

Vesna Bratovčić, Senad Mehmedinović

Persons with Disability in the Social System of Bosnia and Herzegovina

Abstract

Regarding the administrative division, Bosnia and Herzegovina (B&H) consists of two entities - the Federation of Bosnia and Herzegovina and the Republika Srpska and Brčko District. The territory of Brčko was under arbitrage and was attached neither to the Federation of B&H nor to the Republika Srpska. By decision of the International Arbitration Commission, close to the end of 2000, Brčko was put under administration of Bosnia and Herzegovina, as the separate district. Brčko District has its own multi-ethnic government, Assembly, Executive Board, jurisdiction and police forces.

According to the Constitution of the Federation of B&H the field of social protection is under the joint jurisdiction of the Federation and the cantons. The Constitution defines that the implementation of social policies and establishing of social care services fall under the competence of the cantons. The Federation has 10 cantons with their own constitutions and legal capacity to adopt laws, both in the fields under their exclusive jurisdiction, as well as in areas that are under

joint jurisdiction of the Federation and the cantons. In the Republika Srpska, the area of social protection is regulated by the Law on social protection of the Republika Srpska, the Law on civilian victims of war of Republika Srpska, the Law on child protection of Republika Srpska and the Law on the protection of the family of the Republika Srpska, and in the Brčko District by the Law of social protection of Brčko District. Since B&H has a highly decentralized governance structure, it is not surprising that eligibility conditions for social assistance differ between Entities, Districts and Cantons. B&H and its entities have signed a number of international instruments, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and other, that address the rights of persons with disabilities and they constitute an integral part of the B&H's legislation and have the legal force of the Constitutional provisions.

B&H ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol in March 2010 without making any reservations or declarations¹. By ratifying the CRPD, B&H committed itself to the application of its provisions throughout the country and thus expressed its intention to actively work for and contribute to the improvement of the position of persons with disabilities. The fact that the CRPD has become an integral part of the B&H legal system through this act of ratification is particularly important. For B&H the CRPD became effective on 11th April 2010. Although B&H, by signing numerous international treaties, adopted the philosophy of inclusion and equal rights of persons with disabilities, the state is unable to ensure equal participation of persons with disabilities. There is no single definition of persons with disabilities in Bosnia and Herzegovina. Different concepts are used in different areas (social, health care, pension insurance, employment). In B&H there is no comprehensive data on the structure of persons with disabilities, but only data

on the number of persons with disabilities who exercise some rights in certain systems. Although B&H is one of the countries with the highest social protection expenditures, not only in the immediate region but amongst most European countries, unfortunately, the high levels of spending do not translate into proportionate results on the ground, as benefits do not reach the poorest segments of the population due to insufficient targeting. Allocation of funds in the social protection sector is not fair and it is not based on the needs but rather on the status and area of residence of beneficiaries.

The social protection system in B&H - legal and institutional framework

B&H has committed itself to the process of joining the European Union to harmonize domestic legislation with international conventions and European standards. It ratified the European Social Charter, which is one of the most important documents regulating the realization of social rights within the European Union.

The Constitution of B&H, as the highest legal and political document of the state, does not define social protection as the competence of its institutions. The social protection system is organized according to the administrative division of the state. That means that the field of social policy and social protection are under the jurisdictions of the Federation and the cantons, Republika Srpska and Brčko District.

At the level of B&H, the Ministry of Civil Affairs is responsible for coordinating plans and for international agreements on social security ratified by B&H, while the Ministry of Human Rights and Refugees is responsible for the rights of displaced persons and returnees. The social protection system in the Federation of B&H is organized through 10 cantons, which are divided into 79 municipalities, while the Republika Srpska is divided into 63

municipalities. Brčko District is a separate administrative unit.

The area of social protection in the Federation of B&H is regulated by the Law on social protection and the Law of protection of civilian war victims and families with children, supplemented by a specific law of each of the 10 cantons².

In the Republika Srpska, the area of social protection is regulated by the Law on social protection of the Republika Srpska, the Law on civilian victims of war, the Law on child protection and the Law on the protection of the family of the Republika Srpska, and in the Brčko District by the Law of social protection of Brčko District.

According to the information provided by the Initiative and Civil Action in the Federation of B&H³, the system of social protection includes over 30 ministries and institutions: the Ministry of Labor and Social Policy of the Federation of B&H and 10 cantonal ministries, the Ministry of Veterans and Disabled Veterans of the Defensive-Liberation War of the Federation of B&H, the Ministry of Displaced Persons and refugees of the Federation of B&H, Ministry of Health of the Federation of B&H and 10 Cantonal Ministries of Health, Health Insurance and Reinsurance Institute of the Federation of B&H and 10 cantonal institutions/funds, Institute for Pension and Disability Insurance, the Federal Employment Office and 10 cantonal employment offices.

According to the available data from the Statistics Agency of B&H from 2016⁴, there are a total of 59 centers for social work and 22 social welfare services in the Federation of B&H, whereas in the Republika Srpska there are 36 social welfare centers and 10 social welfare municipality services. There is no center for social work in Brčko District, but only one subsection within the Department of Health. According to the Federal Ministry of Labor and Social Policy of 2014⁵, there

are 25 government institutions in the Federation of B&H: 3 institutions for the care of persons with disabilities, 2 houses for social and health care of persons with disabilities and other persons, 5 institutions for Care for children without parental care, 9 institutions for the care of elderly and infirm persons, 1 institution for the education of male children and youth, 3 disciplinary centers for juveniles and 2 therapeutic communities with 31 users.

According to the Government of the Republika Srpska, currently there are seven founding institutions in the social protection system: the Center for children and youth without parental care „Rada Vranješević“ Banja Luka, the Gerontology center Banja Luka, the Home for people with disabilities Prijedor, the Center for persons with disabilities Višegrad, the Elderly care home Prijedor, the Elderly care home East Sarajevo and the Center for children and youth with developmental disabilities „Budućnost“ Derвента. The right to social protection is defined by the Federal Law of Social Protection and includes: financial and other material assistance, training for living and working, accommodation in another family, accommodation in social welfare institutions, social and other professional services, home care and home assistance.

Persons with disabilities in the social system in B&H

After the ratification of the CRPD, the adoption of the „Disability Policy in Bosnia and Herzegovina“ and the entity strategic documents, in which organizations of persons with disabilities participated in the drafting process, the state has so far made no more concrete steps to eliminate the discrimination that persons with disabilities face in both entities. The absence of a nationally agreed definition of persons with disabilities in B&H still leads to different concepts of disability

used in different areas (social, health care, pension insurance, employment). In each of these areas, under different conditions and criteria, status is acquired and disability is defined. Hence, there are no unified criteria for acquiring the status of a person with disability and being eligible to respective services.

In B&H, the exact number of persons with disabilities is still unknown. In the Report on the Compliance of the Legislative and Institutional Framework in Bosnia and Herzegovina with the CRPD⁶ with recommendations for harmonization, it is stated that, according to the 2013 census, the total number of inhabitants in B&H is 3,791,622. 2,371,603 persons were recorded in the Federation of B&H, 1,326,991 persons were registered in the Republika Srpska and 93,028 persons were registered in the Brčko District of B&H. The same document seeks to reach at least the indicative number of people with disabilities in B&H, and starts from the assumption of the World Health Organization (WHO) that approx. 15% of the inhabitants of a country live with a certain form of disability, which further concludes that in B&H there are about 569,000 persons with disabilities (in the Republika Srpska live around 199,000 persons with disabilities, in the Federation there are about 356,000 and about 14,000 persons with disabilities live in the Brčko District).

In B&H there is no comprehensive data on the structure of persons with disabilities. An assessment of the degree of disability in Bosnia and Herzegovina is done unevenly and only on the basis of a medical model, without the application of the International Classification of the Functioning of the World Health Organization (ICF). The ICF understands functioning and disability as a dynamic interaction between health conditions and contextual factors, both personal and environmental.⁷ At the same time, the Preamble to the CRPD acknowledges that disability

is “an evolving concept”, but also stresses that “disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others”.⁸ However, in B&H disability is categorized by percentage of physical and sensory damage certified by the Institute of Medical Examination, and not the functional ability and the ability to interact with the society, as defined by the CRPD. The Law on Basic Social Protection, Protection of Civilian Victims of War and of Families with Children in the Federation of B&H provides for three entitlements in the form of direct cash benefits to persons with 90% disability or more: a personal disability allowance, an allowance for care and assistance by another person and an orthopaedic supplement. These entitlements are universal throughout the Federation and funded from the Federal budget.

The Republika Srpska’s Law on Social Protection stipulates an entitlement to an allowance for assistance and care by another person for those with severe physical or sensory impairments, those with developmental disabilities related to more serious and severe impairments, those with multiple developmental disabilities related to moderately serious and severe intellectual disabilities, persons with autism and persons with chronic intellectual disabilities and no capacity for employment, with absolutely reduced mobility or unable to meet their fundamental needs without another person’s care and assistance, with the provision that they must be not be eligible for this entitlement on any other legal basis or for accommodation in social care institutions.

Assessments undertaken by the OSCE Mission to B&H in 2012 on the social protection system in B&H⁹ identified two main concerns which focus on the inadequate levels of social assistance be-

nefits currently provided to vulnerable groups, and the ongoing discriminatory practice of preferential treatment of war veterans and related groups who enjoy significantly higher levels of protection. B&H spends 4 per cent of the annual GDP on non-contributory assistance schemes (making the country second only to Croatia in social assistance spending when compared to Eastern Europe, Central Asia, and the average spending of OECD countries). According to the World Bank, these excessive budgetary allocations are so poorly targeted that a higher share of social benefits reaches the richer segments of the population, while the poorest 20 percent of the population receives only about 17 per cent of total social transfers. The World Bank repeatedly calls attention to the lack of financial sustainability of the current system and the burden it creates for entity budgets without achieving protection for the most vulnerable.¹⁰ The multi-layered practice of inequality between the different categories of beneficiaries remains one of the most significant causes of concern. There are two main lines along which social protection is provided in unequal ways: the area of residence and the status-based versus needs-based determination of benefits. The most noticeable instance of inequality in social assistance is the disparity between the protections afforded to disabled war veterans and persons with disabilities (both physical and mental) resulting from an accident, illness or existing since birth. The two categories not only receive very different benefits but also face very different situations with regard to eligibility criteria, administration of social assistance and the policy of the authorities with regard to amendments and cuts. In the Federation of B&H, persons with non-war related disabilities receive benefits almost five times lower than war veterans with the same level of disability. Civilian victims

of war form a third category with different levels of assistance, more favourable than for non-war related disability but less than disabled war veterans' support. In the Federation of B&H, a person with nonwar related disability with 100 per cent disability may receive a maximum of BAM 396 monthly while a disabled war veteran with the same level of disability may receive a maximum of BAM 1845 monthly. In the Republika Srpska, the highest amount available to persons with non-war related disability (with a severe disability) is BAM 41 monthly, while a disabled war veteran with the same degree of disability may receive a total of BAM 1825 monthly.

There are substantial discrepancies in the eligibility criteria for different groups of persons with disabilities. Since 2009, persons with non-war related disabilities are eligible for benefits only when they suffer from 90 percent and more degree of disability; this provision excludes persons with a less severe disability from any type of disability related support. In contrast, civilian victims of war require a 60 per cent degree of disability to be eligible, while disabled war veterans require only 20 percent degree of disability to be eligible. As such, a broad spectrum of benefits available to persons with the same degree of disability and the same level of need are determined solely on the individual's status.

Since Bosnia and Herzegovina has a highly decentralized governance structure, it is not surprising that eligibility conditions for social assistance differ between Entities, Districts and Cantons. Along with differences in eligibility criteria there are also differences in coverage, targeting efficiency and benefit level related to the place of residence. Due to the fragmentation of competencies and responsibilities, permanent financial assistance and family allowances differ significantly between Federation of B&H

Cantons and between Republika Srpska and the Federation of B&H. For example, the allowance for care and assistance by another person for those whose disabilities came about after their 65th year of age is supposed to be covered under cantonal law, but has to date been provided for only in Sarajevo and Tuzla Cantons by legislative amendments.¹¹

Generally, it can be said that the field of social protection in Bosnia and Herzegovina has not been well resolved, it does not even provide a minimum of social security for citizens, a social minimum has not been determined even for persons with disabilities and the issue of support for persons with disabilities is often considered as the provision of classic social welfare benefits for supporting persons with disabilities or their families, rather than rights-related to their disability.

Conclusions

Laws and other regulations in the field of social protection are not aligned with the CRPD. There is no uniform definition of disability, and the one that exists in the law does not comply with the definition of disability in the CRPD. No social minimum has been defined, not even for the persons with disabilities. The capacities of the system for ensuring social security do not match the needs, they are not based on human rights and they do not eliminate discrimination. B&H remains one of the highest spending countries in terms of social protection expenditures, not only in the immediate region but amongst most European countries. Unfortunately, the high levels of spending do not translate into proportionate results on the ground, as benefits do not reach the poorest segments of the population due to insufficient targeting. Allocation of funds in the social protection is not fair and it is not based on the needs but rather on the status and area of residence.

Discrepancies in social protection, afforded by the state, need to be justified in terms of legitimacy, proportionality and their effects. Entity governments should engage in a comprehensive reform of the system of social protection, eliminating discriminatory practices in accordance with human rights obligations. Therefore, some of the measures necessary for ensuring the human dignity and social protection of persons with disabilities and their families include:

- Harmonization of the definition of disability with the definition of disability under Article 1 of the CRPD;
- Definition of an adequate disability assessment model according to international disability assessment standards (ICF);
- Harmonization of the laws governing the rights of persons with disabilities with the CRPD and ensuring that rights, benefits and support are provided in accordance with the needs of each individual, and not on the basis of the status, cause and circumstances of the disability occurrence (civilian victims of war, disabled war veterans, people with non-war disabilities);
- With regard to the constitutional system of the Federation of B&H and huge powers given to the cantons, it is necessary to define the framework for the rights of persons with disabilities at the level of the Federation of B&H for the rights of the persons with disabilities exercised at canton level. This would eliminate or at least mitigate discrimination on the territorial principle;
- Inclusion of persons with disabilities in all social policy planning processes and in developing and monitoring the realization of social protection programs.

References

- 1 B&H Official Gazette – International Treaties, edition 11/09
- 2 Institution for Human Rights of Bosnia and Herzegovina (2013): Special Report: The Role of Centers for Social Work in the Protection of the Rights of the Child. Banja Luka.
- 3 Initiative and Civil Action – ICVA (March, 2011): Vodič za ostvarivanje prava iz socijalne zaštite. Sarajevo.
- 4 Agency for Statistics of Bosnia and Herzegovina (2016): Social Welfare – Thematic Bulletin: 2010/2015. Sarajevo.
- 5 Federal Ministry of Labor and Social Policy (2014): Strategy of deinstitutionalization and transformation of social protection institutions in the Federation of Bosnia and Herzegovina (2014-2020). Sarajevo.
- 6 Agency for Cooperation, Education and Development – ACED (August, 2014): “Report on Compliance of Legislative and Institutional Framework in Bosnia and Herzegovina with the UN Convention on the Rights of Persons with Disabilities and Recommendations for Harmonization”. Banja Luka.
- 7 World Health Organization (2001): The International Classification of Functioning, Disability and Health.
- 8 World Health Organization (2011): World report on disability.
- 9 OSCE Mission to Bosnia and Herzegovina (2012): “The Right to social protection in B&H – Concerns on Adequacy and Equality”. Sarajevo.
- 10 World Bank Policy Note (April 2009): Social Transfers in Bosnia and Herzegovina: Moving towards a more Sustainable and better targeted safety net.
- 11 Somun Krupalija, Lejla; Zuko, Fikret; Haverić, Haris; Zahirović, Suvad (2012): An analysis of current and possible future models for supporting people with disabilities in Bosnia and Herzegovina. MyRight (SHIA). Sarajevo.

Biographical Notes



Prof. Dr. sc Vesna Bratovčić was born in 1975 in Tuzla, Bosnia and Herzegovina. She is an education and rehabilitation scientist and university lecturer with a focus on education, rehabilitation and disability sciences. She holds a diploma (2002) and a PH.D. (2011) in education and rehabilitation sciences from the University of Tuzla, Faculty of Education and Rehabilitation. In addition to teaching and project work, Vesna Bratovčić works on planning and implementation of strategies for inclusive services for people with disabilities at the local, regional and national level in Bosnia and Herzegovina. She attended and actively participated in numerous national and international professional and scientific conferences. As author and co-author she published more than 50 scientific and professional papers and four books. Currently she is Head of Department of Special Education and Rehabilitation and Head of Second Cycle Programs at the Faculty of Education and Rehabilitation, University of Tuzla.

Contact:
vesna.bratovcic@untz.ba



Dr. sc Senad Mehmedinović, assistant professor was born in 1981 in Germany. He works at the Faculty for Education and Rehabilitation at University of Tuzla. His primary focus is on methodology of scientific research in the field of special education and rehabilitation, as well as on research dealing with psychology of religion and spirituality. He holds a diploma (2005) and a PH.D. (2015) in education and rehabilitation sciences from the University of Tuzla, Faculty of Education and Rehabilitation. He attended and actively participated in numerous national and international professional and scientific conferences. As author and co-author he published 35 scientific and professional papers and two books. Since March 2015, he is a reviewer of two international journals.

Contact:
senad.mehmedinovic@gmail.com