



SPECIAL REPORT

ON

THE SITUATION OF HUMAN RIGHTS

IN THE INSTITUTIONS FOR ACCOMMODATION

OF MENTALLY DISABLED PERSONS

Prepared by

The Institution of Human Rights Ombudsmen
of
Bosnia and Herzegovina

Cc.

1. All competent BiH, Entity and cantonal ministries and the Government of District Brčko,
2. Financial Inspection of FBiH and Federation Administration for Inspection Businesses,
3. Cantonal Prosecutor's Office of Canton Sarajevo,
4. Relevant Social Work Centers,
5. All visited institutions for accommodation of mentally disabled persons,
6. Agency for Sex Equality
7. Embassy of UK and Northern Ireland, Royal Embassy of Denmark, German Embassy, Embassy of USA, Embassy of Swiss Confederation, Royal Embassy of Sweden, Royal Embassy of Norway.
8. The Office of Representative of the Council of Ministers before European Court for Human Rights (Ms. Monika Mijić, Ms. Zikreta Ibrahimović).

Banjaluka, 10 September 2009

I – INTRODUCTION

1.1. Basis for preparation of Special Report

Recalling basic human rights principles that all human beings are free and equal in dignity and human rights, the Institution of Human Rights Ombudsmen of Bosnia and Herzegovina (BiH) assessed that it was necessary to evaluate situation in Social Protection Institutions where mentally disabled persons from the territory of BiH are accommodated. Due to existing situation happened to exist in these intuitions, significance and urgency of the issue and expressed necessity for a broader examination of existing problems, including urgent intervention by competent organs, in accordance with Article 34, paragraph 2, of the Law on Human Rights Ombudsmen of Bosnia and Herzegovina¹, BiH Ombudsmen decided to prepare present Special Report.

On the occasion of deciding to prepare special report, BiH Ombudsmen had in mind the fact that BiH accepted “Standard Rules for Equalization of Opportunities for Disabled Persons” (Standard Rules). This basic international document sets up rules that are to be complied with by the states in order to ensure living conditions and exercise of rights of disabled persons.

Accordingly, pursuant to the provisions of Standard Rules, governmental organs of all levels are obligated to ensure that all citizens exercise enjoyment and protection of all human rights and fundamental freedoms guaranteed by international instruments. Mentally disabled persons are entitled to the right to protection against any form of ill and degrading treatments. Presence of physical and intellectual failures does not justify any form of discrimination. Freedom and rights of mentally disabled persons may be limited only by law, if it is necessary for the sake of health and security of respective person or other persons. BiH Ombudsmen staff therefore visited all mental health institutions where mentally disabled persons are mainly accommodated for the rest of their life, frequently forgotten by their families.

Bearing in mind that monitoring of the rights of mentally disabled persons, including monitoring of how these persons are treated in the institutions to which they are most frequently accommodated by decisions of competent organs, existing situation in mental health institutions should be seen as a essential indicator for development of modern and democratic society based on the rule of law and human rights protection. Therefore, BiH Ombudsmen, within the structures of the Institution, created, among other departments, Department for Protection of the Rights of Disabled Persons.

With a view to full assessment of the situation, BiH Ombudsmen formed a team that visited the following mental health institutions:

1. Institution for protection of the children and the youth „Pazarić“;
2. Mental Health Institution „Bakovići“;
3. Mental Health Institution in Fojnica: „Drin“;
4. Institution for treatment, rehabilitation and social protection of chronic mental patients „Jakeš“, Modriča;
5. Institution for protection of female children and the youth „Višegrad“;
6. Home of children and the youth retarded in developing „Prijeđor“;
7. Center for acceptance of the elderly and infirm and homeless persons “Duje”, Municipality Doboj Istok.

Regarding the specific status of this institution and due to situation happened to exist in it, Institution for treatment, rehabilitation and social protection of chronic mental patients „Jakeš“, Modriča shall be subject of consideration of present special report.

Due to compressive analyses of the situation of human rights of mentally disabled persons, this Report contains a number of segments divided to:

- legal status of the institutions;
- managing and funding of the institutions;
- accommodation capacities and availability of the institutions;
- rights of the persons accommodated in institution (users);

¹ “Official Gazette of BiH”, no: 32/00, 19/02, 35/04 and 32/06

- Social protection of the users (standards of accommodation, food, hygiene, work therapy, educational work, contacts with family, free time, outings and other activities);
- Health protection, medicines, specialist examination, physical, speak and multi-sensual therapy
- education;
- price of accommodation and cadre structures;
- managing of the intuitions, trade unions of the employees,
- transparence of the work and expenses ,
- exercise of the rights of the employees,
- human relations.

II – INTERNATIONAL STANDARDS AND NATIONAL LEGISLATION

Rights of mentally disabled persons and their accommodation in the institutions are determined by a number of international documents on human rights and by national legislation

Considering the rights of this category of citizens of BiH, it is important to have in mind relations between national legislation and international human rights standards. So, the Constitution of BiH declaratively contains the highest level of recognition for human rights, which is stipulated by Article II. „Human Rights and Fundamental Liberties“. By this Article it is stressed that BiH Constitution is a far-reaching document stipulating „the highest level of enjoyment of internationally recognized human rights and fundamental liberties“.² Further, the Constitution stipulates that European Convention on Human Rights and Fundamental Freedoms (ECHR) and its Protocols are directly applied in BiH and that „they shall have priority above all other laws“³, and basic human rights are listed in a separate paragraph.⁴ Exactly this fact was one of the bases for consideration of the position of mentally disabled persons in BiH.

2.1. International standards

International documents protecting human rights are based that each human being has inherited, equal, inalienable and universal rights springing from dignity of all human beings.⁵ A state may establish mechanisms regulating exercise of these rights and freedoms, including ensuring of equality of all persons.

² The Constitution of BiH (December 0f 1995, adopted within Dayton Peace Agreement), Article II: Human Rights and Fundamental Liberties (paragraph 1)

³ Id, Article II (2)

⁴ Id, Article II (3)

⁵ Preamble of UN Univerzal Declaration on Human Rights adopted on 10,12.1948 stresses: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...”, while Article 2 stipulates: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Apart from rights contained in Universal Declaration, UN adopted two legally binding documents: International Covenant on Civil and political Rights and International Covenant on Economic, Social and Cultural Rights. These two Covenants define rights and establish implementation mechanisms. So, speaking about social rights, it is necessary to draw attention at basic principle common for all UN human rights standards and that is that enjoyment of social rights in a state must be ensured without any discrimination.

The right to social protection is determined by the following UN documents:

1. International Covenant on Civil and political Rights (1966) (ICCPR)
2. International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)
3. Convention on the Rights of a Child (1989) (CRC)
4. Convention on Prohibition of all Forms of Gender Discrimination (1979) (CEDAW)
5. Convention on Prohibition of all Forms of Racial Discrimination (1966) (CERD)
6. Convention on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatments or Punishments (1984) (CAT)

All listed documents are ratified by BiH and have constitutional applicability, since they are integral part of BiH Constitution.⁶

Lobbyist for rights in the area of social protection could call on mentioned instruments, since these documents are: (1) legally binding (2) may request court protection of these rights. Where several international documents define or protect the same individual rights, an individual is entitled to protection according to: (1) all existing (adopted) instruments and (2) the most effective protective provisions, i.e. in accordance with document which ensures the highest level of protection.

A list of economic and social rights, according to international standards, is quite extensive, yet with the purpose to make state to understand all dimensions of its obligation to ensure rights of mentally disabled persons we shall quote some of the social rights enjoyment of which was subject of consideration by BiH Ombudsmen on the occasion of visits to mental health institutions:

- Everyone is entitled to economic, social and cultural rights, enabling dignity and freedom, and individual development (UNDHR 22; CEDAW 11:1 e; CERD 5e; CRC 27);
- Everyone is entitled to right to adequate standard of living, including food, cloths, apartment and health protection (ICESCR 11; CEDAW 14h; CERD 5e, III, CRC 27:1)
- Parents have primary responsibility to ensure that their child has adequate standard of living, and state is obligated to assist, since it is responsible for application of this right (CRC 27:2,3)
- Everyone is entitled to right to social security (UNDHR 22; ICESCR 9; CEDAW 11:1 e, 14C, 13a; CERD 5e, iv; CRC 26)
- Everyone is entitled to right to social services and security in the case of disease, age or other circumstances, including a child, too. (UNDHR 25; CEDAW 11:2 c; CERD 5e, iv; CRC 18:2,3)

2.1.1. UN Univerzal Declaration on Human Rights

Article 1.

- *All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*

Article 2.

- *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.*

2.1.2. European Convention on Human Rights and Fundamental Freedoms

Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

⁶ Annex I to the Constitution of BiH – Additional agreements on human rights that shall be applied in BiH

Article 6, paragraphe 1.

- 1 *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

Article 8

- 1 *Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2 *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

Article 13

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms

2.1.3.

Article 1

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

2.1.5. Convention of the Rights of Persons with Disabilities

Article 1

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Article 5

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. *Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.*

2.1.6. UN Convention on the Rights of a Child

Article 3

1. *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

2. *States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*

3. *States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

Article 23

1. *States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.*

2. *States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.*

3. *Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development*

4. *States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.*

2.2. Relevant BiH provisions

Regarding status of disabled persons in BiH, there exist an issue to what extent competent BiH organs through adopted legislation ensured enjoyment of the rights guaranteed by international standards and effective social protection of this category of the citizens, since competences are divided between different level of the authorities.

Social protection which meets social and cultural needs of the people is consisted of social benefits and services. Services are consisted of full supply in social protection institutions provided to users to meet their existential needs. All citizens are potential users of social protection regardless of their economic, family and social status, due to which consideration of enjoyment of the right to social protection by mentally disabled persons, as a small and particularly vulnerable category, and it can provide realistic indicator of the situation in this area. Social protection is organized as specialized social service in function of the society, however, all other services also deals with social protection (elements of social protection in: education, housing, health protection, social insurance, etc.). Funding is the key issue, which earlier came from contributions for social protection but in BiH today it is determined differently than before.

Accordingly, key segment for assessment of enjoyment of the rights by mentally disabled persons can be found in the level of established social protection in BiH.

2.2.1. The Constitution of BiH

Article II.

„3. Enumeration of rights

All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:

- c. The right not to be held in slavery or servitude or to perform forced or compulsory labor.*

4. Non-Discrimination.

The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in [Annex I](#) to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status“

2.2.2. Standard Rules on Equalization of Opportunities for Disabled Persons⁷

Rule 2. Medical care

1. *Competent authorities of BiH, Entities and District Brčko should ensure the provision of effective medical care to persons with disabilities.*
2. *Competent authorities of BiH, Entities and District Brčko should work towards the provision of programmes run by multidisciplinary teams of professionals for early detection, assessment and treatment of impairment. This could prevent, reduce or eliminate disabling effects. Such programmes should ensure the full participation of persons with disabilities and their families at the individual level, and of organizations of persons with disabilities at the planning and evaluation level.*
2. *Local community workers should be trained to participate in areas such as early detection of impairments, the provision of primary assistance and referral to appropriate services.*

Rule 15. Legislation

Competent authorities of BiH, Entities and District Brčko have a responsibility to create the legal bases for measures to achieve the objectives of full participation and equality for persons with disabilities.

2. *BiH legislation, embodying the rights and obligations of citizens, should include the rights and obligations of persons with disabilities. States are under an obligation to enable persons with disabilities to exercise their rights, including their human, civil and political rights, on an equal basis with other citizens. States must ensure that organizations of persons with disabilities are involved in the development of national legislation concerning the rights of persons with disabilities, as well as in the ongoing evaluation of that legislation.*

2.2.3. The Law on Prohibition of Discrimination⁸

Article 6

1. *„This law shall be subject of application by all public bodies at the State-level, Entities and District Brčko of BiH, general institutions and bodies and legal entities with public responsibilities, including all natural and legal persons in all and particularly in the following spheres of life:
c) social protection, including social insurance, social benefits, social aid (housing subventions, youth subventions, etc.) and manner of actions towards users of social protection;“*

2.3. Competence to act

⁷ “Official Gazette of BiH”, no: 41/03

Competence to act upon the issues of rights of mentally disabled persons is defined in several pieces of legislation, which is, from the aspect of obligatory compliance with Ombudsmen recommendation, of importance for present Report

2.3.1. The Law on Ministries and Other Bodies of Administration of BiH⁹

Article 15

The Ministry of Civil Affairs shall be responsible for:

- **Citizenship, citizen registration and records, personal data protection, residency registration, identity documents, travel documents and vehicle registration process,**
- **mine action.**

This Ministry shall be responsible for carrying out tasks and discharging duties which are within the competence of BiH and relate to defining basic principles, co-ordinating activities and harmonizing plans of the Entity authorities and defining a strategy at the international level in the fields of:

- *health and social care;*
- *pensions;*
- *science and education;*
- *labour and employment;*
- *culture and sport;*
- *geodetic, geological and meteorological affairs.*

2.3.2 The Law on Federation Ministries and Other Bodies of the Federation Administration¹⁰

Article 10

„Federation Ministry of Social Policy, Refugees and Displaced Persons, performs administrative, professional and other professional tasks determined by law applied on Federation competences in the area: social policy, displaced persons, work, pension and disability insurance.“

2.3.3. The Law on the Ministries of Republika Srpska¹¹

Article 11

⁸ “Official Gazette of BiH”, no: 59/09

⁹ “Official Gazette of BiH”, no: 5/03, 42/03, 26/04, 42/04, 45/06 and 88/07

¹⁰ “Official Gazette of FBiH”, no: 8/95, 3/96, 9/96

¹¹ „Official Gazette of RS“, no: 70/02, 33/04, 118/05, 33/06

"The Ministry of Health and Social Protection carries out administrative activities and other professional tasks related to: protection and improvement of citizens' health and monitoring of health conditions and health needs of citizens; health protection system; organization of health protection under all conditions; professional training and specialization of health workers; health inspection; organization of supervision over the expert work of health institutions; health insurance and provision of health insurance from public revenues; production and trade of medicines, toxic and narcotics, medical equipment and medical appliances; health propriety of water, food and products of general use; inspection supervision in sanitary field; social protection system; social care over families and children; activities of public organizations and citizens' associations in the socio-humanitarian sphere; provides information through the media and other public means and performs other tasks in accordance with law and other regulations of the RS and BiH."

2.4. Legal framework regulating accommodation of mentally disabled persons in the entities

2.4.1. Legislation of Republika Srpska

Exercise of the rights of mentally disabled persons and their accommodation in the institutions of Republika Srpska (RS) is regulated by the following pieces of legislation:

- The Law on Social Protection¹²
- The Law on Health Protection¹³
- The Law on Protection of Persons with Disabilities¹⁴
- The Law on the System of Public Services¹⁵

2.4.2. Legislation of the Federation of BiH

Exercise of the rights of mentally disabled persons and their accommodation in the institutions of the Federation of BiH (FBiH) is regulated by the following pieces of legislation:

¹² „Official Gazette of RS“, no: 5/93, 15/96, 110/03 33/08

¹³ „Official Gazette of Republika Srpska“, no: 18/99, 58/01, 62/02

¹⁴ „Official Gazette of Republika Srpska“, no : 46/00

¹⁵ „Official Gazette of Republika Srpska“, no 68/07

- The Law on the Taking Over of Rights and Obligations by the Founders of Social Protection Institution in the Federation of BiH¹⁶
- The Law on Basis of Social Protection, Protection of Civil Victims of the War and Protection of Families with Children¹⁷
- The Law on Health Protection¹⁸
- The Law on Health Insurance¹⁹
- The Law on Protection of the Persons with Mental Disorders²⁰

2.5. By-Laws

2.5.1. Republika Srpska

- Rules on supervision of professional work and provision of professional assistance in the social protection instructions of Republika Srpska („Official Gazette of Republike Srpske“, no: 67/02)
- Rules on elaborated conditions related to space, equipment, necessary professional and other workers needed for founding of social protection institution. („Official Gazette of Republike Srpske“, no: 26/03)
- Rules on classification of persons with difficulties in physical and Psychical Developing („Official Gazette of Republika Srpska“, no: 115/03)
- Rules on education, work and funding of the Commission for Protection of Persons with Mental Disorders („Official Gazette of Republika Srpska“, no: 15/06)
- Methodology guidelines for supervision, professional work and provision of professional assistance to social protection institutions of Republike Srpske („Official Gazette of Republika Srpska“, no: 78/02)
- Guidelines for first instance procedure of classification of persons with difficulties in physical and Psychical Developing. („Official Gazette of Republika Srpska“, no: 15/07).

¹⁶ „Official Gazette of FBiH“, no: 31/08

¹⁷ „Official Gazette of the Federation of BiH“, no: 36/99, 54/04, 39/06 i 14/09

¹⁸ „Official Gazette of the Federation of BiH“, no: 29/97

¹⁹ „Official Gazette of the Federation of BiH“, no: 30/97

²⁰ „Official Gazette of the Federation of BiH“, no: 37/01 i 40/02

III. SITUATION IN MENTAL HEALTH INSTITUTIONS IN BOSNIA AND HERZEGOVINA

3.1. Introduction

Representatives of the Institution of Human Rights Ombudsman of BiH conducted investigation and analyze of exercise of human rights in mental health institutions in BiH. This research resulted in present Special Report which is primarily based on visits to the institutions²¹. It is based on the following segments:

- Interviews with management and staff of the institutions;
- Visits to all rooms where persons accommodated in the institutions stay or work;
- Interviews with persons accommodated in social protection institutions, according to their possibilities for communication;

Following the visits to the institutions BiH Ombudsmen Institution's Team held the consultative meetings with representatives of competent ministries and certain social work centers. The meetings were held with the representatives of the following ministries and social work centers:

1. The Ministry of Health and Social Policy of F BiH, Ivica Marinović, Minister's advisor for social policy;
2. Public institution "Cantonal Social Work Center" Sarajevo, Mirsada Poturković, Director;
3. Public institution "Social Work Center" Zenica, Nurka Babović, Director;
4. Ministry of Work, Social Policy and Refugees of Canton Zenica- Munir Babić, Assistant Minister;
5. Public institution "Cantonal Social Work Center" Travnik, Nikola Lovrinović, Director;
6. The Ministry of Health and Social Policy of Canton Central Bosnia, Vlatka Komšić, the Minister;

²¹ Visits by staff of the BiH Ombudsmen Institution were performed during July of 2009. The visits are performed according to the schedule presented in Annex I of present Report.

7. The Ministry of Health and Social Policy of RS, Ljubo Lepir, Assistant Minister.

Since the situation happened to exist in the institution Pazarić was very specific one, the consultative interviews were held with:

1. Zuferom Derviševićem, Director of Financial Inspections of FBiH;
2. Nives Kanevčev, Main Prosecutor of Canton Sarajevo
3. Ibrahimom Tirkom, Director of Federation Administration for Inspections;

The Team of BiH Ombudsmen Institution was composed of:

- Jasminka Džumhur, Human Rights Ombudsman of BiH,
- Nives Jukić, Head of Department for Protection of Persons with Disabilities,
- David Tomić, Head of Department for Elimination of all Forms of Discrimination,
- Amira Krehić, Professional Assistant for the Project „Strengthening of Capacities of Department for Protection of the Rights of a Child of BiH Ombudsmen Institution,
- Aleksandra Arsenijević-Puhalo, Professional Assistant for the Project „Strengthening of Capacities of Department for Protection of the Rights of a Child of BiH Ombudsmen Institution,
- Andrea Raguž, trainee.

Basic method of research was interview aimed to collection of information on subjective relation of the individuals (opinion, belief, positions) concerning certain social forms, in this case concretely regarding conditions of work, accommodation of users, problems present in ensuring of their rights protection, attitude of staff regarding accommodated persons, as well as interrelations among accommodated persons, as well as human relations among staff. The Ombudsmen were specially focused on health protection, food, working therapy, cases of eventual abuses by staff or other accommodated persons and hygienic conditions in the institutions.

3.2. Social Protection Institutions in the Federation of BiH

According to the Law on the Taking Over of Rights and Obligations by the Founders of Social Protection Institution in the Federation of BiH²², the following institutions are taken over in FBiH

1. Institution for accommodation of mentally disabled persons in Fojnica,
2. Institution for accommodation of mentally disabled persons „Bakovići“,
3. Institution for protection of the youth and children in Pazarić,
4. Institution for education of male children and the youth in Sarajevo,
5. Institution for education of female children and the youth in Ljubuško.

3.2.1. Appointment of the boards of Directors And Supervisory Boards

The Ministry of Work and Social Policy of FBiH, with consent of the Government of FBiH, appointed Board of Directors and Supervisory Boards. Composition of these bodies contains no representatives of staff of the institutions, although there were such candidates²³ or representatives of social work centers, except in the Institution Drin,²⁴ or parents or other relatives of accommodated persons. Appointments are done in accordance with the Law on Ministerial, Government and Other Appointments in FBiH²⁵ Remuneration of members of the Boards is KM 100,000 and resources for that purpose are gained from a part of price paid for accommodation of users, paid by from cantonal budgets. Members of mentioned Boards determined their net remunerations themselves and it is on the level of average salary in FBiH, which is KM 792.88 for June of 2009, and payment is from the resources paid by social work centers for accommodation of users.²⁶

3.2.2. Funding and supervision of the institutions

Funding of the work of intuitions is ensured from the price of services, a part of resources is ensured through donations, humanitarian and other projects and

²² „Official Gazette of FBiH”, no: 31/08

²³ Three employees of the Institution Bakovići applied

²⁴ 1 member of the Board of Directors

²⁵ The Law on Ministerial, Government and Other Appointments of FBiH, (Official Gazette of FBiH, no: 35/03)

²⁶ BiH Ombudsmen Instituion requested the competent minister to provide relevant documentation for process of selection and appointment of members of the boards of directors and supervisory boards of the intuitions, however, up to date of completion of this Report requested documentation was not provided.

through work on the farms possessed by the institutions. Donations in food and cloths, bed sheets, hygienic and other appliances are mainly provided by citizens at the time of religious holydays. The institutions get no resources by the Federation which is the founder of the institutions.

There is not supervision of professional work and supervision of lawful work of the institutions, according to Article 10 of The Law on the Taking Over of Rights and Obligations by the Founders of Social Protection Institutions in the Federation of BiH, since the Ministry of Work and Social Protection of FBiH, the Ministry of Justice of FBiH, the Ministry of Health of FBiH and the Ministry of Education, Science, Culture and Sport of FBiH do not perform any supervision. No institution is subject to supervision of the work of staff. At the same time, members of the Boards of Directors and Supervisory Boards of the institutions, over which the right of the founder is overtaken, are employees of the Ministry of Work and Social Policy of FBiH, and which, according to the Law, should perform supervision. This fact opens the issue of conflict of interests.

3.2.3. Normative and standards of the work of the institutions

In FBiH there is not normative or standards of categorization of the users, regulations on the way of accommodation of separate categories of the users in separate institutions, nether categorization of the institutions is done and, consequently, there is not normative for preparation of appropriate normative acts on systematization of working posts, professional education of the employees, normative on number and accommodation of the users, normative on food, hygiene, normative on the work of the employees and number of users treated by the employees. Existing work in the institutions is performed according to internal acts adopted by the institutions themselves and orders by directors, which, practically, may be a source of misuses and arbitrary behaviors.

In all institutions there is not a single director that is appointed, and to some acting directors time of temporary appointment expired as well, which brings under question lawfulness of the work of these institutions. Vacancy notices for the post of directors take place, which is to a great extent non-transparent

procedure and which constitutes a form of basic characteristics of poor administration.

3.2.4. Institution for accommodation of mentally disabled persons „Bakovići“

Activities performed by Institution for accommodation of mentally disabled persons „Bakovići“ (the Institution Bakovići) are social and health care, training for independent life and work, according to skills and affiliations remained, and work activities for adult persons with disabilities older than 25, persons with moderate difficulties in physical developing of moderately difficult and very difficult level, persons with combined difficulties, as well as persons who completed medical treatment in health institutions.

3.2.4.1. Capacities and availability

Before the war the Institution Bakovići was a branch unit of the Institution “Fojnica” for accommodation of persons with lower level of disability. In that period in the Institution Bakovići sometimes there were accommodated up to 760 persons and average number was 660 persons.

Today’s total capacity of the Institution Bakovići is 375 places. In collective accommodation there are 347 beds, in 4 housing units of center „Budućnost“ there are 20 beds and in dislocated unit 8 beds. At the time of visit to the Institution Bakovići there were 344 accommodated persons in 8 departments, 20 accommodated persons in 4 housing units of center „Budućnost“ and 8 in dislocated unit in suburbs of Fojnica. Men and women live together, and there are separated rooms for men and women.

3.2.4.2. Fulfillment of basic needs of accommodated persons

a) Health protection

In the Institution there are not doctors primarily due to the fact that Institution Bakovići is social protection institution. However, as external associates, there are: neuropsychiatry specialist working in the Institution one day weekly, a general practice doctor, two days weekly, and internist who comes to the Institution twice a month and a dentist who comes monthly.

Treatment of the patients with place of residence in other cantons is quiet difficult when it comes to hospitalization and procurement of prescribed medicines. Regarding urgent cases, services of medical post Fojnica are used. The nurses apply therapy according to the instructions of doctors.

Once a year systematic health examination is organized for all accommodated persons, and in the Institution Bakovići there is permanently employed one physiotherapist.

According to the employees, there is a rare need for isolation or fixation of patients and isolation is executed according to the Rules on Isolation of Accommodated Persons²⁷ and before isolation measure consultation with neuropsychiatry specialist is required. In isolation room there are two beds and day and artificial lighting.

b) Work and sport activities

Regarding occupational therapy, there are activities related to hygiene and clearing of the rooms, involvement and agricultural work in surrounding places, for which accommodated persons are remunerated. Within the Institution Bakovići there is a pork farm, and at the time of occupational therapy accommodated persons are involved in kitchen extra jobs, laundry and sewing.

Training for work is organized within painting workshop in framework of which the patients produce postcards, ornaments of glass, dry flowers and paper. Work is also organized in the workshop for handworks of wool, tread and textile, embroidery, crocheted works and tapestries.

Depending on degree of mental disorder, accommodated persons have a possibility to participate in sport activities, where tournaments in check and table tennis are organized. Additionally, accommodated persons participate in sport manifestations organized outside of the Institution Bakovići.

c) Education

Although in the Institution there is developed program for professional training of the employees, it is not implemented. The employees try to maintain earlier

²⁷ The Institution for Accommodation of Mentally Disabled Persons Bakovići, Instruction no: 02-34-1001/07 of 30.11.2007.

established good relations with certain institutions in Slovenia, who come in working visits, and cooperate with associations from Croatia and trying to implement their experience and projects in the Institution Bakovići.

d) Visits

About 20% of accommodated persons do not have contacts with their families and visits or interest of competent social work centers is also negligible, so, in this sense, social work centers from Sarajevo and Livno are good examples. Certain number of accommodated persons is from time to time visited by their relatives

3.2.4.3. Price of accommodation

By Decision of the Board of Directors, no: 02-14-368/09 of 27.02.2009 the price of accommodation is changed and now it is KM 25.50 daily with additional KM 3.20 for social protection. Total average price of accommodation in the Institution Bakovići is KM 775.00 which is increased for 10% for immobile or difficulty mobile accommodated persons. In relation to previous price the price is now 18,7% higher than before. Some cantons, which pay services for accommodation of persons from these cantons, did not agree with increase of the price, since they believe that the increase is unjustified and caused by expenses spent for remuneration of members of the Board of Directors and Supervisory Board. Consequently, the Institution Bakovići still has the old prices²⁸ of accommodation for persons from Canton Central Bosnia.

3.2.4.4. Staff

There are 108 employees in the Institution Bakovići, out of which there are 4 social workers, 1 pedagogues, 1 speak therapist, 52 medical workers, 1 of them with higher education. Besides permanently employed persons, there are 3 social workers employed as trainees.

²⁸ Insight in bill of accommodation of persons from territory of municipality Travnik (Canton Central Bosnia) for June of 2009.

3.2.5. Institution for accommodation of mentally disabled persons in Fojnica

Institution for accommodation of mentally disabled persons - Drin (the Institution Drin) is an institution of social protection and health care, training for independent life and work, according to remained capabilities and affiliations, and implementation of work therapy for the persons with difficulties in developing, of moderate or serious degree, persons with combined difficulties, as well as persons that completed treatment in health institutions.

In the Institution there is acting director, and the director is still not appointed. For the position of director two employees of the Institution submitted applications but it is not known whether these two are proposed for the function. In the Board of Directors there is only one of the employees of the Institution.

3.2.5.1. Capacities and availability

At the time of visit to Institution Drin, there were 520 persons accommodated there, mainly with more difficult and serious disorder, psychiatric patients and forensic, among which 120 persons who committed criminal offences of homicide. In the Institution there were also 70 children of all ages and diseases.

3.2.5.2. Fulfillment of basic needs of accommodated persons

a) Health protection

In the Institution Drin basic health protection is ensured by presence of one doctor and one dentist permanently employed and who at the same time work on their specialization. Alternative doctor and dentist are not ensured, so that the level of ensured health care is questionable. Specialist examinations are done in medical post in Fojnica. In the Institution Drin, as well as in other institutions in FBiH, there is a problem of health protection for accommodated persons from other cantons.

According to Report on Work for 2008, general practice doctor did 2.743 examinations. If urgent interventions are needed, they are performed by medical post in Fojnica.

According to statements of the employees, fixation and isolation are rarely applied and with appropriate medicines, and only in the situation when accommodated persons are dangerous for themselves and the others. There are not internal rules on fixation or isolation.

b) Work and sport activities

Work and occupational therapy are in accordance with degree of disorder of accommodated persons, and according to data from 2008 about 50% of accommodated persons were subject to mentioned therapy, while such treatment was impossible for other accommodated persons due to seriousness of their disorders or diseases.

In the department of work and occupational therapy there are 5 groups: a small group, classroom and space for training for independent life, creativ worksshoop, mail and femail work occupation.

In the small group there are young children who are primarily occupied with playing games. In the classroom and space for training for independent life there are person with realistic perspectives for independent life. In the creative workshop there are children engaged on preparation of various ornaments. In male and female occupational room accommodated persons are occupied in maintenance of personal hygiene, cleaning of the room and production of ornaments.

Within the Institution Drin there is a workshop for production things of textile and leather and workshop for production of small things of wood, within which a number of accommodated persons are involved according to their capabilities and possibilities.

For its users the Institution Drin organizes various cultural and sport activities and accommodated persons participate in manifestations organized outside of the Institution. So, on the day of Ombudsmen visit, users of Institution's services were ready to go to watch a cultural folklore event in Fojnica. They themselves also organize cultural events.

Summer trips, outings, concerts are also organized for persons accommodated in this Institution and all of it is funded from resources possessed by the Institution Drin.

c) Visits

According to employees, about 170 users are regularly visited by their families. The relatives mainly visit the users monthly, and a certain number of users go to visit their families. Through telephone a certain number of relatives show interest for health conditions of members of their families. Representatives of some social work centers visit accommodated persons under their jurisdiction 1 – 5 times per year.

3.2.5.3. Price of accommodation

Currently, the price of accommodation is KM 25.36 per day plus KM 3.98 for health protection. Total cost of accommodation in the Institution Drin is KM 29.61 per day.

3.2.5.4. Staff

According to data contained in the Report on Work for 2008 (current data is approximately the same), in the Institution Drin there are 198 employees, out of which 106 are people who take care about persons with difficulties in developing, 16 therapists, 24 medical workers, 2 social workers and 2 speak therapists.

3.2.6. Institution for protection of children and the youth in Pazarić

Institution for protection of children and the youth in Pazarić (the Institution Pazarić) is an institution of social protection and health care, education and training for independent life and work according to remained capabilities and affiliations and implementation of work activities of the children and youth with disabilities – with difficulties in psychical developing of moderate, difficult or serious degree and persons with combined difficulties - younger than 25

There is also available space for accommodation of persons with disabilities older than 25 with difficulties in psychical developing of moderate, difficult or serious degree and persons with combined difficulties, as well as for persons who completed treatment in a health institution.

3.2.6.1. Capacities and availability

At the time of visit in the Institution Pazarić there were 384 accommodated persons, out of which 20 minors. There are 60 immovable persons. In Zovik there are 73 persons accommodated, 10 persons in the family house established within

program „International Village Ramići“, and the rest of them are accommodated in Resnik.

According to employees, for the time being, in the Institution Pazarić there are more persons than the capacities of the Institution allows from the aspect of fulfillment of their basic needs, since other institution refuse to accept persons with less or more serious diseases.

3.2.6.2. Fulfillment of basic needs

a) Health protection

In the Institution Pazarić health protection is at the level of basic health protection ensured by one doctor of general practice and one nurse. The doctor is at the same time acting director. Concerning consultative and specialist's or secondary health protection, two times per month doctors from Clinical Centers in Sarajevo and Konjic: neuropsychiatry specialist, gynecologist, internist and dentist examine accommodated persons. Dental health protection is reduced to teeth extraction.

Clinical and hospital treatment is a particular problem. Clinical Center Sarajevo does not provide services to ill persons whose health insurance is paid in other cantons and sending ill persons to hospitals according to their place of residence is a special problem and takes a lot of time.

According to the Report on Work for 2008, doctor of general practice examined 1.490 persons. According to the employees, animosity between hospital staff is felt when hospitalization is necessarily needed, since there exist certain barriers towards such category of persons.

Identical problem exists concerning procurement of medicines and the pharmacies refuse to provide medicines for accommodated persons who are insured in other cantons. Urgent medical interventions are ensured by Medical Post Hadžići.

Fixation and isolation is applied when accommodated person is self-danegerous or dangerous towards the others. According to the employees, isolation is approwed following consultation with the doctor and acording to assessment of medical worker.

On the occasion of visit of Ombudsmen team, representatives of Ombudsmen Institution took a look at isolation room and determined that there is not enough day lighting in this room and artificial light does not exist at all, as well as a bed or a chair. Sometimes isolation took more than 8 hours (insight in the register of isolation), yet isolation usually takes 1 – 2 hours.

b) Work and sport activities

Occupation therapy is organized according to ability of accommodated persons. Mainly it is maintenance of personal hygiene, cleaning of the rooms and assistance in the kitchen and hens farm, and according to data from the Report on Work for 2008 80% of accommodated persons participated in mentioned activities. Training for work is organized through production of tapestries, embroidery, clay ornaments, pieces made of wood, graphical workshop, workshop for ergo-therapy and painting workshop.

According to data contained in the Report on Work for 2008, in this year about 25% of users were comprised by program of training for work. These persons exercise the right to remuneration which is used for procurement of certain stuff for Institution's cantina, since the users do not get money.

Accommodated persons able actively to participate in sport activities taking place in the Institution Pazarić participate in sport activities. They also participate in such activities organized by similar institutions.

c) Education

Educational segment is not organized in the Institution. There still remains prewar cooperation and exchange of experiences between institutions in BiH dealing with the same issue, as well as cooperation with the institutions from the territory of former SFRJ.

d) Visits

According to data contained in the Report on Work for 2008, in this year there were registered 800 visits by the parents, guardians and relatives.

In the Institution Pazarić there are rooms for contacts between users and visitors. Meetings of parents are also organized. A certain number of users visit their families for short or long period of time.

3.2.6.3. Price of accommodation

According to the employees, the price of accommodation is determined according to structure of all expenses spent for each accommodated person monthly, following which expenses for salaries and other remunerations of the staff of the Institution. Since March of 2008 the price is KM 657 monthly for mobile users, which is increased for 10% for immobile persons.

3.2.6.4. Staff

There are 107 employed persons, out of which there is one doctor (at the same time he is acting director), 2 speech therapist, 1 psychologist, 14 educational persons (teachers of preschool education and school education), 40 persons of various professional types, 6 nurses, 3 social workers, 8 work therapists and 2 physiotherapists. Staff mainly works in the Institution for long years now. During ombuds-visit and according to available documentation, there exist mobbing towards some of the employees and they are significantly excluded from the process of planning activities and work with accommodated persons, although they are professional and qualified workers. Staff is without access to information, there are not professional meetings but only meetings of closed circle of the employees, depending on their obedience. Such situation is mirrored in human relations, due to which the employees suffer from apathy, exclusion from community, inability, feeling of absence from the system and constant rule of minority. Lately, in the Institution there is present nepotism, which leads to further aggrieving of already aggravated human relations.

3.2.7. Center for the elderly and infirm, and homeless persons Duje, municipality Doboj Istok

Center for the elderly and infirm, and homeless persons Duje, municipality Dobož Istok (the Center Duje) is established by the NGO „Forum solidarnosti“ Gračanica. This organization is a member of international network of NGOs „Emmaus International“. Main activity of this organization is assistance to vulnerable categories, so that the Organization implement a number of activities related to refugees, displaced persons, victims of trafficking and domestic violence, and their latest activity is establishment of the Center for the elderly and infirm, and homeless persons. The Center accept citizens according to the contract concluded with competent ministries, and following procedure conducted by social work center. In the Center Duje there are accommodated several persons who committed criminal offence in the state of mental incompetence. The Center is situated in the territory of the municipality Dobož Istok and it is 3 km away from the main road between Dobož and Tuzla.

3.2.7.1. Capacities and availability

At the time of ombuds-visit to the Center Duje, in 7 pavilions there were 324 accommodated persons. Most of them are from Canton Tuzla (275). There are 101 mentally disabled persons, out of which 10 are the minors. 50% of accommodated persons are mentally disabled persons with job incapability. Immobile persons, requiring additional care and medical assistance are placed in one of the pavilions. Users are accommodated in three-beds rooms on the ground floor, containing sanitary and hygiene premises adapted for disabled persons. Due to donations of international organization „Emmaus International“, there is also adjusted equipment for bathing of immobile persons. Capacity of the Center is broader than it is actually occupied and it is 450 persons of all categories entitled to accommodation.

3.2.7.2. Fulfillment of basic needs of accommodated persons

a) Health protection

In the Center Duje significant attention is paid at health protection, since the category of accommodated persons is of such character which requires additional attention. Unfortunately, in the Center Duje there are not permanently employed doctor of general practice, neuropsychiatry specialist, lawyer and social worker.

They are employed according to contract of work. At the time of ombuds-visit general practice doctor was in the Center and through contacts between the doctor and accommodated persons it could be concluded that human relations are very well develop that are result of high level of devotion of the doctor towards his tasks. Although the doctor is employed by the contract of work, the fact that he is a person who is not employed by any other institution but he is a pensioner created the possibility for the doctor to work with the patients even more than it is envisaged by the contract, and exactly this fact was visible through his attitude towards accommodated persons. Urgent cases are mainly resolved by Medical Post Dobož Istok, and there exist good cooperation with health institutions in Dobož and Tuzla. The issue of health protection in this Center is not that much problematic as in the others, since the main number of accommodated persons is from territory of Canton Tuzla, where they have status of socially insured person. In large number of cases the Center cooperates with cantonal health institutions, including procurement of orthopedic equipment, and certain number of such equipment is donated by international organization „Emmaus International“, which particularly applies to wheelchairs for immobile persons. .

Regarding accommodated persons from other cantons or Republika Srpska, the Center concludes contracts with health insurance funds, and in this way the issue of health protection of such persons is resolved.

According to the staff, in the Center Duje fixation and isolation is not applied even in the situations when accommodated person is self-dangerous or dangerous towards the others. Such persons are calmed down only by appropriate medicines.

b) Work and sport activities

Occupational therapy is organized in various forms. Center Duje concluded a contract with a private firm on production of small items used in industry and the users are paid of KM 50 – 70 monthly. There are developed various other of occupational therapy, which particularly applies to work in the sections led by instructors employed by the Center. Training for work is organized through workshops for production of embroidery, crocheted works and tapestries and clay ornaments. A small number of persons is engaged in maintenance of hygiene, laundry and production of vegetable, as well as in graphic and painting workshop.

c) Education

In the Center the segment of education is still not regulated, however consultative meetings are already held with the director of primary school Dobož Istik.

d) Visits

Visits by the families, guardians or relatives are quite frequent, and the main obstacle for more frequent visits is financial situation of the visitors.²⁹

In the Center there is a room for visits. Meetings of the parents are organized, too. The users of the Center have got on their disposal a telephone booth, and during the weekend the users may use telephones of the administration of the Center without any limits.

3.2.7.3. Price of accommodation

According to the employees, the price of accommodation is determined on the basis of the type of accommodated person and it depends on whether a user is immobile or mobile person and according to the degree of mental disorder. It is between KM 500 and 900. Resources got from the prices can cover salaries of the staff and maintenance, while significant part of maintenance expenses, particularly those related to food and cloths is covered from donation.

3.2.7.4. Staff

There are 105 persons employed by the Center and only 4 persons are of higher education. As already mentioned these people have contracts of work. The greatest number of the employees is medical technicians (51), persons who take care of the users (4), main nurse (1) physiotherapist (2) cooks and cleaning women (10) hair dresser (1) and instructors of various types.

3.3. Social work institutions in u Republka Srpska

3.3.1. Home for the children and youth with difficulties in developing in Prijedor

²⁹ The staff emphasized example of the father who visits his son once a month, at the time of getting the pension.

Activities of the Home for the children and youth with difficulties in developing in Prijedor (the Home Prijedor) ensure male children and the youth with difficulties in developing or autism full and long-term accommodation, appropriate forms of education and training for work in accordance with psychical and physical conditions. According to Decision of the Government of RS no: 02-323 of 22. 08. 1995³⁰, which also contained Rules on Economists and Psychiatrists, the founder of the Institution is Republika Spska. According to the director, cooperation with the Board of Directors is quite good and the members of the Board hold sessions in the Institution and visit accommodated persons. The Ministry of health and Social Policy (the Ministry) is competent for professional supervision and due to determined omissions, the Ministry ordered the Home to undertake urgent measures. Based on the Report on the Situation of 2007, prepared by the commission appointed by the Ministry, the Institution renewed and adapted children's pavilion, kitchen and dining room, and procured required furniture.

3.3.1.1. Capacity and availability

Accommodation capacity of the Home Prijedor is 225 beds, and at the time of ombuds-visit there were 211 persons, out of which 30 children.

3.3.1.2. Fullfilment of basic needs of the users

a) Health protection

According to the employees, health protection is ensured adequately, since all users are insured through medical post Prijedor except those coming from FBiH. One physiotherapist is permanently employed. According to data contained in the Report on Work for 2008, external associates are: one doctor of general practice, psychiatrist, dentist and physiatrist. In 2008 there were 520 health examinations and general systematic medical examination is organized once a year.

In the Home there is isolation room, however, according to director, this room is not used but aggressive behaviors are treated by medicines. It is prescribed by Decision on Establishment of the Rules on Reduction/Isolation of Distressed

³⁰ This decision has been changed by the Decision of the Government of RS, no: 04/1-012-1808/08 of 17. 07. 2008)

Users, no: 01-2535a/07 of 28. 12. 2007, adopted by the director of the Institution. Fixation is applied quite rarely and it is executed upon approval of the psychiatrist.

b) Work and sport activities

Occupational treatment is organized through maintenance of personal hygiene and cleaning of the rooms, production of fruits and vegetables in the open space of 1,3 hectares. Besides, there is work therapy on pork farm, which is within the Institution, and tapestry workshop, kitchen and laundry. In the Institution there are adequate objects for agricultural activities and vegetable and grain storage, including a tractor for work on the soil. This equipment makes good conditions for organization of work therapy. According to the employees, about 60% of accommodated persons are involved in work and occupational therapy.

Sport section is active as well and traditionally it acquires good results in organized sport manifestations.

c) Education

At the time of ombuds-visit, 18 children were at school „Đorđe Natošević“, where curricula is adapted for children with special needs. According to the Report on Work for 2008, educational and training activities were applied towards 19 accommodated persons: development of psychometrics and physical training, developing of speak, social development and care, music lessons and painting lessons, environment knowledge and work training. Educational areas are divided in 4 levels and each takes 3 years.³¹ However, according to the director and the staff, the Ministry of Education and Culture stopped to finance educational work, which resulted in cessation of organization of described process.

d) Visits

³¹ In the first year the first level was attended by 4 pupils, third year 5 pupils, while forth year was attended by 10 pupils. Second year was attended by 6 pupils and third by 4 pupils.

60-70% of users are in regular contacts with their families and, according to the staff, each accommodated person who wishes to telephone is enabled to do it from the office of social worker. The main number of accommodated persons is from Prijedor and Banja Luka, and vicinity of the Institution enables frequent visits.

3.3.1.3. Price of accommodation

Price of accommodation for mobile is KM 595 and for immobile persons KM 650, and for persons from FBiH KM 750. Reason for higher price for persons from FBiH is in the fact that competent ministries do no co-financing of accommodation. Social work centers are obligated to pay full price of accommodation, yet, according to the director, co-financing is also provided by the Ministry of Health and Social Protection of Republika Srpska.

Competent ministry also provides finances for adaptation and equipment necessary for the work of the Institution and renewal of children's department, kitchen and dining room is realized from these resources. Financing of the activities of this Institution is also ensured from the price of its services and a part of finances comes from donations and humanitarian and other projects. Updated charge for accommodation is 80% because the Institution paying for accommodation now transfers the money through the treasure. Specific problem of this Institution is financing of 7 persons from the territory of the Republic of Croatia (during the war they happened to be in this Institution) and competent organs of the RH refuse to take over financial care about these persons in some similar institutions in Croatia.

3.3.1.4. Staff

In Home Prjedor there are 71 employees: 31 persons taking care of users, 2 work instructors, 2 medical technicians, 2 physiotherapists, 5 speak therapists and one social worker. At the moment the new systematization is prepared and it is planned in conformity with users' needs, since there is a need for larger number of professional staff.

3.3.2. Institution for protection of female children in Višegrad

Activities of Institution for protection of female children in Višegrad (the Institution Višegrad) is to ensure accommodation of children with difficulties in developing caused by family circumstances until conditions for return to their families, adopters or foster families are ensured, i.e. until the users are equipped for independent life. During accommodation care, health care, education and training for independent work for users is ensured. According Decision of the Government of RS, no: 02/1-020-376/03 of 15. 05. 2003³², the founder of the Institution is the Government of RS. The Board of Directors is established in 2008 and is composed of 3 members: a lawyer, an economist and a professor of sociology. According to the director, he is content with cooperation with the Board. Competent Ministry supervises the work of the Institution and approve reception of new accommodates.

3.3.2.1. Capacity and availability

Capacity of the Institution Višegrad is 190 beds. At the time of ombuds-visit in the Institution there were 150 persons accommodated, out of which about 20 of 10-18 years old. In cooperation with competent Ministry the management tries to realize project of construction of object for alternative forms of institutional care, which would enable easier socialization and adaptation for life in the society (so-called „Houses on the half of the way“).

3.3.2.2. Fulfillment of the basic needs of accommodated persons

a) Health protection

According to the employees, basic health protection is at appropriate level, and as external associates 2 psychiatrists and 1 doctor of general practice re engaged in the work of the Institution. Neuropsychiatry specialist comes 1 – 3 times monthly or whenever he/she is needed, while general practice doctor examines accommodated persons weekly. The Institution Višegrad itself ensured space for medical activities. Gynecology and other specialists' examinations take place on regular basis. According data contained in the Report on Work for 2008, general

³² This decision has been changed by the Decision of the Government of RS, no : 04/1-012-1811/08 od 17. 07. 2008 godine.

practice doctor performed 379 examinations. According to the employees, isolation and fixation are applied very rarely and only in the cases when accommodated persons are extremely aggressive. Isolation must be approved by the main nurse with prior consultation with neuropsychiatry specialist. Isolation is applied according to the Instruction adopted by the Director of the Institution. It is executed through application of magnetic handcuffs and such fixation is less painful for users.

b) Work and sport activities

Work and occupational therapy is organized through embroidery, knotting, crocheted works and tapestries production, and through art workshop. Work and occupational treatment also includes work on pork and chicken farms and maintenance of personal hygiene and cleaning of the rooms.

c) Education

In 2008 5 users of 14-30 attended educational work in the following areas: development of psychometrics, development of speak, getting acquainted with the surroundings, self-care and social development, work training, painting and music lessons.

d) Visits

About 30% of accommodated persons contact their families on regular basis and 40% of them regularly contact their families through telephone. According to the employees, staff of the Institution put a lot of efforts to motivate the relatives more frequently to contact accommodated persons.

3.3.2.3. Accommodation price

The price for mobile persons is KM 595, immobile persons KM 650 and persons from FBiH KM 750. The situation regarding users from FBiH, is the same as in the Institution Prijedor: competent ministries do not co-financing accommodation.

3.3.2.4. Staff

According to the Report on Work for 2008, in the Institution there are 51 employed persons, out of which 1 is engaged in educational work, and there is 1 social worker. Direct care of accommodated persons is performed by 13 employees, while in health protection there are 11 persons and 2 persons are work instructors.

3.4. Consultative meetings

Consultative meetings held between ombuds-delegation and representatives of certain competent ministries, social work centers and other institutions, which took place following visits to mental health institutions, were aimed to get information on the manner and problems related to accommodation in mental health institutions. Since the problems are determined in the Institution Pazarić, additional meetings are organized with representatives of financial inspections of FBiH, the Prosecutor's Office of Canton Sarajevo and Federation Administration for Inspection Businesses. Due to specific findings, BiH Ombudsmen decided to elaborate the situation in the Institution Pazarić in more detail in a separate Special Report.

3.4.1. The Ministry of Work and Social Policy of FBiH

At the meeting it was confirmed that The Ministry of Work and Social Policy of FBiH did not take any steps towards supervision of the institutions, since it considers that appointment of director should be done first. Accordingly, normative acts are not adopted neither standards that would properly organize the work of the institutions, and the fact that remuneration of members of the Board of Directors and Supervisory Boards are paid out of charges for accommodation, which is paid by the cantons. The Ministry did not establish its organizational structure that could ensure payment to services of the institutions but the price is paid by the Sector for Social Protection and Protection of Families with Children.

3.4.2 The Ministry of Work and Social Policy of Canton Zenica-Doboj

The Ministry of Work and Social Policy of Canton Zenica-Doboj, in accordance with Article 57 of the Law on Basic Social Protection, Protection of Civil Victims of the War and Protection of

Families with Children of Canton Zenica-Doboj, concluded general contract with the institutions for accommodation of mentally disabled persons.

This contract is concluded with 19 institutions, and individual contracts are concluded with the Institution Duje and the Peace Village Čitluku (church organization). During the talks it was stressed that the Ministry did not provide consent for increase of accommodation prices in the Institution Bakovići, however the new prices are paid. All payments for services provided to accommodate persons are paid from the budget of Canton Zenica-Doboj and there are no additional resources provided by FBiH. Through ad hoc commission the Ministry performed revision of all decisions on accommodation in the institutions regardless of the fact that the members of the Commission do not have this responsibility in description of their duties. Revision continued as a permanent process on the occasion of taking decision on every new accommodation.

3.4.2. Social Work Center Zenica

Social Work Center prepares request and proposal for accommodation in an institution and it shall be referred with supportive documentation (social anamnesis, information on relatives, property health and other relevant documentation) to the Ministry of Work and Social Policy of Canton Zenica-Doboj.

Most frequently Social Work Center appears as submitter of request for withdrawal of work capacity in extra-judicial court procedure. This as an additional burden for Social Work Center and, before all, financial expense not planned in the budget and it is related to remuneration of court experts and courts frequently request these payments to be paid in advance. Social work centers are competent for accommodation in an institution only following completion of medical treatment in medical institutions (hospitals). In practice, mentally disabled person is accommodated in an institution before withdrawal of work capacity, since there is not any other solution. Due to such practice and the fact that inspectors, during conduction of professional supervision, found a number of persons accommodated in the institutions without withdrawal of work competency by decision of competent organ, revision of such cases was conducted by the Ministry of Work and Social Policy of Canton Zenica-Doboj and this revision procedure, although

not established by law, has become a part of regular procedure. Revision procedures related to already withdrawn work capacity also take place.

Guardians are assigned to users of services of social protection institutions and it is most frequently social worker, since the relatives do not want to take over this responsibility. For responsibility of guardian members of social work center are not remunerated, although such remuneration is prescribed by law. So, in Social Work Center there is case where 1 social worker is the guardian to 41 persons with withdrawn work capacity and accommodated in the institutions.

On annual basis the institutions submit reports to social work centers in which they inform on all changes of users. Occasion of new accommodations is used as an opportunity for visits by social workers to already accommodated persons. On the occasion of conclusion of contracts social work centers are requested to examine whether user possess health booklets, and where secondary health treatment is needed, social work centers have to ensure decision for treatment of user from other canton.

Concerning accommodation, social work centers are not in a possibility to select an institution and it is done according to the principle of empty beds, i.e. where an institution is in a possibility to accept a new user. Sentenced persons with mental incapacity are placed at forensic department of prison Zenica. There are 4 persons, registered by social work center, with forwarded final court decisions.

There are 42 persons employed by social work center.

3.4.3. The Ministry of Health and Social Protection of Canton Central Bosnia

The Ministry of Health and Social Protection of Canton Central Bosnia (the Ministry) supervises the work of institutions of social protection only if they are in the territory of Ministry's jurisdiction and in accordance with provisions of the Law on Social Protection of Canton Central Bosnia. So, the institutions Drin and Bakovići are supervised by the Ministry since 1998. Cantonal inspector is of the position that both institutions are overcrowded by accommodated persons and the situation is worse in the Institution Drin.

Persons are accommodated in these institutions based on their diagnosis or according to court decision on withdrawal of work competency where accommodation is recommended by court.

Representatives of the Ministry stressed the problem of lack of cooperation between the cantonal Ministry and the Ministry of the Federation of BiH, and there is also a complaint due to increased price of accommodation in the Institution Bakovići. In this Canton there also exist problem of accommodation person who committed a criminal offence in the state of mental incapacity and, for the time being, there are 6 such persons registered, out of which 1 is accommodated in the Institution in Jakeša and some of them in the Institution Duje (Doboj Istok). Complaints related to the conditions in the institutions are more oral than in writings, which especially applies to the Institution Duje. Inter-entity contract on payment of services is not concluded.

In the Institution Drin, in the same Canton, there are 56 accommodated persons, in the Institution Bakovići 100, Pazarić 39 and Duje 3 users who committed criminal offence. Representatives of the Ministry visit the institutions 4 – 5 times per year and in the Ministry there are only 18 employees responsible for health and social protection.

3.4.4. Social Work Center Travnik

There are 12 employees in the Social Work Center Travnik and according to the Rules on Internal Organization, there should be 17 employees. Out of 12, 5 are social workers, one accountant with secondary education and 5 are supportive staff and the director.

In 2008 there were 91 persons accommodated in all types of institutions by the Center. Users are accommodated according to the principle of empty beds. The Center pays accommodation depending on amount received by the Ministry.

Following medical examination the doctor prepares recommendation in which institution to accommodate certain person and most frequently these are Drin and Bakovići.

Some of the users requested to be accommodated in institutions in Jakeša and Sokolac but they are put on the waiting lists..

Employees of the Center are most frequently guardians of accommodated persons, since the relatives are too busy to take over this responsibility. The Employees of the Center are not remunerated for the role of a guardian. Due to lack of resources the guardians visit accommodated persons rarely, most frequently when they accommodate a new person. Regarding health situation of accommodated persons, the Center is regularly informed. Persons accommodated in the institutions are mainly in legal procedure of withdrawal of work capacity. Concerning property, commission is formed and goes to the spot where it makes inventory of property.

Decision on medical treatment outside of the Canton is needed for exercise of the right to health protection. In practice, persons who need an urgent treatment are accommodated in hospitals and decision on medical treatment outside the Canton is issued later. This procedure takes 10 days. The Ministry is of the opinion that the work of the institutions should be supervised by the inspections and it is also necessary that employees of social work centers are members of board of directors of the institutions.

3.4.6. **Public Institution: Cantonal Center for Social Work of Canton Sarajevo**

According to director of Public Institution: Cantonal Center for Social Work of Canton Sarajevo, (the Center), since 1992 there exist standards and normative of social protection and since the same year the status of social work institutions is not resolved, due to which the institutions work according to unwritten rules and based on the Teams that takes decisions independently.

Social work centers know no standards or criteria according to which to work. Based on diagnosis, the social rights centers freely assess, to which institution to accommodate the users. As a rule, request for accommodation is forwarded to all institutions until some of them accept to accommodate a person, and if no institution is ready to accept a user, the user stays in its environment. Social work centers are not sure whether they accommodate a person in the right institution, since their opinion is that it is better to accommodate a person anywhere than nowhere.

What is currently happen in the institution leads to conclusion that there exist to system or law and that the State does not care about work of the institutions, so the institutions get around themselves and accept all users for whom payment of the price of accommodation is ensured, since only in this way an institution can function.

With regard to the Institution Pazarić, no person without categorization can be accommodated in this Institution regardless of sex and age. However, this standard is reserved only because the Institution has got enough number of requests for accommodation. Categories that are not accepted are people of less serious disorders and mentally ill persons. The Institutions Drin and Bakovići do not stick up with prewar standards, according to which children were accommodated in the Institution Drin and adult persons in the Institution Bakovići. Regarding social work centers, they do not have accommodation waiting lists, while such lists are possessed by the institutions themselves.

For mentally ill persons – whose disorder came from consuming of alcohol or narcotics – there is a waiting list, since there are not capacities for their accommodation and the Institution Bakovići mainly do not accept such persons.

Generally, the institutions do not stick up with prewar criteria prescribed by the institutions themselves but the directors apply self-prescribed standards. Social work centers from territory of Canton Sarajevo take decisions on accommodation in the institutions (together with supportive documentation) and forward proposals of contracts to the institution where a person is to be accommodated. In other cantons social work centers only take decisions on accommodation and competent ministries conclude contracts.

Such contracts are of purely obligation nature and contain provisions on obligation of payment of accommodation and supervision of care for accommodated persons.

Guardianship is determined in accordance with the Law on Mental Health, where social work centers, upon proposal of medical team, initiate procedures. Procedure for withdrawal of work capacity is initiated if a user does not want to be accommodated in an institution of his/her own will. The main problem is the fact that no-one from the family or remote relatives do not wish to be a guardian to such person. Because of this social work centers take over this responsibility, although actually they no time to be committed to the role of a guardian as it is prescribed by family legislation. For fulfillment of this obligation social work

centers get no resources or refunding of expenses, and having in mind that they are obligated to be guardians for 10 or more persons, objectively the Centers in their working hours can not meet this obligation. There is not practice applied by the institutions to include guardians and inform them on the situation of accommodated persons, nether on the manner of treatment and rehabilitation.

Each month social work centers pay approximately KM 150,000 to the Institutions Drin and Pazarić, and KM 160.000 to the Institution Bakovići, since the price of accommodation in mentioned institutions for the users from Canton Sarajevo is KM 880, and it could be assessed that the institutions earn fine, and that they could better finance their activities. The institutions provide reports on health situation of users only upon request of a guardian and these are three-months or six-months reports. As it is defined by law, guardians should be remunerated but actually they are never paid and they are content with formal reporting by the institutions related to health condition of accommodated person.³³

3.4.7. The Ministry of Health and Social Protection of Republika Srpska

According to Assistant Minister, Mr. Ljubo Lepir, this Ministry is since 2006 significantly involved in improvement of the services provided by the Institutions in Višegrad and Prijedor, and for period from 14 to 19.09 2009 it plans to visit the Institution in Višegrad. The Ministry fulfils its legal obligation of supervision of the work of mentioned institutions, so in 2007 it controlled the work of the Institution in Prijedor, on the occasion of which certain irregularities were determined. These irregularities are later, according to knowledge of Mr. Lepir, are corrected. Additionally, the Ministry is provided with completely elaborated requests for accommodation and the requests are approved by the Ministry.

With regard to financial of resources, the Ministry finances adaptation and renewal works on the objects of the Institution and co-finance a part of expenses for accommodation (procurement of heating fuel and material and technical equipment).

3.4.8. Public Institution Social Work Center Banjaluka

³³ With regard to social protection, there was a body composed of doctors, representatives of social work centres, faculty professors which was obliged to visit the institutions several times a year, prepare report on situation that happened to exist and propose measures for elimination of the problems and at the same time to work on collection and distribution of resources for these purposes and priorities, and, of course, to follow up realization of planned activities. Slovenia and Serbia partly still apply legal solutions from ex-Yugoslavia and Slovenia harmonized mentioned legal solutions with international standards and for the moment Slovenia in the best way regulated issues from the area of social protection in the Region.

Director of Social Work Center Banjaluka (the Center) informed representatives of ombuds-institution that the Center, when it is about the persons with difficulties in developing, provides a system of protection and services in co-operation with the NGOs. In the Center there is special department for work with children with special needs and department for accommodation of persons with difficulties in developing in adequate institutions. According to director, co-operation with the Institutions in Višegradu is important for improvement that took place in last two years, i.e. since the period when the Center together with the Ministry conducted revision of accommodation in mentioned institutions. On the occasion of revision it was determined that certain number of accommodated persons was in the institutions, although they did not meet prescribed conditions. It was also determined that a large number of relatives do not meet their obligation for fostering, due to which the Center put a pressure on the relatives. The Center regularly insists that the relatives should visit the users and show interest concerning their condition. The relatives who are assigned to be guardians have obligation to provide the Center with reports quarterly.

A smaller number of accommodated persons, who are within competence of the Center, are accommodated in similar institutions in territory of FBiH. And their transfer depends on themselves, that is, those who are for a long period in institutions Drin, Bakovići and Pazarić do not want to change the environment, although it would be rational if they were accommodated in Prijedoru or Višegradu because it is cheaper.

Concerning financing of the Center, director emphasizes that up to date she was content with financial support from the budget of the city however she draw attention at the fact that for next year reduction of budgetary resources is planned. She says that the Center regularly pays its obligations towards all institutions where the users of the Center are accommodated. She particularly stressed that upon insisting and in cooperation with the Social Work Center Višegrad a housing unit was adapted for living within the project „living with a support“. As to procedure of accommodation, a request is examined by the experts (psychologist, sociologist and lawyer), following which the council existing within the Center (Council for Children and Council for Adult Persons) takes decision on accommodation in the institutions. Since last year, apart from this procedure, parallel procedure is conducted related to assessment whether a user should be exposed to withdrawal of work capacity, following which, if needed, appropriate

procedure is initiated before court. Categorization is performed concerning the children younger than 15, i.e. evaluation of the degree of difficulties in developing..

Finally, the director drew attention at the fact that the Center excellently cooperates with large number of the NGOs.

IV Observations and Concerns of the Ombudsmen

4.1. Positive observations

Functioning and long-years existence exclusively through use of their own capacities and without any support by the authorities to the institutions for accommodation of mentally disabled persons, particularly in FBiH, is result of professional devotion of the employees to their jobs. Relation of the users towards employees that occurred during ombuds-visits has shown that the employees are completely devoted to their work in the best interest of the persons accommodated in the institutions. Persons employed by the institutions, which also goes even to the Institution Pazarić, where the staff is mainly of long-years of work experience (20-30 years of experience) and who are evidentially exposed to mobbing by the management, put maximal efforts to make accommodation as better as possible, which is accompanied with high degree of improvisation in the circumstances of lack of systemic approach to accommodation of this category of citizens and lack of support by competent governmental organs. It is important to stress mentioned facts, since the employees of the institutions do not have possibility to address any institution and draw attention at problems they encounter in their very requiring work. Whenever they emphasized weaknesses of the system, which has significant impact on the rights of the users, they did not get adequate and legally prescribed effective protection. This is particularly related to the employees of the Institution Pazarić, who for long-years now request competent organs to undertake measures targeted to cessation of unlawful activities, mobbing, and deprivation of the rights of accommodated persons as well. Everything ends up in relation between the employees and the director, even in the case where director is a „weak link in the chain“, functioning of an institution becomes questionable.

Concerning all visited institutions, ombuds-delegation assessed that the staff fulfill their duties in more than human manner and, as much as possible, alone resolve problems faced by the users. Statements by accommodated persons we interviewed is a testimony for above described efforts of the staff and the users were full of nice words towards the staff. As to extraordinary personal efforts, which could be seen only in the work of professionals who love their jobs, the fact that these humanitarians and experts are not additionally trained or are trained very little speaks for itself.

4.2. General concerns

4.2.1. Lack of defining and categorization

Mentally disabled persons fall in the category of disabled persons. Various names are used for this category of citizens such as “Persons with difficulties in developing”, “Persons with special needs”, “Mentally retarded persons”, “Persons with developing disorders” and “Persons with intellectual difficulties”. Exactly the fact that there is not legally determined terminology creates legal confusion, which opens possibility for violation of the principle of consistency in application of law and negation of certain benefits, too, i.e. certain rights of this category.

In the field there is different understanding of term mental retardation and usage of definition is not regulated. Namely, in different peaces of legislation and areas of activities, establishing the right of mentally disabled persons, different definitions are used, that is, there not exists clear and universal definition. These results in impossibility of categorization of mentally disabled persons from the aspect whether such persons should be accommodated in health protection or social protection institutions.³⁴

At the same time in BiH, in practice, there not exist real categorization of the institutions, particularly not according to the degree of retardation of the users, although the directors of the institution presented opinion according to which all

³⁴ Cause is criteria for medical definition, degree of social adaptation is criteria for social definition, education is criteria for pedagogic definition.

visited institutions are designed for accommodation of certain category of mentally disabled persons. The situation in the institutions, that is, conditions of persons accommodated at the time of ombuds-visit have shown that the position according to which the Institution Pazarić is envisaged for accommodation of the children and the youth, the Institution Baković for accommodation of persons with less serious mental retardation and the Institution Drin for accommodation of persons with serious mental retardation is simply wrong. In all institutions there happened to be accommodated all categories of users because there is not systemic accommodation but accommodation, particularly in F BiH, is performed according to the principle of „empty bed“ and which to great extent depends on decision of director of the institution. Such methodology is therefore mainly established on arbitrary and subjective principle and represents additional difficulty to the directors, particularly in F BiH, due to the fact that more available capacities of the institutions are needed. As to categorization of the users, particular problem in Republika Srpska is division of the users according to their sex.³⁵

4.2.2. Legislation

Legislation determining the status and the rights of mentally disabled persons in BiH is inadequate and not harmonized with international standards, particularly with „Stand Rules for Equalization of Opportunities for Disabled Persons“. This fact creates room for arbitrary behaviors and lack of ensuring of the principle of equal treatment for all mentally disabled persons without discrimination.

This fact is in the best way confirmed through the issue of accommodation in the institutions, since it is unclear according to which criteria waiting lists are prepared and since these lists of mentally disabled persons waiting for accommodation are quite extensive. Inadequate legislation arises the issue of access to the rights of mentally ill persons, and there also lacks adequate legislation determining establishment and functioning of the institutions for accommodation of mentally disabled persons, which particularly applies to F BiH following its taking over of the rights and obligation of the founder without prior resolving of transitional issues or legal resolving of these issues, such as the issue of legal division of the Institution Fojnica within which institutions Baković and

³⁵ *Separation of the users on the basis of sex is directly contrary to the Rule 9 of Standard Rules.*

Drin are two separated work branches and not two separated subjects, division of balance has never been prepared, process of separation is not completed, so it is unclear what rights and obligation are taken over by FBiH. The situation is additionally complicated by the fact that these institutions were never a subject to revision and that financial inspection of FBiH on several occasions determined unlawful business operations of the Institution „Pazarić“, which is a subject of examination by competent prosecutor's office. It is not clear why there are not consultations with cantonal ministries of social protection, which pays expenses of accommodation, and social work centers, which accommodate persons in the institutions, employees of which are in the largest number of cases the guardians of persons accommodated in the institutions. Additionally, it is particularly concerning that the issue of property of the institutions has never been reviewed and the Law on Taking Over of the Role of Founder does not even contains preamble, so legal ground for this activity is unclear, particularly if one has in mind that, except for appointment of the board of directors and supervisory boards, realization of any other right lacks, which also goes for any obligation. Legislation is full of omissions particularly in the segment determining the issue of supervision. So, in FBiH, where obligatory supervision is stipulated by the Law (Article 10) and where 4 ministries never decided on the manner of supervision. Consequently, 3 ministries are not at all involved in the process of supervision.

4.2.3. The rights of accommodated persons

Absence of adequate legislation determining the rights of mentally disabled persons, as well as legislation determining establishment and functioning of the institutions for accommodation of mentally disabled persons resulted in aggravated and unlawful exercise of the rights, without clearly set up principle. This opens possibility for arbitration and the Ombudsmen are therefore deeply concerned regarding all segments of protection of mentally disabled persons. Before all, this applies to FBiH where supervision of professional work and lawfulness of the work of the institutions, according to law, should be performed by competent ministries. Unfortunately, on the occasion of ombuds-visits, it was determined representatives of no ministry visited the institutions. In RS there was intervention by competent ministry concerning situation in the Institution Prijedor

in 2007, following which determined omissions were eliminated. The similar intervention took place in the Institution Višegrad.

4.2.3.1. Accommodation and conditions in the institutions

On the occasion of its visits, BiH ombuds-team determined that the main problem is in the fact that too many people are accommodated in the institutions, particularly in FBiH. At the same time, each institution still has a waiting list for accommodation. Present problem is in the fact that frequently complexity of cases requires urgent accommodation in the institution, the institutions under pressure of social work centers and cantonal ministries of social protection in FBiH, are forced to accommodate certain mentally disabled person, which resulted in overcrowded institutions. The rooms for accommodation, regardless of whether we speak about a smaller or bigger room, there are too many beds, the beds are frequently double-deck beds, so one can not speak about standard of 4m² per person, which is requested for persons serving the sentences in the prisons. This leads to conclusion that mentally disabled persons are accommodate in less appropriate conditions than prisoners who committed criminal offences. Such conditions of accommodation violate right to privacy and create conditions for eventual progress of infectious diseases and hygiene conditions, in such conditions, can hardly be maintained at satisfactory level. Overcrowded institutions create conditions for conflict situations and disable any form of therapeutic work.

In the institutions there is very small number of bathrooms. For instance, 40 accommodated persons use just two sanitary facilities. None of the institutions have bathroom adjusted for needs of persons with disabilities. Most of the institutions do certain improvisations and adjustments to enable the staff to maintain hygiene of accommodated persons. What is unacceptable from aspect of protection of the rights of a child, is the fact happened to exist in one of the institutions in children's pavilion and it is related to the room which is at the same time used as sanitary facility, room for relaxation and room for changing of dresses of female-employees. In most of the rooms of the institutions the ambient is „cold“. Interior is impersonal with few pieces of furniture, few pictures or other decorative things on the walls. There lack cheerful colors, which would surely impact on mood of accommodated persons. The ambient is „vividly colored“, colorful only in children's pavilion, although not in all such pavilions

and in satisfactory degree. There lack toys and other didactic equipment that could be useful for work with children. Additionally, it is noted that courtyards and playing rooms for children are not adequately formed in main number of the institutions.

4.2.3.2. Health protection

Devastating fact is that there are still not systemic solutions for health protection of accommodated persons. Each institution in FBiH meets the same problem, if a user needs health service, and if he came from the territory of other canton where his/her health insurance is paid. In urgent cases such person is accepted by cantonal hospital of the same canton where the institution is situated, however, in such cases the staff is forced to resolve administrative problems between different cantons. This procedure requires a lot of time and correspondence performed by the employees of the institutions. Due to described administrative obstacle, most frequently the institutions transport their users to the canton where he/she is health insured, if it is not an urgent case. Nevertheless, it is important to stress that, when it comes to hospitalization, medical staff of the hospitals do only the urgent interventions. The hospitals frequently refuse to accept such ill persons, since they require special treatment and the hospitals claim that they are not equipped for such treatments. If urgent surgery is not necessary, patients from the institutions wait for months or never get required treatment. There is a large number of examples – regarding teeth protection, exclusively oral surgery is done or extraction of teeth, so that most of accommodated persons are toothless. Another concerning fact, having in mind nature of the institutions, is that according to their activity, apart from their social activity, ensure health protection as well, and in the institutions there are not doctors employed or the doctor is at the same time acting director of the institution or they simply work on their specialization in some institution.³⁶ Number of persons accommodated in all institutions requires permanent health care by the doctors, particularly having in mind that large number of users is constantly under the medicines therapy.

³⁶ This is contrary to the Rule 2 of the Standard Rules for Equalization of Opportunities of Disabled Persons, which reads: „States should work towards the provision of programmes run by multidisciplinary teams of professionals for early detection, assessment and treatment of impairment. States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society“.

Quality health protection provided through conclusion of contracts of work with doctors is disputable due to the fact that the doctors see this engagement as an additional activity that should fit in their regular work. It would be more logical if the contracts were concluded with health institutions or if the institutions permanently employ medical specialists of different professions.

4.2.3.3. Education

Right to education is completely neglected by the institutions, which is contrary to the Rule 6 (upbringing and education) The Standard Rules for Equalization of Opportunities of Persons with Disabilities binds states parties to „to ensure the principle of equal opportunities for education in primary and secondary schools and higher education institutions to children, the youth and the adult persons with disabilities in integrated conditions“. State parties must ensure that schooling for persons with disabilities is integral part of general schooling system.

4.2.3.4. Communications with the guardians and relatives

This communication is exclusively based on interest shown by parents, which is frequently directly connected with their financial situation. In most of the cases accommodated persons are from the families with poor financial situation, so that members of accommodated persons are not in possibility to visit their accommodated relatives. Additionally, the guardians – employees of social work centers – due to financial situation, too much work and the fact that guardianship is not their regular job, are also prevented sufficiently to care about the rights and interests of the users or to visit them. Mainly, these are random visits when social workers officially, or due to some other cause, visit the institutions. The employees of the institutions are aware of importance of not only this form of communication but also of communication with other persons, however, this standard is not possible to maintain, having in mind existing capacities of the institutions and a whole lot of unresolved issues.

4.2.3.5. Isolation and fixation

Rooms for isolation of aggressive or disturbed persons are not in accordance with standards of dignity of this population. There is not possibility of surveillance of a user while he/she is placed in such rooms, neither there is protection against potential injuries, since the walls are not coated. The issue of fixation and isolation is mainly decided by internal rules of the institutions, and some of the institutions never adopted such rules.

4.2.4. The board of directors and supervisory boards

Organs of management of the institutions in FBiH are appointed – there are boards of directors and supervisory boards and appointment of directors is ongoing process now – existing directors have a status of institution there are parents or members of social work centers, and only acting directors. It is concerning that in management organs of no in the Institution Drin one member of the Board of Directors is employee of the Institution. Moreover, members of boards of directors and supervisory boards remunerated and they are paid by the money users paid for accommodation. This means that each institution monthly must pay each member of the boards, including travel expenses. To save their resources certain institutions organize transport themselves and some institutions organize sessions of the boards outside of institution. Although they are paid for their work, the largest number of the boards in FBiH never visited institution or eventually talked to the staff and users to understand the real situation.

4.2.5. Staff

Apart from the fact that the staff of certain institutions are exposed to mobbing (Pazarić), completely missed any care for mental health of the staff working with mentally disabled persons. In last 5 to 6 years practice of continued professional training of the staff completely ceased to exist, so the experts employed by the institutions do not have opportunity to learn new practices applied in this line of work neither they have possibility to exchange experiences with colleagues working in other institutions of similar type in the region or third countries. Particularly concerning is the fact that there are rare cases of professional gatherings of the employees of the institutions in BiH. Competent ministries, with excuse that they do not have resources for such seminars, conferences, education

or other forms of professional specialization do not show any interest for creation of modern methods of work in the institutions subject to present Report.

Programs for prevention of „burnout“³⁷ syndrome are not implemented except in the situations when the directors of the institutions, upon personal requests, organize seminars for the staff with the purpose of their protection against mentioned professional disease. As it is well-known „burnout“ syndrome is characteristic for supportive professions where the professionals are considerably personally involved so that it is necessary to take measures for their protection, particularly protection of their health. Such measures would contribute to improvement of quality of work and productivity in the work with accommodated persons. The situation happened to exist in the institutions is a clear indicator showing that inability of professional education and risks from professional diseases are mirrored in quality of services provided by the employees and their readiness to take a professional approach to the work. Cadre problems are present in all visited institutions. Insufficient number of experts and staff can hardly meet the needs of the users. One of the illustrations is related to the fact that immobile persons and children can not go out in the courtyard but they are only carried to the verandas and it is questionable how often it is carried out. And everybody knows that the stay in the fresh air and change of ambient would very positively impact to psychical and physical conditions of such persons.

In some of the institutions medical staff wears white coats, which is a rudiment of old-fashioned modal in treatment of persons with mental disabilities or psychical disorders. This creates division line between the health and the ill persons and opens possibility for marginalization of a whole population with certain specifics in psychical and physical functioning.

4.2.6. Cooperation with other institutions and organizations

Cooperation of the institutions with other professional institutions is not at satisfactory level. According to assessment of the employees, such cooperation could be more intensive. The same goes for the NGOs, schools and local community. Practice of social inclusion of the users is not satisfactory and must be intensified. In this way existing marginalization of this specific population

³⁷ Psychological consequences of the work with people in need or crises are usually marked with 3 terms: „burnout“, „counter-transfer reaction“ and „indirect traumatization of assistant“.

would be eliminated and would result in decreased prejudices about persons with mental disabilities. This Report prepared by the Institution of Human Rights Ombudsman of Bosnia and Herzegovina draws attention at the fact that entity governmental structures invest almost none or very little resources in constructing, adaptation, renewal and equipping of the institutions and one gets impression that accommodated persons are „forgotten citizens“.

Resources at disposal of the institutions are acquired through price of accommodation or, eventually, through certain donations for maintenance of the buildings, furniture, work equipment, cloths and shoes for accommodated persons. In main number of the institutions the food and medicines have to be bought. Stable financing of the institutions in which most frequently are permanently accommodated mentally disabled persons is not resolved.

From the entire Report it is more than obvious that respect for human rights of mentally disabled persons in BiH is one of the issues dealt by almost no-one from governmental structures.

4.2.7. Financing and the role of the founder

Non-carrying out of founders' obligations is directly mirrored on conditions in the institutions, particularly to further developing of capacities. From accommodation price the institution can ensure just accommodation and fulfillment of minimum needs for survival of disabled person and which is not task of these institutions. This fact, too, is put under the question, since functioning of the institutions is still significantly dependent on donations, particularly by the citizens, so that the main number of the institution in FBiH almost never buy meat but they get it through donations in kurban meat at the time of religious holiday Kurban Bajram. Accordingly, real role of the founders is really concerning one, particularly if one takes in the account non-developed capacities of competent ministries. This is particularly present in FBiH, where adequate internal structure of competent ministry is not established, which would ensure exercise of the rights of mentally disabled persons and which would also ensure effectiveness of the work of the institutions as precondition for undertaking measures for further improvement of the situation in this entire area.

V - RECOMMENDATIONS

Presence of intellectual difficulties does not justify any form of discrimination. Mentally disabled persons are different in their abilities however they are equal in

their rights. Visits to the institutions for accommodation of mentally disabled persons in BiH performed by BiH Ombudsmen Institution have shown that absence of protection of quality and necessary participation and assistance of the society, including controls and supervisions by competent organs over accommodation of mentally disabled persons, made accommodated persons “invisible citizens”, closed in “their” institutions without any networking of the system support or other support. In one word, they are convicted to serious discrimination and marginalization of their problems. Therefore, BiH Ombudsmen according to their powers referred to in Article 32 of the Law on Human Rights Ombudsmen of Bosnia and Herzegovina:

R E C O M M E N D

I

- Competent organs: *The Ministry of Civil Affairs of BiH, the Ministry of Human Rights and Refugees of BiH* through co-ordination with *The Ministry of Work and Social Policy of FBiH, the Ministry of Work and Social Policy of RS and The Government of District Brčko* immediately to take measures to ensure introduction of contemporary modals of support to mentally disabled persons in order to realize goals of their rehabilitation, i.e. normalization, social inclusion, individualization, and to the greatest extent to encourage independency and autonomy of mentally disabled persons. In that sense it is necessary *immediately to undertake activities on preparation of strategic document* in accordance with contemporary intentions contained in Plan of Action of the Council of Europe for persons with disabilities and Rule 14 of Standard Rules (creation of policy and planning), all of it with a view to transformation of segregation and charity treatment of persons with mental disabilities. The Rules bind state parties to initiate and plan adequate policy related to persons with disabilities and stimulate and support activities on regional and local level, and ensure mechanisms guarantying full application of regulations adopted.
- Within strategic document there should be ensured:
 - a. Determination of *measures for adoption of legal framework*, which should in comprehensive manner *determine rights of mentally disabled*

persons with full respect for Standard Rules, since the Standards are prepared in conformity with international documents³⁸;

- b. Determination of *measures targeted to adoption of legislation* which should fully and in comprehensive manner *determine issue of functioning of the institutions* for accommodation of mentally disabled persons and with prior resolution of all disputable issues. For this measure, particularly in FBiH, it is necessary to form team of experts composed of representatives of different professions, and with obligatory consultations with the institutions ensuring social services (social work centers) and cantonal ministries which pay functioning of the institutions. Until adoption of adequate legislation in FBiH it is necessary to refrain from undertaking of activates prescribed by the Law on Taking Over of the Rights of the Founder, which would lead to further violations of already extremely complex relations existing in the institutions. Only measures related to right to supervision should be undertaken with purpose of elimination of unlawfulness;
- c. *Determination of clear definition of mentally disabled person* to ensure usage of precise and consistent definition in entire legislation and policy in BiH in all spheres of life. Competent organs should also adopt by-laws on categorization of mentally disabled persons, which is precondition for categorization of the institutions;
- d. Preparations of basic principles with respect for international standards that determinate the right of mentally disabled persons to categorization of the institutions for accommodation of such persons. It is necessary *to consider possibility of establishment of a triage center*, which would, based on medical, sociological and pedagogical indicators, decide on accommodation of each mentally disabled person.

³⁸ Present Report is based on the following international documents: International Charter on Human Rights, Universal Declaration on Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention on the Rights of a Child, Convention on Elimination of all Forms of Discrimination of Women, as well as in accordance with World Action Program related to persons with disabilities.

Organs competent to act in accordance with recommendations

- The Ministry of Civil Affairs of BiH
- The Ministry of Human Rights and Refugees of BiH
- The Ministry of Work and Social Policy of FBiH
- The Ministry of Health and Social Policy of RS
- The Government of District Brčko

Deadlines

Competent organs are obligated within 60 days to prepare strategic document (Plan of Activities), which should ensure implementation of the Recommendation, unit 1, and since it is a long-term measure, the competent organs should inform the Ombudsmen continually and permanently on further development of implementation of adopted strategic document.

II.

The Ministry of Work and Social Policy, the Ministry of Work and Veterans and Disabled Persons Protection of RS, The Ministry of Health, the Ministry of Health and Social Protection of RS, The Ministry of Education, Science, Culture and Sport, the Ministry of Education and Culture and competent institutions comprised by present Report, each in its scope of activities should immediately:

1. undertake measures aimed to improvement of institutional accommodation of mentally disabled persons, with consideration of possibilities to increase their capacities (particularly problematic is the situation in the Institution Drin) or request change of facility purpose of other objects (such as military barracks, etc.);
2. harmonize systematization of working posts with needs of the institutions of alleged types and engage greater number of experts of various profiles necessary for work with the persons with mental disabilities;
3. prepare plan and organize systemic supervisions of professional training programs for the staff of the institutions;
4. implement programs of prevention of „wearing out“ of the staff employed by the institutions;

5. pay a special attention at the ambient where the children and adult users spend their time and receive visits in the institutions (should be full of toys, pictures, objects painted in cheerful colors, paint the walls, etc.);
6. enable staff to work in their personal cloths or uniforms which is not a symbol of medical institution (to „remove“ white cloths);
7. prepare normative for isolation and fixation based on the principle of equality for all institution and adjust it to standards existing in traditional democracies;
8. ensure better health protection and work with the users, employment of the doctors, speak therapists and other professional cadres, also having in mind that a number of such cadres are registered by the employment bureaus;
9. establishment/intensifying of cooperation with the institutions of similar type, the NGOs. Schools, media, local communities, to decrease marginalization and elimination of existing prejudices towards this category of citizens;

Competent organs and the deadlines

- The Ministry of Work and Social Policy of FBiH
- the Ministry of Work and Veterans and Disabled Persons Protection of RS,
- The Ministry of Health of FBiH
- The Ministry of Health and Social Protection of RS

Within 60 days all institutions comprised by present Report are obliged to forward their reports on actions taken in accordance with present Recommendation to BiH Ombudsmen.

III

The Ministry of Work and Social Policy of FBiH should immediately start its work on determination of functioning of mental health institutions for which it is competent and the work should be done in accordance with the Law on Taking Over of the Rights of the Founder with urgent previous resolving disputable issues evidenced in present Report.

Until adoption of appropriate legislation in conformity with strategic document referred to in item I. of the Recommendation, it should ensure implementation of

measures related to the right to supervision with purpose of elimination of unlawfulness and should refrain from all activities which would additionally aggravate already very complex relations within institutions.

Accordingly:

1. Remunerations for members of the board of directors and supervisory boards from the resources earned through the prices of accommodation should be stopped at once;
2. The way of appointment of members of board of directors and supervisory boards should be re-considered from the aspect of ensuring participation of parents/guardians, the employees and the founders, and respect for the knowledge and experience in this area as a basic criteria for appointment;
3. Strengthening of capacities for implementation of the measures for supervision should be in accordance with law, including re-consideration whether there exist conflict of interests of employees of the Ministry from the aspect of their membership in boards of directors and supervisory boards;
4. all institutions should be subject to financial revision and subject to undertaking of measures aimed to elimination of unlawfulness determined by financial inspections in certain institutions, which particularly applies to the Institution Pazarić;
5. Consideration of solutions for all opened issues related to taking over of the role of the founder, such as: property, division balance, etc.;
6. As the first among the equal things, involvement of other competent ministries, which according to the Law have the right and obligation to perform supervision, should be ensured;
7. Organization of consultative meetings between cantonal ministries of social protection and representatives of social work centers that cover the greatest number of accommodated persons in the institutions should be implemented for the purpose of resolution of all disputable issues and establishment of the teams of experts to decide on accommodation and which should be composed of various professionals, with obligatory consultations with social work centers and cantonal ministries that pay functioning of the institutions.

Competent organ and the deadline for action

- The Ministry of Work and Social Policy of FBiH

Within 30 days competent Ministry is to inform BiH Ombudsmen Institution on measures undertaken, contained in the item III. of the Recommendation.

IV

BiH Ombudsmen recommend all competent institutions and bodies referred to in present Recommendations to establish cooperation with international organizations (UNICEF, UNDP, the World Bank, etc.) and other potential donors, and to consider possibility of usage of pre-accessional funds of the European Commission with a view to creation of financial preconditions for implementation of present Recommendations.

Banjaluka, 10.09.2009

**The Human Rights Ombudsmen
of Bosnia and Herzegovina**

Jasminka Džumhur

Ljubomir Sandić

Ombudsmeni BiH

Jasminka Džumhur

Ljubomir Sandić

Annex I

Schedule of visits of ombuds-representatives to the institutions of social protection in BiH

| Institution | Date of visit | Composition of ombuds-team | Remark |
|---|----------------------|--|--|
| The Institution for accommodation of mentally disabled persons Bakovići | 02.07.2009. | <ul style="list-style-type: none"> ➤ Jasminka Džumhur, ombudsman; ➤ Nives Jukić, Head of Department for Protection of the Rights of Persons with Disabilities; ➤ David Tomić, Head of Department for Elimination of Discrimination ➤ Aleksandra Arsenijević-Puhalo, psychologist ➤ Amira Krehić, coordinator of the project for the rights of a child; ➤ Andrea Raguž, trainee | <ul style="list-style-type: none"> ➤ Ivo Markija, director; ➤ Nikolina Ababović, nurse,; ➤ Dženana Đozić, lawyer; ➤ Marinela Marić, social worker; ➤ Katarina Slomo, pedagogist; ➤ Marlena Koštroman, social worker; |
| The Center for Accommodation of the Elderly and Weak Persons and | 07.09.2009. | <ul style="list-style-type: none"> ➤ Jasminka Džumhur, ombudsman; ➤ Almedina Karić, Public Relations Adviser; ➤ Haris Šahbaz, Head | <ul style="list-style-type: none"> ➤ |

| | | | |
|--|-------------|---|---|
| homeless persons Duje, municipality Doboj Istok | | of the Cabinet of BiH Ombudsmen Instituion | |
| The Instituion for accommodation of mentally disabled persons Fojnica | 02.07.2009. | <ul style="list-style-type: none"> ➤ Jasminka Džumhur; ombudsman; ➤ Nives Jukić, Head of Department for Protection of the Rights of Persons with Disabilities; ➤ David Tomić, Head of Department for Elimination of Discrimination ➤ Aleksandra Arsenijević- Puhalo, psychologist ➤ Amira Krehić, coordinator of the project for the rights of a child; ➤ Andrea Raguž, trainee | <ul style="list-style-type: none"> ➤ Ibrahim Katana, director; ➤ Đenita Karahmet – social worker; ➤ Adnan Bubalo, lawyer; |
| Instituion for protection of the children and the youth Pazarić | 01.07.2009. | <ul style="list-style-type: none"> ➤ Jasminka Džumhur; ombudsman; ➤ Nives Jukić, Head of Department for Protection of the Rights of Persons with Disabilities; ➤ David Tomić, Head of Department for Elimination of Discrimination ➤ Aleksandra Arsenijević- Puhalo, psychologist ➤ Amira Krehić, coordinator of the project for the rights of a child; ➤ Andrea Raguž, trainee | <ul style="list-style-type: none"> ➤ Salko Čengiće, director; ➤ Edina Fejzić, lawyer; ➤ Radica Sladoje, speak therapist,; ➤ Zijo Korjenić, socil worker; ➤ Radmilo Cuca, psychologist; |
| Home of the | 14.07.2009. | ➤ David Tomić, Head of Department for | ➤ Rajko Drinić, |

| | | | |
|--|-------------|---|---|
| children and the youth with difficulties in developing Prijedor | | <p>Elimination of Discrimination</p> <ul style="list-style-type: none"> ➤ Aleksandra Arsenijević-Puhalo, psychologist | director; |
| The Institution for protection of female children and the youth Višegrad | 08.07.2009. | <ul style="list-style-type: none"> ➤ David Tomić, Head of Department for Elimination of Discrimination ➤ Aleksandra Arsenijević-Puhalo, psychologist ➤ Andrea Raguž, trainee | <ul style="list-style-type: none"> ➤ Zoran Vasiljević, director; ➤ Social worker; ➤ psychologist; ➤ main nurse; |