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**The United Nations Committee on the Rights of Persons with Disabilities**

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**Attn. Secretary of the Committee, Ms. Harumi Fuentes Furuya**

**Subject: Submission to the United Nations Committee on the Rights of Persons with Disabilities - Review of the Status of the Rights of Persons with Disabilities in Bosnia and Herzegovina for the purpose of compiling the list of issues for Bosnia and Herzegovina.**

**I- Introduction**

1. Human Rights Ombudsmen of Bosnia and Herzegovina received information from the United Nations Committee on the Rights of Persons with Disabilities that Bosnia and Herzegovina has accepted a simplified reporting procedure and that in this connection the Committee will submit to the State of Bosnia and Herzegovina a List of Questions, in accordance with which a state briefing on the implementation of the UN Convention on the Rights of Persons with Disabilities should be prepared. The list of questions will be based on information that the Committee will obtain from institutions for the protection of human rights, independent mechanisms for monitoring rights, organizations and persons with disabilities and other civil organizations.

2. In this regard, the Ombudsmen of Bosnia and Herzegovina provide our view of the situation of the rights of persons with disabilities with a proposal of the matter, with the expectation that the document will contribute in an adequate way to the compilation of the List of Issues, which ultimately will result in the Report of Bosnia and Herzegovina on the application of Convention on the Rights of Persons with Disabilities

**II-Positive aspects**

3. The Ombudsmen of Bosnia and Herzegovina point out that in the Federation of Bosnia and Herzegovina adopted a new Strategy 2016-2021 for the Promotion of the Rights and the Position of Persons with Disabilities in the Federation of Bosnia and Herzegovina. Also, in the Republika Srpska, the Strategy for Improving the Social Position of Persons with Disabilities in the Republika Srpska 2017-2026 was adopted.

4. Law on the Prohibition of Discrimination in Bosnia and Herzegovina<sup>1</sup> was amended in 2016. Amendments to the Law introduced disability as a new basis of discrimination.

<sup>1</sup> „Official Gazette of BiH " no. 59/09 and 60/16

### **III - The main reasons for concern**

#### **Article 1 - Purpose**

5. The Strategy for Improving the Social Position of Persons with Disabilities in the Republika Srpska and the Strategy for the Improving of the Rights and Conditions of Persons with Disabilities in the Federation of Bosnia and Herzegovina envisage the adoption of a unique definition of disability which should be harmonized with Article 1, paragraph 2 of the Convention. Unfortunately, in Bosnia and Herzegovina there still not exist single definition of "disability", nor is it likely when it will exist. At present, various, first and foremost, entity and cantonal legislation define the concept of a person with disabilities depending on which area they regulate (laws in the field of social protection, health care).

#### **Suggested questions**

What measures the authorities in Bosnia and Herzegovina plan to take in order to adopt a unique definition of a person with disabilities within the meaning of the Convention?

- What are the authorities in Bosnia and Herzegovina planning to do in order to take to ensure that a unique definition of disability is applied at all levels of government in BiH?
- How do competent authorities in Bosnia and Herzegovina plan to ensure the participation of persons with disabilities in the process of adopting a single definition of a person with disabilities?

#### **Article 3 and 4 - General Principles and obligations**

6. The umbrella document for equalizing disabled people is Disability Policy in Bosnia and Herzegovina<sup>2</sup>. However, despite this fact, very often the adopted regulations are not in line with the provisions of the Policy, or with the basic principles and provisions of the UN Convention on the Rights of Persons with Disabilities.

7. Unfortunately, there is still an inadequate level of involvement of civil society organizations that engage persons with disabilities in the processes of adoption of laws and regulations, policies and decisions concerning persons with disabilities. In a small number of cases, civil society organizations that engage persons with disabilities are involved in the lawmaking process, leaving short deadlines for objections and complaints, and often failure to comply with the given objections and complaints. For this reason, civil society organizations that engage people with disabilities are guided by the principle "Nothing about us without us" and the motto reflects the importance of involving these organizations in the decision-making process that is important for exercising the rights of that category.

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<sup>2</sup> Available at:

<http://www.vladars.net/sr-SP>

Cyrl/Vlada/Ministarstva/MZSZ/Documents/Politika%20u%20oblasti%20invalidnosti%20u%20BiH.pdf

**Suggested questions:**

- What measures do the authorities in Bosnia and Herzegovina plan to take to ensure compliance of laws and policies with the provisions of the Convention at all levels of government (municipality, city, canton, and entities, state)?
- What measures are the authorities in Bosnia and Herzegovina planned to take in order to raise public awareness of the rights of persons with disabilities, on the basis of the Convention and the Optional Protocol?
- What measures are the authorities in Bosnia and Herzegovina planned to take in order to establish mechanisms for ensuring the continued participation of persons with disabilities in the design and implementation of policies, strategic documents, regulations and other decisions concerning persons with disabilities?
- What measures are the authorities in Bosnia and Herzegovina planned to take in order to improve the situation in the area of financing, or provide financial support to civil society organizations that are occupied by persons with disabilities?

**Article 5 - Equality and non-discrimination**

8. The Constitution of Bosnia and Herzegovina, the constitution of both entities, stops ten cantons and international documents clearly define that all persons are equal before the law, but the prohibition of discrimination on grounds of disability in the constitutions in Bosnia and Herzegovina is not explicitly mentioned, but is performed by some other social and personal properties. As already pointed out, the most important novelty is that the Discrimination Act adds disability as the basis of discrimination. In this regard, Article 5 of the Law on the Prohibition of Discrimination stipulates that positive measures aimed at equalizing opportunities for persons with disabilities will not be considered discrimination. However, there is no provision stating that the denial of reasonable accommodation is considered to be discrimination.

9. Despite the fact that the Law on the Prohibition of Discrimination in Bosnia and Herzegovina now recognizes disability as the basis of discrimination, in practice there is still discrimination against the place of residence or place of residence, especially in cases where persons with disabilities determined in one entity want to change their place of residence, because the established right in one entity is not transferable in the territory of another entity. In the Federation of Bosnia and Herzegovina, a disproportion in disbursements for persons with disabilities is still noticed, depending on the cantons in which they live, as these rights are exercised at the cantonal level. Discrimination in the Federation of Bosnia and Herzegovina is evident, since only persons with a percentage of damage of 100% and 90% can realize the rights prescribed by the Law on the Basics of Social Protection, Protection of Civilian Victims of War and Family Protection with Children of the Federation of Bosnia and Herzegovina<sup>3</sup>, and since 2009 when the said Act passed persons with disabilities of less than 90%, all these rights were lost. The existing laws regulate in different ways the rights of military invalids, civilian victims of war and peacetime disabled people, different procedures and conditions for obtaining status, and different allocations of budget funds for realization of rights based on disability are also different, with the level of fees and allocations for war invalids are significantly higher in relation to civilian disabled people.

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<sup>3</sup> "Official Gazette of FBiH", no. 36/99, 54/04, 39/06, 14/09,45/16

**Suggested questions:**

- What measures do the authorities in Bosnia and Herzegovina plan to take in order to change legislation and eliminate discrimination against persons with disabilities, by the cause and circumstances of disability?
- What measures do the authorities in Bosnia and Herzegovina plan to take to eliminate discrimination against persons with disabilities, according to the territorial principle (between entities and cantons, or even the cantons themselves)?

**Article 6 - Women with disabilities**

10. In Bosnia and Herzegovina, non-discrimination is defined by the Constitution of Bosnia and Herzegovina<sup>4</sup>, the Constitution of the Federation of Bosnia and Herzegovina<sup>5</sup>, the Constitution of the Republika Srpska<sup>6</sup>, the Law on the Prohibition of Discrimination of Bosnia and Herzegovina and the Law on Gender Equality in Bosnia and Herzegovina<sup>7</sup>. There are no other laws governing the issue of equality between women and men. In order to implement the Gender Equality Law in Bosnia and Herzegovina, the Gender Action Plan has been adopted, with the aim of ensuring gender mainstreaming in legislation and policies in different areas of life, special institutional mechanisms for implementing and monitoring gender equality have been developed: for the level of Bosnia and Herzegovina - Agency for Gender Equality; for the level of the Republika Srpska and the Federation of BiH - the Gender Center of the Republika Srpska and the Gender Center of the Federation of BiH.

11. The Ombudsmen of Bosnia and Herzegovina are in the Report on the Application of the UN Convention on the Rights of Persons with Disabilities in Bosnia and Herzegovina from 2016<sup>8</sup> indicated that legislation in Bosnia and Herzegovina does not know or regulate in a special way the health care of women with disabilities. Namely, health institutions in Bosnia and Herzegovina have low level of equipment, so, for example, women with paraplegia do not have the opportunity to undergo gynecological examinations.

**Suggested questions:**

- What measures do the authorities in Bosnia and Herzegovina plan to take to ensure the inclusion of women and girls with disabilities in the design, implementation and monitoring of policies and programs of relevance to them?
- What measures do the authorities in Bosnia and Herzegovina plan to take to collect all data on women and girls with disabilities?
- What measures do the authorities in Bosnia and Herzegovina plan to take to ensure that they consult with women and girls with disabilities, through organizations that represent them, in relation to the design, implementation and evaluation of programs and measures in all matters that are directly related to them?
- How much budget funds Bosnia and Herzegovina plans to allocate in the next five years for the procurement of adequate medical devices for the provision of gynecological examinations for

<sup>4</sup> Article II, paragraph 4. of the Constitution of Bosnia and Herzegovina

<sup>5</sup> Article 2, paragraph 1, items c) and d) of the Constitution of the Federation of Bosnia and Herzegovina

<sup>6</sup> Article 10 of the Constitution of the Republika Srpska

<sup>7</sup> "Official Gazette of BiH" no. 16/03 and 102/09

<sup>8</sup> Available at: [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2017050312330714bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2017050312330714bos.pdf)

women, dental services, with the aim of ensuring adequate health care for women with disabilities.

## **Article 7 - Children with disabilities**

12. In the Annual Report on the results of work for 2017, the Ombudspersons emphasized the importance of drafting guidelines for determining the best interests of the child in Bosnia and Herzegovina. In 2018, the Guidelines were drafted by the Ministry of Human Rights of Bosnia and Herzegovina.<sup>9</sup>

13. In Bosnia and Herzegovina, there is no legal framework that supports children with disabilities, as well as support for families with children with disabilities. This additionally complicates the fact of the different approach in the Republika Srpska and the Federation of Bosnia and Herzegovina in regulating this issue, especially given the significant competence of the cantons in the Federation of Bosnia and Herzegovina. Cantons in the Federation of Bosnia and Herzegovina have the authority to regulate that area, which often leads to discrimination against children with disabilities and families with children with disabilities by territorial principle, due to different legal framework and disproportionate benefits. There are no instruments by which the authorities of the Federation of Bosnia and Herzegovina may oblige the authorities of the canton to implement this Federation's provision.

14. The Ombudsmen also, in the Report on the Application of the UN Convention on the Rights of Persons with Disabilities in Bosnia and Herzegovina from 2016,<sup>10</sup> noted that children with special needs who are beneficiaries of day care centers usually have a transport problem, or because the institution has no means to organize it or because the child is housed far from the day care center and for which the transport itself cannot be organized. In this case, no home-based treatment of the child is ensured. In this connection, the question arises as to the age of a person who can use day centers and occupational workshops, because the most frequently set is a certain lifetime, regardless of their interest and benefits for socializing a person.

15. The Ombudsmen of Bosnia and Herzegovina, through the Special Reports<sup>11</sup>, pointed to the authorities in Bosnia and Herzegovina on the problems of children and families of children with special needs and the need to take measures with the aim of establishing a standardization of instruments and procedures for observing and assessing child's abilities in categorization - multidisciplinary approach, full health care and exercising other rights guaranteed by the UN Convention on rights of children. However, the situation has not changed significantly until now.

16. When it comes to the centers for social work, the Ombudsmen of Bosnia and Herzegovina continuously point out that the employees in the centers meet with numerous professional risks, a wide range of legal responsibilities and authorizations, and daily work with a large number of different users (mentally-ill patients, persons prone to asocial and aggressive behavior, perpetrators of various criminal offenses, marital and extra-marital partners, juveniles in conflict with the law,

<sup>9</sup> Available at: [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2019020112314016eng.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019020112314016eng.pdf)

<sup>10</sup> Available at: [https://www.ombudsmen.gov.ba/documents/obmudsmen\\_doc2017050312330714bos.pdf](https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2017050312330714bos.pdf)

<sup>11</sup> Special report on the situation of children with special needs/disabilities in psychophysical development, December 2010, available at: [www.ombudsmen.gov.ba](http://www.ombudsmen.gov.ba);

etc.). For many years, Ombudsmen have been advocating the strengthening of the capacities of the centers for social work<sup>12</sup>, which due to insufficient human resources, poor working conditions, responsibilities and vulnerability, exposure to professional stress, as well as the issue of perception of professions by citizens and users, are unable to efficiently perform all tasks entrusted to them.

**Suggested questions:**

- What measures do the authorities in Bosnia and Herzegovina plan to take to ensure the necessary support for children and youth with disabilities with a view to their inclusion in society as well as their community life with their families?
- What measures are the authorities in Bosnia and Herzegovina planning to take to ensure that children and young people with disabilities are involved in decision-making regarding them and how they exercise the right to express their opinions in accordance with Article 7, paragraph 3 of the Convention, and how are they supported?
- How do the authorities in Bosnia and Herzegovina plan to provide financial, human resources and other support to the centers for social work in Bosnia and Herzegovina?

**Article 8 - Rising awareness**

18. Complaints received at the Ombudsman institution and telephone calls from citizens indicate a low level of awareness of the rights and needs of persons with disabilities. Citizens' remarks indicate that due to the nature of disability, these persons often remain isolated and do not know their rights, and do not seek their protection.<sup>13</sup>

**Suggested questions:**

- What measures the authorities in Bosnia and Herzegovina plan to take in order to increase the awareness of persons with disabilities about the rights they belong to, as well as the ways in which they are to be implemented?
- Did the competent authorities in Bosnia and Herzegovina carry out certain campaigns in the past period in order to achieve the aforementioned goal?

**Article 9 - Accessibility**

19. The Ombudsmen of Bosnia and Herzegovina continuously point out that the inconsistent application of legal solutions and by-laws, as well as the lack of adequate sanctions for violators of the prescribed norms, prevented full physical accessibility to public-use objects and other urban-construction facilities<sup>14</sup> (for example, residential buildings-intended for families of fallen soldiers and war invalids in Zvornik did not have access to wheelchairs at the time of filing the complaint. In the design, construction and monitoring system, there is insufficient awareness of the importance of accessibility standards, so accessibility standards are applied in part or not at all.<sup>15</sup>

<sup>12</sup> Special Report of the Ombudsmen of Bosnia and Herzegovina "The role of the Centers for Social Work in the Protection of the Rights of the Child", November 2013

<sup>13</sup> Ž-BL-02-202/16, Ž-BL-02-766/15

<sup>14</sup> Ž-BL-02-733/15, Ž-BL-02-152/14

<sup>15</sup> The Special Report on the Accessibility of Premises of Legislative Bodies in Bosnia and Herzegovina points to the fact that many facilities are only apparently accessible and that the interior of the facilities is not adapted to persons with disabilities.

20. Unsupported programs for public and private broadcasters and electronic media (inadequate translation into sign language, lack of audio translation for people with visual impairments and lack of information in an easily readable format for people with reduced intellectual capacity or some other reason why they cannot monitor all information), disables the participation of persons with disabilities in discussions relevant to their life. Also, public debates are not enforceable due to the incompatibility of working material for people with disabilities<sup>16</sup>, which also applies to documents that are published on the websites of public authorities<sup>17</sup>. There is no system solution that would ensure the training and skills needed by people with disabilities to use modern assistive methods for blind people, because Braille script printers cost a lot. In the Federation of Bosnia and Herzegovina, health insurance has not provided aids for blind persons, which generally leads to extremely poor social status of this population.

21. One of the most important segments of accessibility is accessible public transport, in suburban, city and intercity traffic. The regulations governing this area do not clearly define the obligation of the service provider to provide accessible means of transport, facilities and information to persons with disabilities, which in turn has the effect of significantly limiting the freedom of movement, especially for persons with severe disabilities. In certain cities in Bosnia and Herzegovina, certain funds are available for the transportation of people with disabilities, but due to the unacceptability of stations, needy drivers, as well as other transport users, as well as a small number of affordable means of transportation, there are no expected effects from their introduction. In addition, alternative programs for the transport of persons with disabilities have not been developed in local communities.

**Suggested questions:**

- What measures are the authorities in Bosnia and Herzegovina planning to take in order to remove architectural barriers and to make physical accessibility, transport, information and communication technologies to persons with disabilities in as significant a percentage?
- What measures do the authorities in Bosnia and Herzegovina plan to take in order to make the buildings fully accessible to persons with disabilities in BiH?
- What measures are the authorities in Bosnia and Herzegovina planning to take in order to introduce a monitoring mechanism and effective sanctions for failure to comply with accessibility standards in all areas covered by the Convention, and ensure the participation of representative organizations of persons with disabilities in monitoring?
- What measures do the authorities in Bosnia and Herzegovina plan to take in order to make public transport and supporting infrastructure accessible to people with disabilities?
- What measures are the authorities in Bosnia and Herzegovina planning to take to ensure that services intended for all citizens are also available for people with disabilities?
- What measures do the authorities in Bosnia and Herzegovina plan to make in order to make the websites of public institutions accessible to people with disabilities?

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<sup>16</sup> Ž-BL-02-289/16

<sup>17</sup> The Ombudsmen of Bosnia and Herzegovina were not aware of the public hearing on the Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities under Article 35 paragraph 1 of the Convention on the Rights of Persons with Disabilities, October 2012.

## Article 12 - Equality before the law

22. The Ombudsmen of Bosnia and Herzegovina continuously express concern over the entire existing system of deprivation of legal capacity and on several occasions have alarmed the competent structures on the mandatory application of the UN Convention on the Rights of Persons with Disabilities. The suppression of legal capacity should be an institute that will be applied exceptionally, after exhausting all other alternative methods of decision-making assistance. Particularly worrying is the insufficiently developed institutional structure of support for people with intellectual and mental disorders in the community. The capacities of the centers for social work are insufficient, the staff is not educated for the efficient treatment of this category of citizens, and the poor institutional linkage of the Centers for Social Work and the mental health centers is weak.

23. The lack of comprehensive databases on persons with intellectual and mental disabilities, then persons who have been deprived of their legal capacity to work and who are housed in institutions, demanded through research conducted in 2018 by the Institution of Ombudsmen for Human Rights of BiH, as part of the development of the Special Report on the Status of the Rights of Persons with Intellectual and Mental Disabilities, there are relevant indicators. The fact is that it is in accordance with Art. 33, paragraph 1, of the Family Law of the FBiH is regulated by an expert on a person's specialty who is to be examined by a person who is under the procedure of deprivation of legal capacity, which will give written evidence and opinion on his/her psychological state. In the Republic of Srpska, a Working Group was formed to draft an Action Plan with the aim of preventing future human rights violations in accordance with Article 5 of the Convention on the Involuntary Accommodation of Persons with Mental Health Disorders, based on the judgment of the European Court of Human Rights in Strasbourg, *Hadžimejlić and Others vs. Bosnia and Herzegovina*, adopted at the session of the Government of the Republika Srpska<sup>18</sup>.

The Government of the Federation of Bosnia and Herzegovina is in relation to the Objective 1 of the Action Plan for the implementation of general measures for the prevention of human rights violations under the Judgment of the European Court of Human Rights *Hadžimejlić and Others vs. Bosnia and Herzegovina* passed the Decision on the appointment of the Working Group for drafting the Proposal for Amendments to the relevant Laws with the aim of harmonizing domestic legislation and practice with International Human Rights Standards for people with mental disorders<sup>19</sup>. The task of the mentioned Working Group is to prepare amendments to the Law on the Protection of Persons with Disabilities, the Law on Out-of-Court Procedure and the Law on the Basis of Social Protection, Protection of Civil Victims of War and Protection of Family with Children in order to ensure the legal accommodation of persons with mental disorders in institutions, or judicial decision-making on this accommodation, which are in the course.

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<sup>18</sup> "Official Gazette of the Republika Srpska", number: 77/16

<sup>19</sup> "Official Gazette of the Federation of Bosnia and Herzegovina", number: 82/17



**Suggested questions:**

- What measures do the authorities in Bosnia and Herzegovina plan to take to ensure support for persons with disabilities when making decisions?
- What are the authorities in Bosnia and Herzegovina planning to undertake in order to reform legislation regarding custody and deprivation of legal capacity (instead of a medical expert, to be a team of experts) in order to accept internationally accepted standards?

**Article 13 - Access to justice**

24. Persons with disabilities as well as other citizens of Bosnia and Herzegovina have access to courts, administrative and executive bodies, provided they have business capacity. Access to justice for persons with disabilities can not be effective, as a number of buildings in which judicial institutions are located are not physically accessible to persons with disabilities due to the existence of physical barriers. By using the necessary modern aids, people with disabilities will be allowed to participate in a more independent life and contribute to increasing their social inclusion.

25. The Human Rights Ombudsman Institution of Bosnia and Herzegovina stated in the Annual Report for 2018 that by addressing citizens, it points to a limited and discriminatory approach to justice (for example, a party in the trial, who is blind, documentation and written statements in the Braille letter, or otherwise appropriately). In this way, the right to access to justice is violated, and therefore they are prevented from using regular remedies or to initiating litigation.

**Suggested questions:**

- What measures are the authorities in Bosnia and Herzegovina planning to take to eliminate physical barriers, access to assistive technologies, obligation to engage qualified interpreters of the sign language, provide Braille Letter in judicial proceedings in the judiciary?
- Is there sufficient resources in Bosnia and Herzegovina for specialized training of judicial and police personnel on the rights of persons with disabilities?

**Article 14 - Freedom and security of a person**

26. When it comes to persons with disabilities, the fact is that people with mental disorders are at the highest risk, as well as persons placed under the supervision of institutions. In addition to supervising the work of these institutions by the competent ministries, control is carried out within the framework of inspection supervision. At the level of Bosnia and Herzegovina, the Supervision Commission has been established, which reports on the situation in these institutions on an annual basis, or, as needed, by visiting and drafting an ad hoc report. Also, social work centers have the ability to monitor the conditions in which people with disabilities live. It is important to point out that the European Court of Human Rights in Strasbourg rendered a judgment in the Hadžimejlić and Others vs. Bosnia and Herzegovina<sup>20</sup> case, which found that the rights of persons deprived of legal capacity and who were placed in social welfare institutions were violated. With this judgment, the European Court found that Bosnia and Herzegovina violated Article 5 of the European Convention

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<sup>20</sup> Decision of the European Court of Human Rights of Bosnia and Herzegovina is available at: [http://www.mhrr.gov.ba/ured\\_zastupnika/odluke/PRESUDA%20HADZIMEJLIC%20I%20DRUGI%20protiv%20BIH.pdf](http://www.mhrr.gov.ba/ured_zastupnika/odluke/PRESUDA%20HADZIMEJLIC%20I%20DRUGI%20protiv%20BIH.pdf)

for the Protection of Human Rights and Fundamental Freedoms, because the applicants for many years were placed in the Social Protection Institution of Yugoslavia. Institution for the care of mentally handicapped persons "Drin" in Fojnica, without a valid legal basis, that is, without a court decision, since no judicial review of the justification and integrity of retention of complainants in that and similar social welfare institutions has been ensured. Persons with disabilities are primarily subjects, not objects of rights and obligations that make them legal entities equal to everyone else.

**Suggested questions:**

- What measures do the authorities in Bosnia and Herzegovina plan to take in order to implement the judgment of the European Court of Human Rights in Strasbourg in the *Hadžimejlić and Others vs. BiH* case?
- What actions have the competent authorities in Bosnia and Herzegovina taken to improve the status of persons with disabilities in cases of forced retention in psychiatric treatment based on disabilities after the reports submitted by the Supervision Commission, which do so on an annual basis, or when needed, by visiting and creating ad hoc report?
- What measures are the authorities in Bosnia and Herzegovina planning to take with the aim of putting an end to the laws allowing the deprivation of liberty of a person on the basis of disability, as well as forcible retention on treatment, use of coercive means and coercive measures on a medical-based disability model?

**Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment and Article 16 - Freedom from exploitation, violence and abuse**

27. A preventive mechanism has not yet been established in Bosnia and Herzegovina. However, through the project of Capacity Building of the Ombudsman for Human Rights of Bosnia and Herzegovina with the aim of implementing the mandate of the Preventive Mechanism in Bosnia and Herzegovina, appropriate training on the mandate and functioning of the Preventive Mechanism was carried out. Visits to places where persons are in any way restricted freedom of movement are an effective way to prevent and combat torture. Places where detained persons are deprived of their liberty, because of their character, are suitable places for torture, and regular monitoring of these places, or public presentation of the state of play, is a prerequisite for the prevention of torture and other forms of degrading treatment of these persons.

28. The constitution of Bosnia and Herzegovina, the Constitution of the Republika Srpska, the Constitution of the Federation of Bosnia and Herzegovina, as well as four criminal laws (Bosnia and Herzegovina, the Republika Srpska, the Federation of BiH and Brčko District) specifically prohibit all forms of abuse, violence and exploitation of all citizens. Other laws, such as the Law on Rights, Obligations and Responsibilities of the Patients of the Federation of Bosnia and Herzegovina<sup>21</sup> and the Law on the Protection of Persons with Mental Disorders of the Federation of Bosnia and Herzegovina<sup>22</sup>, directly prohibit all forms of medical experiments and research without prior consent of a person with disabilities or a person authorized by law to make decisions on their behalf.

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<sup>21</sup> „Official Gazette of the Federation of Bosnia and Herzegovina”, number: 40/10

<sup>22</sup> "Official Gazette of the Federation of Bosnia and Herzegovina" number: 37/01, 40/02, 52/ 1, 14/1

**Suggested questions:**

- Are the budgetary funds for professional training and training of authorized officials dealing with persons deprived of liberty in the budgets of police and security agencies in Bosnia and Herzegovina in the coming period?
- What measures do the authorities in Bosnia and Herzegovina plan to take to ensure alternatives in society rather than forcible retention on the treatment or hospitalization of persons with disabilities?
- What measures do the authorities in Bosnia and Herzegovina plan to take in order to provide funds for victims of abuse, especially with regard to the compensation of persons with disabilities?

**Article 19 - Independent life and inclusion in community**

29. In Bosnia and Herzegovina, there is no strategic document that would contribute to the deinstitutionalization of institutions where people with disabilities are accommodated. Although there were initiatives to enable these individuals to live independently in the community, with the support of personal assistance, the concept has not yet come to life. These issues are mostly dealt with by non-governmental organizations, with very little or no support from the competent public authorities.

30. Competent authorities should create legal bases for measures to achieve the goals of full participation and equality of persons with disabilities. This would ensure that these people enjoy their rights, including human, civil, political rights on an equal basis with other citizens.

**Suggested questions:**

- What measures are the authorities in Bosnia and Herzegovina planning to take to ensure the participation of people with disabilities in the process of developing comprehensive strategies in order to deinstitutionalize and introduce support services, especially in local communities for people leaving the institutions?

**Article 20 - Personal mobility**

31. Due to the inaccessibility of the physical environment, along with inadequate or missing orthopedic and other aids, the lack of public transport for people with disabilities, and the lack of information adapted to the blind, the deaf and the persons with intellectual disabilities contributes to the exclusion of persons with disabilities from all social and socioeconomic activities in Bosnia and Herzegovina.

32. Certain laws ensure and facilitate the personal / personal mobility of persons with disabilities, which primarily relates to social security laws, laws governing the rights of war disabled war veterans (compensation for assistance and care of another person and orthopedic supplement), laws in the field health care (issue of aids and medical rehabilitation) and laws and by-laws on spatial planning and construction (prescribe standards of design and construction without architectural barriers). However, persons with disabilities often have important limitations in the exercise of these rights, because not all the necessary by-laws are adopted, and those that have been adopted are very restrictive or not implemented.

**Suggested questions:**

- What measures do the authorities in Bosnia and Herzegovina plan to take to ensure the availability of appropriate aids that ensure the personal mobility and inclusion of persons with disabilities in society?
- What measures are the authorities in Bosnia and Herzegovina planning to take to ensure that persons with disabilities receive the appropriate aids, and in accordance with the United Nations Convention on the Rights of Persons with Disabilities that can not be physically indicated in Bosnia and Herzegovina (machine for writing Braille, readers screen, aids for easier communication, etc.), and what percentage of the budget of all levels of government are taken into account for the procurement of orthopedic and other assistive aids?
- What do the authorities in Bosnia and Herzegovina intend to take to eliminate discrimination that manifests in providing assistance to different groups of persons with disabilities, where the root cause is the cause and circumstances of the occurrence of a disability rather than the real needs of persons with disabilities?

**Article 21 - Freedom of expression and opinion, and access to information**

33. Freedom of expression and opinion is guaranteed by the Constitution of Bosnia and Herzegovina and the constitutions of the entities and cantons, while the exercise of the right of access to information to natural and legal persons is governed by the free access to information legislation<sup>23</sup> in both entities and Brčko District of Bosnia and Herzegovina. However, in Bosnia and Herzegovina, most of the information is not available to persons with disabilities, because of the physical barriers or barriers faced by these persons due to various sensory impairments, as well as lack of information regarding the method of exercising the individual rights. Frequent modifications of bylaws governing the procedure of the enjoyment and implementation of certain rights, inadequate information and awareness of the citizens<sup>24</sup> (method of referral to spa treatment of persons with 100% disability, access to gynecological and dental services, categorization, different treatment of persons with disabilities depending of the cause of disability, failure to execute European Court of Human Rights in Strasbourg and so on) causes dissatisfaction of persons with disabilities.

34. Bosnia and Herzegovina has not yet ratified the Marrakech Treaty aimed to create a set of mandatory restrictions and exemptions for the benefit of blind, visually impaired, or otherwise print disabled who are unable to use the printed materials. The initiative to start the ratification process of the Marrakech Treaty was submitted to the Council of Ministers of Bosnia and Herzegovina.<sup>25</sup>

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<sup>23</sup> Freedom of Access to Information Act of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", no. 45/06, 62/11 and 100/13), Freedom of Access to Information Act of the Federation of Bosnia and Herzegovina („Official Gazette of the Federation of Bosnia and Herzegovina “ no. 32/01 and 48/11 Freedom of Access to Information Act of the Republika Srpska ("Official Gazette of the Republika Srpska“ no. 20/01);

<sup>24</sup> Ž-BL-02-822/17, Ž-BL-04-218/18, Ž-BL-04-217/18, Ž-BL-02-218/18

<sup>25</sup> Information available at: <https://www.ipr.gov.ba/bs/novost/10005/pokrenuta-inicijativa-za-ratifikaciju-ugovora-iz-marakesa>

**Suggested questions:**

- Which measures the authorities in Bosnia and Herzegovina plan to take to ensure that information intended for the average population is available in formats accessible to persons with disabilities?
- Which measures the authorities in Bosnia and Herzegovina plan to take to ensure better awareness of persons with disabilities of their right to free access to information and methods of its implementation?

**Article 23 – Respect for home and the family**

35. The right to home and family to all citizens of Bosnia and Herzegovina is guaranteed by the Constitution of Bosnia and Herzegovina and the constitution of both entities, which means that this right has to be exercised by persons with disabilities under equal conditions. Persons with disabilities are often deprived of the rights to their home and family because of the lack of a unique model of social housing in Bosnia and Herzegovina. However, in the Federation of Bosnia and Herzegovina two cantons have adopted legislation on social-nonprofit housing as follows: Bosnia – Podrinje Canton, The Law on Social – Non-Profit Housing<sup>26</sup> and Zenica – Doboje Canton, The Law on Social – Non-Profit Housing<sup>27</sup>. In 2018 in Sarajevo Canton adopted was a draft The Law on Social – Non-Profit Housing<sup>28</sup>.

The Government of the Republika Srpska also adopted the draft Law on Social Housing in June 2018, while the National Assembly of the Republika Srpska at its second session held on 31 January 2019 adopted a Conclusion<sup>29</sup> to refer the draft Law on Social Housing to public discussion.

**Suggested questions:**

- What measures the competent authorities in Bosnia and Herzegovina plan to take to improve the conditions for persons with disabilities to create and maintain their families and to assist them in child raising, and maintaining the parental rights?

**Article 24 - Education**

36. Legislation related to education at the state level includes the following framework laws: the Law on Pre-school Education, the Law on Primary and Secondary Education and the Law on Higher Education, which define the basic principles and standards of education in Bosnia and Herzegovina. Although existing legal regulations determine the right to education for all under the same conditions, the situation in practice is significantly different. Bosnia and Herzegovina, following the adoption of the Framework Law on Primary and Secondary Education (2003) did not ensure the effective implementation of this Law because the relevant laws and bylaws necessary for the implementation of this Law were not adopted at the entity and cantonal levels, which is why families of children with special needs do not have the necessary support to enable the socialization of their children and adequate inclusive education. Children from rural areas are in an even more difficult position when it comes to the process of socialization. Standard justification for this

<sup>26</sup> “Official Gazette of Bosnia – Podrinje Canton Goražde”, no.: 9/13”

<sup>27</sup> „Official Gazette of Zenica – Doboje Canton, no.: 13/13”

<sup>28</sup> <http://skupstina.ks.gov.ba/zakon-o-socijalnom-neprofitnom-stanovanju-u-kantonu-sarajevo>

<sup>29</sup> Information available at: <http://www.narodnaskupstinars.net/?q=la/akti/javne-rasprave/nacrt-zakona-o-socijalnom-stanovanju-republike-srpske>

situation is the lack of funds to secure transportation to schools, kindergartens, day centers, health centers etc.

**Suggested questions:**

- Which measures the authorities in Bosnia and Herzegovina plan to take in order to ensure the conditions for inclusive education of children and young people with disabilities at all levels and whether the appropriate budgets are planned for these purposes?
- Which measures the authorities in Bosnia and Herzegovina plan to take in order to ensure that legislative acts in bah include the obligation of implementation of inclusive education of children with difficulties in their development including the measures of supports to their parents?

**Article 25 – Health**

37. Health care in Bosnia and Herzegovina is, under its constitutional arrangement, falling within the competence of the entities, cantons and Brčko District of Bosnia and Herzegovina and is regulated by the laws and other regulations of the entities and the Brčko District of Bosnia and Herzegovina.

38. Health policies of the entities and the Brčko District must fit the needs of citizens. All programs should aimed at health care provision should be tailored according to the purpose they serve, therefore the participation of people with disabilities in their drafting, either directly or indirectly, is very important. However, the applicable legislation does not provide an adequate quality and standard of health care services adjusted to the needs of persons with disabilities. In Bosnia and Herzegovina there is a difference in the exercise of the right to health care for children depending on their place of residence<sup>30</sup>, which leads to discrimination of children on territorial grounds, in particular having in mind the significant powers of the cantons in the Federation of Bosnia and Herzegovina. As an example can serve the fact that children suffering from diabetes in some cantons<sup>31</sup> are not entitled to insulin pumps in the framework of the regular health care services<sup>32</sup>, and children with intellectual difficulties cannot enjoy the dental care services.

**Suggested questions:**

- Which measures the authorities in Bosnia and Herzegovina plan to take in order to ensure necessary harmonization of the regulations governing the health care provision to children in Bosnia and Herzegovina?
- Please list the measures to ensure the access to health care services including the services related to sexual and reproductive health, access to maternity health facilities and pediatric institutions, in particular in rural and remote areas?
- Which measures the authorities in Bosnia and Herzegovina plan to take in order to ensure in order to establish the status of persons with disabilities and to ensure that mechanisms for the assessment of disability degree are in place based on the adopted unified assessment criteria irrespective of the cause and circumstances of disability emergence?

<sup>30</sup> 2018 Annual Report on Results of Work of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, available at: [www.ombudsmen.gov.ba](http://www.ombudsmen.gov.ba);

<sup>31</sup> 2018 Annual Report on Results of Work of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina, available at: [www.ombudsmen.gov.ba](http://www.ombudsmen.gov.ba);

<sup>32</sup> 2018 Annual Report on Results of Work of the Institution of Human Rights Ombudsman of Bosnia and Herzegovina

- Whether or not the authorities in Bosnia and Herzegovina enable persons with disabilities to participate in creation of health policies?

### **Article 27 – Work and employment**

39. Having in mind the sensitivity of the persons with disabilities who, even when they are employed, encounter many obstacles to access to the workplace, but first of all having in mind the difficulties they face in finding the employment, the Ombudsmen are constantly pointing out<sup>33</sup> that it is necessary to pay additional attention to the adequate exercise of the rights of these persons. This opinion is based on number of complaints received by the Ombudsman related to the employment of persons with disabilities and the difficulties in implementation of the obligation of the employers to pay indemnity in case of non-employment of a person with disabilities pursuant to the relevant entity legislation.

40. The applicable entity legislation on professional rehabilitation, training and employment of persons with disabilities<sup>33</sup> include a quota system as a measure of encouragement of employment of persons with disabilities in the open labor market. Also, there are no training centers for disabled persons in neither one entity.

#### **Suggested questions:**

- Which measures the authorities in Bosnia and Herzegovina plan to take in order to ensure that the relevant legislation clearly defines that the general health condition or ability not be considered as a pre-condition for the employment of persons with disabilities if they are professionally trained for a particular job?
- Which measures the authorities in Bosnia and Herzegovina plan to take in order to establish occupational centers as a form of work therapy for persons with the gravest forms of disability pursuant to legislation on professional rehabilitation?
- Which measures the authorities in Bosnia and Herzegovina plan to take in order to ensure that legislation on professional rehabilitation and employment clearly define criteria and mechanisms, including additional stimulations and incentives for the employment of persons with the gravest forms of disability?

### **Article 28 - Adequate standard of living and social protection**

41. According to the Constitution of Bosnia and Herzegovina, social policy and social care is within the competence of the entities and the Brčko District of Bosnia and Herzegovina. In the Federation of Bosnia and Herzegovina the competence in the field of social protection and care is divided between the entity and the cantons. In Bosnia and Herzegovina there are three categories of people with disabilities. These are war veterans, civilian victims of war and civilian persons with disabilities whose disability is not caused by war.

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<sup>33</sup> Law on Professional Rehabilitation and Employment of Persons with Disabilities of the Federation of Bosnia and Herzegovina (Official Gazette of F BiH no. 09/10) and Law on Professional Rehabilitation and Employment of Persons with Disabilities of the Republika Srpska (Official Gazette of Republika Srpska, no. 37/12 and 82/15)

Although the needs of all these categories in most cases are the same because they have similar or same consequences of disability, the rights and benefits for the three categories of disability differ drastically.

For instance, the Law on the Rights of War Veterans and Members of their Families<sup>34</sup> and the Law on the Rights of Veterans, Disabled Veterans and the Families of Killed Soldiers of the Homeland War of the Republika Srpska<sup>35</sup>, a blind person whose disability originates from war is entitled to disability allowance, the carer's allowance, allowance for orthopedic device, priority in employment, housing, free parking lot, facilities during the vehicle import, priority while waiting in lines, while a blind person born with this disability is only entitled to the carer's allowance.

42. Lack of unified registers of persons with disabilities at the entity level leads to inadequate allocation and reallocation of budgetary funds, which impacts the daily life of persons with disabilities.

**Suggested questions:**

- Which measures the authorities in Bosnia and Herzegovina plan to take in order to ensure elimination of discrimination of persons with disabilities based on the cause of their disability and their place of residence?
- Which measures the authorities in Bosnia and Herzegovina plan to take in order to ensure elimination of discrimination in availability of assistive devices to all persons with disabilities under equal conditions?
- Which measures the authorities in Bosnia and Herzegovina plan to take in order to ensure reallocation of budgetary funds at all levels in order to implement the rights to monetary allowances to persons with disabilities to facilitate their daily life.
- Which measures the authorities in Bosnia and Herzegovina plan to take in order to ensure implementation of sanctions for irregular payment of disability benefits?

**Article 29 - Participation in political and public life**

43. It is beyond dispute that access to the work premises of the legislative bodies for persons with disabilities has a direct impact to their enjoyment of the right to freedom of thought and expression, the use of political rights, including the right to vote and to run for election, social inclusion and thus the creation of legal i.e. political) framework defining the status of persons with disabilities.

44. Legislation of Bosnia and Herzegovina governs the accessibility of polling stations and method of voting for persons with disabilities assisted by other person. However, people with disabilities point out their dissatisfaction because a large number of the polling stations are not adapted in the architectural sense, and voter lists are not adjusted to blind people (e.g. in Braille script, or through audio instructions or the possibility of voting by telephone).

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<sup>34</sup> " Official Gazette of the Federation of Bosnia and Herzegovina", no. 33/04, 56/05, 70/07, 9/10 and 90/17

<sup>35</sup> "Official Gazette of the Republika Srpska", no. 134/11



**Suggested questions:**

- Which measures the authorities in Bosnia and Herzegovina plan to take in order to ensure the implementation of the right of persons with disabilities to participate in political life including the publication of election materials in formats accessible to persons with disabilities, guidance related to access to polling stations and in general, participation of persons with disabilities at the elections?

**Article 30 - Participation in cultural life, recreation, leisure and sport**

45. Amendments to the Law on Sports in Bosnia and Herzegovina<sup>36</sup> include the provisions related to persons with disabilities. These provisions enable support to athletes with disabilities by which their discrimination is eliminated.

**Suggested question:**

- Which measures the authorities in Bosnia and Herzegovina plan to take in order to ensure ratification of Marrakech Treaty?

Human Rights Ombudsmen of  
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Nives Jukić, sgd.  
PhD. Ljubinko Mitrović, sgd.  
PhD. Jasminka Džumhur, sgd.

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<sup>36</sup> „Official Gazette of Bosnia and Herzegovina”, no. 27/08 and 102/09