Under article 32, the right to placement in a foster family is provided to: [a] person with moderate and severe mental disabilities, person with profound mental disabilities and person with permanent physical disability who needs permanent fostering and care, an adult with physical disabilities and a person with mental disabilities who are not capable to take care of themselves and for whom, due to their housing and family position, there are no other alternatives for provision of care. The selection of the foster family and the type of accommodation is conducted by the Center for Social Work (article 33). The foster family receives monthly compensation for the costs of the accommodated person with disability in the amount of 6,000 Denars and compensation for care in the amount of 2,500 Denars per person with disabilities. In addition, pension and disability insurance and health care are foreseen for caregivers (article 37).

The right to residing in a small group home, under article 39, is entitled to: “[c]hild with difficulties in the mental or physical development, person with mental or physical disability and who does not have adequate living conditions in his family, does not have family or for any other reason requires accommodation in a small group home”. Right to organized life with support, in accordance with article 40, is foreseen for persons with mental or physical disability, who are entitled to “independent and organized housing in special housing units with permanent or periodical support by experts and other persons in accommodating their vital needs, as well as their social, working, cultural, recreational and other needs”. The level of support is determined according to the needs, the type and degree of disability of the user (article 40 paragraph 2).

Besides the non-institutional care, the Law also regulates the institutional protection, which covers, among other, the right to accommodation in an institution for social protection (article 43). This right can be exercised by a person who does not have adequate living conditions in their family or for other reasons needs accommodation in a social care institution, when other forms of social protection are not applicable.

According to available data as of January 1, 2011, 22,684 persons with disabilities received social benefits and / or social assistance, of whom 6,568 were children (3,296 with intellectual and 3,272 with physical disability) and 16,116 adults (over the age of 18)⁸⁸. Increasingly more persons with moderate and severe intellectual disabilities are taken care of in day-care centers that are located in different municipalities across the country. Day-care centers provide daily accommodation, care, nutrition, psychosocial rehabilitation and reeducation, counseling for people with moderate and severe disabilities (mostly children aged between five and 18 years). There are 23 day-care centers and they are mainly located in urban areas. The Ministry also participates in the financing of four day-care centers for adults with moderate and severe mental disabilities, managed by the NGO Poraka.

In practice, the process of deinstitutionalization is facing a number of problems. One of the recommendations of the Ombudsman is to continue the de-institutionalization process by introducing a mandatory preparatory period for the user and respect for the will and the opinion of

⁸⁸ See: *Социјална заштита на деца, млади и возрасни лица 2013-2014*, State Statistical Office, Publication number 2.4.13.18 763, 2013.

the user. This recommendation comes after the insight that "a user, who with the process of deinstitutionalization was transferred to a day-care center out of the residential institution, could not adjust to the new conditions. Due to lack of sufficient adaptation period, the person does not accept to stay in the day-care center, and was returned to the residential institution being visibly upset"⁸⁹.

Simultaneously, inadequate housing conditions for persons with disabilities in residential institutions are assessed as quite worrying. Namely, during an inspection by the Ombudsman over the Special Institution Banja Bansko, a discovery was made of "[a] deaf-mute child was tied with a rope to the bed, due to its disability, and at the same time, the special institution accommodated a child under social risk, a child with mental disability, as well as a child with psychiatric disorders and without physical disability"⁹⁰. Similar were the findings at the Special Institution Demir Kapija⁹¹.

For the institutional care, the state allocates large funds, which in practice do not provide for dignified life of persons with disabilities⁹².

Studies show that persons with disabilities are the most discriminated against in the provision of adequate housing and inclusion in the community, due to the existence of numerous prejudices about these people. In fact, having persons with intellectual disability as neighbors would distress 27% of the surveyed population, while people with physical disabilities are more acceptable as neighbors compared to persons with intellectual disabilities⁹³. At the local level, there is neither adequate infrastructure, nor acceptable mechanism for allocation of funds for social protection that will not be only reduced to material protection, but would also provide for other aspects of the social inclusion⁹⁴. In addition, although residential institutions⁹⁵ are a necessary form of accommodation, the practice demands new forms of services⁹⁶, as well as overcoming the old-fashioned system of assessment of the "specific" needs of persons with disabilities.

Text number 14, Dnevnik, 20.11.2014

PERSONS WITH DISABILITIES AND THEIR FAMILIES MARGINALIZED

"Families that will take care of a person with disability receive money from the states and are entitled to pension, but biological families do not receive anything, parents of children with disabilities complain."

VI.3. Adequate living standard

In addition to social protection measures, the state undertakes additional measures aimed at preventing and overcoming the basic social risks. Social risks include: health risks (illness, injury and invalidity); risks related to old age and aging; risks of single-parent families; risks of unemployment, loss of income for existence based on employment and the like; risks of poverty; and risk of other types of social exclusion.

⁸⁹ Annual Report of the Ombudsman 2013, page 73.

⁹⁰ Annual Report of the Ombudsman 2013, pages 35-36.

⁹¹ Annual Report of the Ombudsman 2013, page 59.

⁹² See: Звонко Шаврески, Елена Кочоска, *Бела Книга-Институционализацијата - наша реалност*, 2009, page 30.

⁹³ See: Виолета Влаховиќ, Анита Војновска Наумовска, Елена Грозданова, Атула Касуми, Тања Кикерекова, Билјана Сајковска, Зорица Стаменковска, Владимир Стојановиќ, Јована Тренчевска, Ипек Усеинова, Нермина Факовиќ, Светлана Цветковска, *Водич за спроведување на националната стратегија за еднаквост и недискриминација врз етничка припадност, возраст, ментална и телесна попреченост и врз полово основа*, British Council in Macedonia, 2013, page 25, <http://www.britishcouncil.mk/sites/britishcouncil.mk/files/vodic_nsen_mk.pdf> Accessed on: 21.10.2014.

⁹⁴ See: *Децентрализација на социјалната заштита во Република Македонија – фактичка состојба, предизвици и можности на локално ниво*, MLSP, 2012, page 39.

⁹⁵ See: *Извештај од истражување за состојбите во однос на имплементацијата на Конвенцијата на ОН за правата на лицата со попреченост*, Poraka, 2012, page 20.

⁹⁶ See: *Студија за сиромаштијата и социјалната исклученост во Република Македонија: Локални социјални проблеми и потреби*, MLSP, 2011, page 213 and page 221.

Two important documents should be mentioned here: the National Strategy for Reduction of Poverty and Social Inclusion 2010-2020 and the National Program for Social Protection Development 2010-2020, which incorporate measures to improve the situation of persons with disabilities.

The program for conditional allowance for secondary education, adopted by the Government, aims to "improve access and quality of education for secondary education students from households that are beneficiaries of the right to social financial assistance".

Another significant reform in the educational process is the dispersion of the studies of higher education at the local level, as well as legal provisions for student dormitories⁹⁷, where 40% of the total number of available places in the dormitories are intended for students who come from families with total family monthly income that does not exceed the minimum wage foreseen in the Republic of Macedonia, *inter alia* for students and children with special needs. Despite the solid approach taken by the legislator in introducing affirmative action to secure a place in the dormitories, in practice, when obtaining the beds in the dormitories⁹⁸, 53.79% of students said that the most common form of discrimination was on the grounds of political background, while 21.4% said that they faced discrimination on the basis of physical and mental disabilities. Further 14.7% of the students claimed that discrimination existed on the basis of the health status.

The problems of poverty and social exclusion represent a serious obstacle, especially bearing in mind that they are in causal connection with disability. Efforts to effectively overcome them must be based on comprehensive research and analysis. Unfortunately, studies conducted on poverty and social exclusion often do not cover persons with disabilities.

Recommendations:

- Amendments to the Law on Social Protection and relevant by-laws in the direction of introducing disability among the anti-discrimination clause, as well as a complete change of the approach towards persons with disabilities from the medical, rehabilitation, charity and defectological approach to an approach based on human rights. In addition, the law needs to change the approach distinguish between services and ordinary cash benefits.
- Adoption of a *lex specialis* for the rights and dignity of persons with disabilities because of systemic coordination of the issue of disability at micro and macro levels.
- Establishing and carrying out a Policy for comprehensive system of support services with concrete specification of control and coordination instruments. New services need to be additionally developed, as well as profiles that will meet the needs of citizens with disabilities.
- Introducing a new approach in categorizing persons with disabilities, based on the human rights approach and such that will ensure active participation of persons with disabilities in commissions for categorization of persons with disabilities.
- Development and promotion of the system for prevention of social exclusion through: expanding preschool education for greater access, increased accessibility of primary education for children with disabilities and reducing the number of students with disabilities who drop out of the educational process by strengthening extracurricular activities of schools, cooperation with local communities and interactive methods that support individual learning for children with disabilities and their personal advancement.

⁹⁷ Call for accommodation in state student dormitories and other appropriate accommodation objects in the Republic of Macedonia for the 2014/2015 academic year, <<http://www.hiljadnikov.com.mk/KONKURS%202014-2015.pdf>> Accessed on 25.11.2014.

⁹⁸ See: Наташа Бошкова, Жарко Трајаноски, *Анализа на документи и на политики на универзитетот „Св. Кирил и Методиј“ во Скопје за степенот на вклученост на принципот на еднакви можности и на недискриминација*, Coalition for sexual and health rights of marginalized communities, 2013, page 15, <<http://issuu.com/youthportalweb/docs/70e13562b620d7/1>> Accessed on 01.11.2014.

- Increasing the quality of services and create conditions to reduce the dependence on institutional care by developing alternative forms of protection.
- Amending the Law on Housing to emphasize the need to provide a home for persons with disabilities at national and local level, and offer new measures and activities to ensure accessibility and availability of existing homes.
- Strengthening and providing greater support to biological families at the expense of institutional and non-institutional forms of care.
- Aligning compensation on the grounds of disability for all persons with disabilities, regardless of the reason for the occurrence of disability, such as redefining mobility allowance and its separation from the compensation on the grounds of disability (supplement for blindness and deafness).

VII. NATIONAL IMPLEMENTATION AND MONITORING

M: Do you expect any changes after the Convention or...?

I: As far as I can see, nothing has changed, they have only signed just for us blinds to not shout, to not rebel...

Female, 67, person with vision impairment

Within the country there are two coordinating bodies relating to the implementation of policies for persons with disabilities: the National Coordination Body for Equal Rights of Persons with Disabilities, and the National Coordination Body for Implementation of the UN Convention on the Rights of Persons with Disabilities in Republic Macedonia.

Namely, the Government established a National Coordinating Body for Equal Rights of People with Invalidity in Macedonia in 1996, which includes representatives of the National Council of Invalid Organizations, ministries and institutions responsible for this issue⁹⁹.

The role of this body is in accordance with Rule 17 of the UN Standard Rules¹⁰⁰, i.e. to serve as a contact person for matters pertaining to persons with disabilities. It is permanent and established with an administrative decision and includes relevant institutions, as well as organizations of persons with disabilities that participate in its work. The body is responsible for coordinating the efforts of the state to promote the rights of persons with disabilities. The National coordinating body took an active part in the drafting of the revised National Strategy for Equal Rights of Persons with Disabilities 2010-2018, described above. Constructive comments, directed to the composition and work of the Commission, propose a revision and redefinition of its mandate, powers and composition, increasing human resources and provision of appropriate training for the entire staff of the provisions of the CRPD and the Optional Protocol thereto, as well as provision of additional funds. In addition, this body includes only traditional organizations of persons with disabilities. Article 33 paragraph 3 refers to the entire sector, that is, it includes both the traditional organizations represented in the National Council of Invalid Organizations and the new organizations of persons with disabilities.

Persons with disabilities are not a homogeneous group like; similarly, their representative organizations are not homogeneous either and, therefore, the state should create opportunities for inclusion of various stakeholders with different opinions on certain issues in the interests of persons with disabilities, such as: associations of parents of children with disabilities and self-advocacy organizations for persons with disabilities, etc. all in the spirit of the maxim "Nothing about us - without us."

In addition to this body, the Government of the Republic of Macedonia approved the creation of the National Coordinating Body for implementation of the UN Convention on the Rights of Persons with Disabilities in the country in November 2012¹⁰¹. It is planned to serve as a coordination mechanism in accordance with article 33 paragraph 1 of the CRPD. The Coordinating Body incorporates representatives of government and legislative authorities, such as: the Inter-party parliamentary lobby group for the rights of persons with disabilities, the Committee on Equal

⁹⁹ For additional information on the body and its members appointed by the Government in 2010, see: Решение за именување на претседател, секретар и членови на Националното координативно тело за еднакви права на лицата со инвалидност на Република Македонија, Official Gazette of RM, no.28/10, <<http://www.slvesnik.com.mk>> Accessed on: 5.11.2014.

¹⁰⁰ United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities, UN General Assembly Resolution 48/96, from 20 December 1993, <<http://www.un.org/esa/socdev/enable/dissre00.htm>> Accessed on: 5.11.2014.

¹⁰¹ Одлука за формирање на Националното координативно тело за имплементација на ООН Конвенцијата за правата на лицата со попреченост во Република Македонија, Official Gazette of RM, no.114/12, <<http://www.slvesnik.com.mk>> Accessed on: 5.11.2014.

Opportunities for Women and Men, various ministries (especially the Ministry of Labor and Social Policy, Health, Local Government, Education, Finance, Transport, Justice, Economy, and Foreign Affairs), independent institutions such as the Ombudsman and the Commission for Protection against Discrimination, the regulatory body - the Broadcasting Council, the Judicial Council, and civic organizations of persons with disabilities (National Council of Invalid Organizations and Polio Plus). It has permanent structure and adequate powers allowing it to coordinate all government institutions and bodies, at both national and local level, responsible for the implementation of the Convention on the Rights of Persons with Disabilities. The Minister of Labor and Social Policy chairs the Coordinating body. In addition to monitoring the implementation of the Convention, this body has the opportunity to simultaneously draft proposals and opinions on laws and regulations in the field of protection of persons with disabilities. It is worrying though that this body only formally exists, rarely convenes and does not take specific actions.

Another criticism for the state is that it has still not appointed an independent mechanism to promote, protect and monitor the implementation of the Convention, which is noted as a severe shortcoming. The appointment of *institutions* that have capacity to implement and to monitor the implementation of the Convention is a *condition sine qua non* for the process of ratification of the CRPD. In fact, under article 33, the Republic of Macedonia is obliged to establishment or appoint a national monitoring mechanism which, together with the Committee on the Rights of Persons with Disabilities (article 34-39 of the Convention), will complete the overall system of monitoring over the achievements by the Republic of Macedonia of the obligations under the Convention. This act would not only represent acceptance of primary responsibility by the state with regards to the implementation of the provisions of the CRPD, but such national monitoring system would encourage the accountability and the process of long term capacity strengthening of the state in order to fully realize the commitments and obligations undertaken with the CRPD. This would contribute to overcoming what is called the "implementing gap", i.e. the gap between international human rights standards that exist on paper and which the state assumed the obligation to implement, on the one hand, and the effects of those rights on the lives of persons with disabilities, on the other. It is recommended that this needs to be overcome soon.

Recommendations:

- Strengthening the coordination between the two existing bodies relating to the implementation of policies for people with disabilities, i.e. the National Coordinating Body for Equal Rights of Persons with Disabilities, and the National Coordination Body for Implementation of the UN Convention on the Rights of Persons with Disabilities.
- Completion of the entire system of monitoring over the fulfillment by the Republic of Macedonia of the obligations under the Convention through the appointment of an independent mechanism for monitoring over the implementation of the CRPD provisions.
- Active involvement of organizations of persons with disabilities in the national mechanism for coordination and monitoring of the implementation of the Convention.

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