



CONVENTION
ON THE RIGHTS
OF PERSONS
WITH DISABILITIES



OMBUDSMAN OF THE REPUBLIC OF BULGARIA

MONITORING COUNCIL REPORT 2021

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THE COUNCIL

As an independent human rights body, whose activities are subject to the Constitution, laws and international treaties to which the Republic of Bulgaria is a party, as well as in his capacity as the rotating chair of the Monitoring Council, the Ombudsman also monitors the implementation of the Convention on the Rights of Persons with Disabilities (CRPD).

In 2021, the Ombudsman's activities to monitor the implementation of the CRPD are carried out, in addition to citizens' complaints to the Ombudsman, and through the activities of the Monitoring Council, established in 2019 in accordance with Art. 33, para. 2 and 3 of the CRPD, led by the Ombudsman until July 2021.

The Ombudsman's cooperation with representatives of persons with disabilities within the framework of the activities of the Monitoring Council is directly subordinate to the motto "Nothing for us without us!" under which persons with disabilities and their representatives developed the Convention, and which is embodied in the text of Article 4, para. 3 of the CRPD: "In developing and implementing the necessary legislation and policies for the implementation of the present Convention, as well as in any other decision-making processes relevant to the issues of persons with disabilities, States Parties shall closely consult with and engage the active participation of persons, including children with disabilities, through their representative organizations.

As in the rest of the world, in Bulgaria in 2021, the main risk to the rights of persons with disabilities under the Convention continues to be the coronavirus pandemic and the imposed restrictive measures. The imposed restrictions affect the rights of persons with disabilities in using social and medical services, their real participation in and quality of the educational process, the use of administrative and other public services, and in general, in everyday life and in their pursuit of leading a dignified, independent and active life. From the online meetings held with representatives of other European National Human Rights Institutions, it is established that similar problems are observed in other countries.



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THE ACTIVITIES OF THE OMBUDSMAN OF THE REPUBLIC OF BULGARIA AND THE MONITORING COUNCIL REGARDING PERSONS WITH DISABILITIES

1. The institution of the Ombudsman of the Republic of Bulgaria receives complaints from personal assistants under the Personal Assistance Act who report that municipal authorities delay the payment of the salaries due.

Citizens tell that quite a number of them have to service debts as they borrowed loans from lending institutions which are not inclined to compromise on settlements after the due date. Additional sums accrue in the form of penalty fees and interests, which citizens must subsequently repay.

The lack of certainty is a factor that makes personal assistants leave and that leaves the disadvantaged persons without the needed assistance by another person who is in their employment.

The Ombudsman recommended to the Executive Director of the Social Assistance Agency that all necessary measures should be taken to meet the statutory deadlines and to guarantee the rights of the citizens concerned and of the personal assistance users.

2. Citizens with disabilities express their discontent with the Sofia Metropolitan (Metropolitan JSC) management who do nothing to supply with handrails the last few steps of the stairs leading to the underground train platforms.

The onsite inspections by experts of the Ombudsman Institution show that in fact the handrails of the stairs to the underground train platforms do not meet the regulatory requirements of accessible environment.

A recommendation was made to the Metropolitan Executive Director to take measures to conduct a thorough inspection of the existing parapet guardrails and handrails in the metro stations and to take measures to address the existing problems in compliance with the legislation in force, including Art. 9 of the UN Convention on the Rights of Persons with Disabilities (CRPD).

Acting on the recommendation, the Metropolitan Company drew up a plan containing fixed deadlines and specific measures to eliminate the reported violations.

3. Concerning the incoming complaints from citizens with disabilities who seek a possibility for their re-certification with the Transport Regional Expert Medical Boards (TREMBs) across the country and to obtain medical certificates needed to be issued/reissued a driving license, a recommendation was made to the Minister of Transport, Information Technology and Communications.

The letter emphasized that the legislation does not provide for any extension of the driving licenses that expire after 1 January 2021.

The problem is that the majority of the TREMBs appoint the re-certification sessions in several months while the citizens' driving licenses will expire in the interim.



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This delay makes it very difficult for the citizens with disabilities to exercise their rights and to live an independent life and to be actively involved in public life. Citizens whose driving licenses expire after 1 January 2021, are in more disadvantaged circumstances than citizens whose driving licenses expired before 31 December 2020 but who are covered by the provision of § 10, paragraph 3 of the Transitional and Final Provisions of the Act on the Measures and Actions during the State of Emergency Declared by a Resolution of the National Assembly of 13 March 2020 and on Addressing the Consequences.

Acting on the recommendation, measures have been taken to improve the TREMB organization and to set up new boards in the transport hospitals.

4. Following a recommendation by the Ombudsman to the National Assembly, a solution has been found to the problem of the inequitable treatment of foster families and the families of close friends and relatives who bring up children with a certified type of disability whose degree is 70% and over 70%. Such families were entitled to monthly allowances under Art. 8e in an amount far lower than what the biological parents were entitled to for their children with disabilities that are similar in type and degree.

The action taken to amend Art. 8e of the Family Allowances Act and Art. 63 of the 2021 State Budget Act of the Republic of Bulgaria has eliminated the existing unequal treatment and the families facing this inequality have become beneficiaries of the Government's due adequate support.

5. On 31 March 2021, the Ombudsman of the Republic of Bulgaria submitted the Institution's 2020 Annual Activity Report to the National Assembly.

The report describes the violations of citizens' rights identified in the year under review and the remedial action taken.

Individual chapters describe the action taken to protect the rights of persons with disabilities and of their families, in addition to the measures to enable the function of monitoring the implementation of the UN Convention on the Rights of Persons with Disabilities by the competent authorities in Bulgaria. The chapter on the monitoring of the UN Convention on the Rights of Persons with Disabilities includes, inter alia, the activities of the Monitoring Council and the recommendations made over the years.

The Annual Report's key recommendations are as follows:

- Speed up the ratification procedure of the Optional Protocol to the Convention;
- Involve persons with disabilities or their legal representatives and empower them at all levels of administration in the decision taking or policy making regarding their rights;
- Transfer, without any further delay, the provision of aids and medical appliances from the Ministry of Labor and Social Policy (MLSP) to the Ministry of Health and the National Health Insurance Fund (NHIF);



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- Solve the problems concerning personal assistance under the Personal Assistance Act and provide opportunities to all who need such to access it;
- Make the amount of the cash benefits for persons with disabilities adequate and commensurate with the actual income level within the country;
- Apply an individual-to-individual approach in the allocation of monthly allowances and targeted cash transfers and in the provision of social services;
- Create conditions for employment of persons with disabilities by financing, promoting and developing the national program for employment of persons with disabilities as per the Persons with Disabilities Act that went into effect in 2019;
- Ensure appropriate social services within the family and the community so as to live an independent life, including for elderly and single people who need support all the time but do not have certification from a Regional Expert Medical Board (REMB) or from the National Expert Medical Board (NEMB) or who are not eligible to assistance provided by a person who is in their employment;
- Ensure high-quality and affordable healthcare for persons with disabilities, including appropriate rehabilitation in a pandemic situation included;
- Ease the administrative burden in the use of social services and in the allocation of social benefits;
- Install integrated e-service for persons with disabilities in the government institutions;
- Create an effective and integrated institution-to-institution shared register that will contain updated information which is required for the exercise of the rights of persons with disabilities as per the Persons with Disabilities Act;
- Carry out adequate reform of the medical expertise and the expertise to assess the capacity to work involving the active contribution of the persons with disabilities and of their legal representatives;
- Envisage tools to enable the commitment of the Ministry of Labor and Social Policy and other government institutions to properly enforce Art. 112, para 9, sentence 1 of the Health Act by the arms of the social assistance system;
- Take measures to support children with disabilities and their families so as to be effectively integrated into the learning process, including in a pandemic situation.

6. The Ombudsman Institution has drafted a set of indicators to enable proper monitoring of the UN Convention of the Rights of Persons with Disabilities (CRPD) Article 9 implementation. The set of indicators focuses on the implementation of the elements of accessible surroundings as laid down in Article 9, para 1 (A), viz., buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces.

The monitoring methodology is based on the guidelines of the Committee on the Rights of Persons with Disabilities as published in 2020 and the training conducted about the development of the indicators with the European Union Agency for Fundamental Rights (FRA) and the methodological instructions.



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The document considers the general provisions of the incorporated indicators, by which data and information will be collected, in addition to the methodology by which the monitoring will be concretely carried out.

The generally accepted configuration of the three groups of indicators was used: for the institutions in charge (i.e. the central government and local authorities) – indicators regarding their commitments and practical efforts, and for the right-holders – indicators regarding the results they are able to use.

The indicators were discussed and approved by the last sitting of the Monitoring Council that under the Persons with Disabilities Act on 8 July 2021.

This was the last sitting under the chairmanship of the Ombudsman Institution of the Republic of Bulgaria. Under the Persons with Disabilities Act the administrations of the Ombudsman of the Republic of Bulgaria and of the Commission for Protection against Discrimination rotate in administering the operations of the Monitoring Council by taking alternate two-year turns.

Other specific issues on which the Monitoring Council under the Persons with Disabilities Act has taken action include:

7. Prolongation of the fair treatment policy as regards the beneficiaries of social services during and after the lockdown period.

The Act on the Measures and Actions during the State of Emergency (AMADSA) Declared by a Resolution of the National Assembly of 13 March 2020 provided for the exemption of the payment of the fees due for the use of the all social services by the eligible individuals between 13 March 2020 and 31 December 2020 to address the severe restrictions that were imposed in the COVID-19 situation and the citizens' inability to have an adequate access to social services and to use them in full.

The Coronavirus situation persisted after 1 January 2021 and, accordingly, Council of Ministers decisions extended the pandemic state of emergency several times, therefore the Monitoring Council proposes to the Members of Parliament that:

- Actions should be taken to prolong the effect of Article 12, para 8 AMADSA in a way to exempt the beneficiaries of the social services enumerated in the text as long as the state of emergency provoked by the pandemic is in place;
- Measures should be taken to organize the reimbursement, as soon as possible, of the fees paid by the stricken citizens from 1 January 2021 onwards.

8. A recommendation was made to codify beneficiaries for life in the event of permanently reduced capacity to work/type and degree of disability whenever the dominating disability is irreversible.



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Subsequently, action was taken on the recommendations made to revise the Medical Assessment Regulation (MAR) and though it is an important step towards the solution of the problems, the process was not made visible to the public and public opinions were not invited.

To respond to complaints from mistreated citizens, information was requested from the Ministry of Health about the statutory act and the amendments made.

After the publication of the amendments and the provision of information about them, they are to be discussed by the Council and an opinion is to be expressed on them.

9. Activation of the Information System for Control on Medical Assessment - launched in 2020, the system fails to operate for the benefit of persons with disabilities, a recommendation in this regards was made to the Minister of Health.

The recommendation notes that the system does not enable eligible citizens and their authorized representatives/agents to have an adequate access to the system and to lodge their applications and documents through it. The functions for access with a Qualified Electronic Signature (QES) and e-Filing Applications are limited. The persons authorized face hindrances and cannot register in the system at all.

The commitment to design a tool to enable citizens to access the system by their Personal Identification Code (PIC) has not been met though this would have helped greatly the persons with disabilities.

The following recommendations are made:

- action should be taken to ensure the adequate access of persons with disabilities and of their agents to the Information System for Control on Medical Assessment as soon as possible;
- measures should be taken to meet the commitment to design and use a tool to enable citizens to access the system by their PIC.

10. Improve the system of assistant support to people with disabilities - At a discussion within the Monitoring Council sitting it was found that persons whose disability is permanent, persons with a certain type and degree of disability/permanently reduced capacity to work but who do not entitle to prescribed external assistance, cease to be entitled to the support of an assistant from 1 January 2021 onwards.

Their cases are not covered by the Social Services Act or by the Personal Assistance Act.

On-site inspections show that some municipalities have solved the problem and provide assistant support to people with disabilities while some municipalities have not solved it. Hence the required intervention by the central government to overcome the



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existing deficiencies and preconditions for unequal treatment of citizens who live in municipalities where no action has been taken on this issue.

A recommendation was made to the Minister of Labor and Social Policy:

- That urgent measures should be taken to appropriately address the problem and to ensure the rights of the underprivileged citizens in 2021.
- That a broad public discussion should be held and that action should be taken to amend the legislation and thus find a fair and final solution to the problem.

11. The Ombudsman's institution receives complains that there is still no regulation governing the mechanism for the provision of medical devices after 1 January 2022, which puts at risk the exercise of the rights of people with disabilities and their representatives in need. It is also unclear whether the Ministry of Health and the National Health Insurance Fund have prepared structures, close to people with disabilities, to take on this important function. A significant problem is that the time until the end of the year is short, and it is necessary to conduct an appropriate information campaign to ensure that people with disabilities are aware of the new procedure and will not be adversely affected.

Regarding the complaints and in order to guarantee the rights of people with disabilities, the Ombudsman sent recommendations to the heads of the responsible authorities to take urgent action to provide adequate information to interested citizens and their representatives on the procedure for obtaining medical devices and aids and to conduct a broad communication campaign with all stakeholders.

The letters to the heads of the responsible bodies also drew attention to the other issues on which the Ombudsman Institution has made numerous recommendations related to the service life of medical devices, with the specified amounts of state support for the purchase of medical devices that have not been updated for years and on which their quality largely depends.

It is recommended that measures should be taken to address these issues by meeting the requirements of the UN Convention on the Rights of Persons with Disabilities and the Law on Persons with Disabilities to ensure the interests of needy citizens with disabilities and meet their needs.

12. The Ombudsman sent a reasoned opinion to the Deputy Prime Minister and Minister of the Interior and to the Minister of Transport, Information Technology and Communications, describing the complaints of people with disabilities in the issuance / re-issuance of driving licenses for vehicle.



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The opinion raises the issues of:

a) Complaints against the cumbersome procedure for appearing before the Transport Regional Medical Expert Commissions / TRMEC / and the scheduling of dates for re-certification in a long-term perspective, during which time the driving licenses of citizens will have expired;

b) the number and location of commissions in the country, which puts those living in the cities where TRMEC is situated in a more favorable position than other citizens with disabilities, as they do not have to incur significant travel costs while attending examinations;

The Ombudsman pointed out that while implementing the Regulation (EU) 2021/267 of the European Parliament and of the Council of 16 February 2021 on laying down special and temporary measures in view of the ongoing crisis concerning COVID-19 on the renewal or extension of certain certificates and authorizations, the postponement of certain periodic inspections and continuing training in certain areas of transport legislation and the extension of certain deadlines set out in Regulation (EU) 2020/698, only a partial solution was found to the problem of delays in scheduling and validity of driving licenses - for those that expired by 30.06.2021

The current legislation does not provide for a decision for citizens whose driving licenses expire after that date, which means that the citizens concerned need to appear for re-certification as soon as possible after submitting their applications.

c) The signals for lack of accessibility for people with reduced mobility in the buildings in which the commissions TRMEC and the Traffic Police are located are also indicated as deficiency of good practices on the part of the responsible authorities.

The Ombudsman puts the emphasis to the fact that the failure to provide an accessible environment for people with disabilities is a prerequisite for the violation of their dignity and rights and is in violation of a number of international and domestic regulations

13. The Ombudsman also made a second recommendation to the Minister of Health regarding the amendments to the legal framework for medical expertise, which provide for the determination of a lifetime of permanently reduced working capacity / type and degree of disability for all cases where the leading disability is definitive.

The Ombudsman's opinion is that, on the one hand, taking action to change and resolve the existing problems is in line with the Ombudsman's recommendations (the last of which was from 18.06.2021, precisely in relation to the definitive conditions) and is long awaited. and an important step in efforts to ensure an adequate assessment of the health



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status of citizens with disabilities and to identify appropriate measures for their further support tailored to individual needs.

On the other hand, all actions that will affect the rights and interests of people with disabilities should be carried out through continuous dialogue and participation of people with disabilities and their organizations and with maximum transparency and publicity. This is a basic principle established in the UN Convention on the Rights of Persons with Disabilities and in the Law on Persons with Disabilities, and which fully applies to medical expertise in Bulgaria.

The Ombudsman brought to the attention of the Minister the issue of the different application of the new provisions and the problem of the established short period within which the affected citizens can benefit from the provided more favorable conditions for appearing before the medical examination bodies.

14. The Ombudsman of the Republic of Bulgaria took position on a persisting problem with the accessibility of the public services' infrastructure – namely the regional offices of the Social Assistance Directorates. Based on an escalating number of complaints, the Ombudsman sent a reasoned opinion to the Minister of Labor and Social Policy.

The opinion put an emphasis on the fact that social services play the special functions of social workers and their effective functioning is crucial for people with disabilities and for their ability to compensate for disability-related deficits and lead independent lives.

The Ombudsman has stressed once more the fact that the lack of accessible environment hinders people with special needs for full participation in community life. The lack of accessibility is in violation of a number of international and domestic regulations - Art. 9 and 19 of the UN Convention on the Rights of Persons with Disabilities ratified by the Republic of Bulgaria, the Law on Protection against Discrimination and the respective Ordinances.

The ombudsman recalls that accessibility is a key factor in the exercise of rights not only by people with disabilities but also by other people with reduced mobility, such as parents with young children who move in prams and have no one to leave their children with.

In response to the Ombudsman's recommendation, the Minister of Labor and Social Policy made a commitment to take concrete action to address the problem.



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15. The first meeting of the Monitoring Council after the transfer of the administrative functions to the Commission for Protection against Discrimination (CPD) was held on 15.10.2021.

The Commission for Protection against Discrimination provided information in connection with its campaign named "Accessible Bulgaria". The initiative aims to ensure the right of accessible environment for people with disabilities to various buildings of public importance. Within the framework of the Commission's powers, dozens of cases have been opened for violations of anti-discrimination legislation and fines have been imposed for non-compliance with established obligations.

16. **The Ombudsman of the Republic of Bulgaria continues to closely monitor the problem with the reception of citizens wishing to appear before the bodies of medical expertise in the conditions of COVID-19.** A new case was open upon the submission of dozens of complaints from citizens with disabilities, especially in connection with the organization of work of the Regional Health Inspectorate in Stara Zagora. In their complaints, citizens with disabilities describe the difficulties encountered in the processes of certification and re-certification. People with serious illnesses and reduced mobility are forced to wait for hours outside of the inspectorate premises at low temperatures, without even being given the basic opportunity to sit down. The complaints state that the officers of the Health Inspectorate did not look for a way to find a solution to the critical situation, for instance to extend the reception time, in order to serve all those waiting.

On this occasion the Ombudsman took a stand and addressed a recommendation to the Head of the Regional Health Inspectorate in Stara Zagora pointing out the necessity for an in-depth analysis of its work and reception practices in the best interest of citizens, including citizens with disabilities.

The concerned public office of the RHI - Stara Zagora conducted an analysis and evaluation of all activities carried out in the reception of people with disabilities. As a result office of the RHI - Stara Zagora established new rules and reception procedures that aim the respect of the rights of all citizens.