

NON-MAJORITY COMMUNITIES





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**NON-MAJORITY
COMMUNITIES**

SLOVAK-BALKAN PUBLIC POLICY FUND

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FOREWORD

According to recent studies on civil society development in the Western Balkan countries such as CIVICUS Civil Society Index, USAID Sustainability Index etc. civil society is maturing. While facing many different country-specific challenges, however, there is one in particular faced by all – lacking influence on the development of laws and policies that affect daily lives of ordinary citizens. Considering that all countries are on the path of EU membership, this process, no matter how long, always requires massive changes of laws, bylaws and policies (usually termed by experts as “harmonization” and “transposition”), sometimes even overnight.

In such a context our network felt it was one of its strategic goals to work on development of advocacy knowledge and skills among civil society actors as a base for their greater impact. Setting up of the Slovak-Balkan Public Policy Fund (SBPPF) was a natural consequence when contemplating how to embark on such a huge task as building of research and advocacy capacities of CSOs in different areas of work. Starting as a small pilot initiative that initially included only three countries, SBPPF quickly grew to be a recognized, multi-donor and network-supported project, covering six countries and producing twice as many policy products in its second round.

Considering that the EU accession process is the key transformation and reform factor, we have focused our effort on assisting both CSOs and individual young researchers in the development of concrete policy products that analyse considerably different but equally important topics. Among the 21 policy papers, there are those that aim to open up state budget for citizens’ in Macedonia to understand how public money is being

spent; improve possibilities of young Bosniacs who have studied at foreign universities and want to return to BiH and work in public administration; improve integration and well-being of families and victims and missing persons during 1999 conflict in Kosovo; improve transparency and citizen participation to urban development process in Serbia, push for implementation of environmental standards in Albania under the Aarhus Convention...

The energy, the passion, the work and the commitment behind each CSO and individual researcher working on these and other papers, those of the project team and mentors who helped in their development and are presented via this collection testify that there is a wealthy potential among CSOs and researchers to give relevant, timely and concrete contribution to solving the array of issue being tackled in the papers. We hope that this collection will be a serious step in helping them promote, pressure and influence among public institutions and other relevant stakeholders in their countries.

Enjoy the read.

Tanja Hafner Ademi
Executive Director
BCSDN

SLOVAK - BALKAN PUBLIC POLICY FUND

Civil society actors often do not have the capacity to engage and influence civil society related policies and programmes and thus need to build their expertise and understanding of how the EU and national institutions function, as well as the possibilities and existing tools for advocacy. On the other hand the institutions also lack the awareness about the benefits and the added-value from working with CSOs and the policy options and solutions they might offer. It is for this purpose that BCSDN, in cooperation with Pontis Foundation and supported by Slovak Aid, the European Commission (EC) and the Balkan Trust for Democracy (BTD), has been administrating the Slovak - Balkan Public Policy Fund, an initiative that aims to support civil society actors from the Western Balkans to develop their research and advocacy capacities and increase their engagement into the creation of public policy in regards to the EU integration process.

The Slovak - Balkan Public Policy Fund operates through a programme of small grants and tailor-made capacity-building support allocated to CSOs and individuals that are involved in the shaping of the public debate. In the first phase, the Fund focused on providing local CSOs a concrete, practical, learning-by-doing support, including a training on public policy and a mentor, to develop a policy product and organize a public debate event in their area of work. In the pilot phase in 2011-2012, the grant scheme targeted 3 countries: Albania, Macedonia and Montenegro, and 11 small grants (between EUR 3,000 and EUR 5,000) were offered, out of the 113 applications recieved, in total amount of EUR 42,000

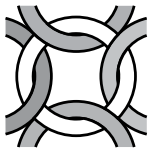
In 2013, the Slovak - Balkan Public Policy Fund continued its program for enabling CSOs and individual researchers from the Western Balkans to develop their advocacy skills and contribute to the reform process and policy making in their respective countries, but increased its coverage to include also Bosnia & Herzegovina, Kosovo and Serbia. In this second round, a total of 167 applications were received, out of which 21 projects were selected for funding (12 for Albania, BiH and Montenegro covered from the European Commission and BTDF funds and 9 covering Kosovo, Macedonia and Serbia supported by Slovak Aid) and a total amount of EUR 84,000 was granted. The Call and application documents and process was coordinated and developed in cooperation with BCSDN member CRNVO who also acted as partner for sub-granting and monitoring of this project activity.

The awarded organizations and individuals received a training on advocacy and policy paper writing as well as continuous support in the implementation of the project by BCSDN, Pontis and assigned mentors. After the successful development of the policy products, in 2014, the majority of the projects were publicly presented in front of relevant stakeholders at national level, aiming to present the research data and the main policy recommendations, to raise public awareness about the addressed topic, and to advocate and lobby for improvement of public policies among the representatives of the CSOs, public institutions, donors and other relevant stakeholders who attended the presentations.

The policy outputs of this second round of the SBPPF program are revolving around two priority themes: 1) Democracy and the rule of law and 2) Non-majority communities. With regard to *Democracy and Rule of Law*, the focus is put on analyzing one or several of the following issues: policy-making and policy implementation/enforcement, corruption,

media, access to public information, administration capacity and transparency of public institutions; while within the second priority theme, *Non-majority communities*, special attention is given to: respect and protection of non-majority, social groups and groups in position of other forms of discrimination and people with disabilities.

The Slovak Balkan Public Policy Fund has proved to be a successful support model for boosting research and advocacy skills of CSOs in the Western Balkan countries, as projects supported in both rounds have demonstrated tangible results from their policy work. BCSDN is convinced that the selection conducted by an evaluation committee, composed of experts on public policy issues, advocacy and civil society development from the Western Balkan Countries and EU countries, produced successful policy outputs and empowered civil society actors with great advocacy potential and opportunity for real impact in the policy-making process.



BALKAN
CIVIL
SOCIETY
DEVELOPMENT
NETWORK

Balkan Civil Society Development Network (BCSDN) is a network bringing together 15 civil society organizations (CSOs) from the Balkan region, both new member states and (pre)-accession countries; a network which exists since 2003 and has been officially formalized in 2009. Its mission is to empower the civil society and influence

European and national policies towards a more enabling environment for civil society development in order to ensure sustainable and functioning democracies in the Balkans. Its work mainly focuses on advancing the concerns of local CSOs and other stakeholders to EU institutions, regional inter-governmental forums, and national governments relevant for enlargement policies in the countries.



The Pontis Foundation is a Slovak non-profit non-governmental organization established in 1997. It encourages individuals and businesses to take responsibility for those in need and for the world

around them, contribute to the building of democracy in non-democratic countries, create awareness about this need in Slovakia, and advocate for values-oriented Slovak and EU foreign policies. The Pontis Foundation promotes corporate philanthropy, corporate responsibility and is active in development cooperation, where has a track record of successful projects aimed at transferring Slovak transition and EU integration experience and know-how, especially in the Western Balkans and the Eastern Partnership countries. Through the projects in the field of democratization and development abroad, the Pontis Foundation promotes Slovak and EU foreign policy based on democratic values such as respect for human rights and solidarity.



Center for Development of Non-Governmental Organizations (CRNVO) is not-for-profit, non-governmental association founded and registered in September 1999. The mission of CRNVO is to provide support to development of non-governmental organizations

in Montenegro and contribute to creation of a favorable environment for citizens' participation in public policy issues and civil society development. CRNVO provides help to the beneficiaries through educational programs, publishing programs, legal aid, researches and representations of citizens and non-for-profit sector.

NON-MAJORITY COMMUNITIES

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IMPLEMENTATION OF THE DISABILITY POLICY IN BOSNIA AND HERZEGOVINA 2008-2013 – ANALYSIS AND RECOMMENDATIONS

Project coordinator and main researcher
Olivera Mastikosa

Research team members:
Sanja Malić
Sandra Dobrijević Šipka
Tanja Mandić Đokić



Banjaluka, april 2014.



SUMMARY

The main aim of the research was to determine the change and progress in disability issues in BiH since the Disability policy adoption in 2008 until 2013 in relation to objectives defined in the document. The assessment and analysis was performed in cooperation with government institutions at the state level, entity levels, local communities and organizations of persons with disabilities for education, social protection, health protection, employment and private life as well as organization of persons with disabilities.

The objectives and tasks of the analysis were to determine connection of improvements and progress in stated areas of disabled persons lives with implementation of Disability policy, as well as its influence on changes that occurred in these areas. The first step was to define the level of progress and areas where there were evident improvements and to identify difficulties in realization and implementation of defined objectives from the Disability policy. The final task of the analysis was to state recommendations for overcoming difficulties in implementation of defined objectives from the Disability policy in BiH.

For the purpose of analysis, we used the following techniques in order to gather relevant information. Primarily, we performed the analysis of available documentation (legislation, relevant literature related to disability issues and human rights) and then we performed interviews and questioning using specially designed questionnaires. We used two different questionnaires one of which was created for organizations of disabled persons and the other one for decision makers at the BiH level, entity levels

(including District Brcko), and local communities including different questions for each area of interest important for disabled persons lives.

There was used selected sample of participants which included the level of decision makers on issues related to protection of disabled persons and the level of organizations of disabled persons both relevant for comprehensive analysis. The response from selected sample was important indicator of attitudes towards disability issues. Interviews were realized with the Ministry of Civil affairs at BiH level (for all four areas of interest) and competent ministries for each area of interest at entity levels as well as available funds and institutes. These interviews were mostly successful. Some entity institutions did not reply to the questionnaire and interviewe appointment but we were facing a great crisis in Federation of BiH Government at the time of project implementation so we cannot for sure state that they did not show interest in answering the questionnaires. At local communities level we sent questionnaires to the departments for social affairs and the cabinets of mayors/chiefs and their response was indicator of their attitudes and awareness of their role in implementation of the Disability poliy. The least response was received from District Brcko where we gathered only information related to health protection (25%). In relation to the field of interest, we received the gratest response and information regarding health protection 41%, then social protection 36%, employment/labor 25% and the least response and information regarding education 23%. These figures show in fact the level of development and progress as well as relationship and awareness of authorities on needs of disabled persons in different fields of everyday life.

Analyzing the situation with Organizations of persons with disabilities sending questionnaires in ninieteen organizations (6 of them, or 31,6%, Unions at entity level and 13 of them, 68,4%, at local level) we received back all ninieteen questionnaires filled with information. Nine organizations are organized by the type of disability while four of them are cross disability organizations. Their reply speaks for their interest in disability issues and their efforts in improving the status of disabled persons.

The analysis of gathered information showed that Disability policy in BiH is not adequately implemented in practice, sharing the destiny of many strategic documents in BiH. Organizations of persons with disabilities stated their opinion that the Strategies resulted from Disability policy in BiH are not regularly monitored and no one surely stated that there was or was not any progress in implementation of these documents. Organizations of persons with disability stated that the greatest progress was made in the field of social protection, then in health protection, education and employment/labor, and the smallest in the field of family life. The progress in accepting the inclusion philosophy of issues related to disability in the mainstream was not significant in the past five years. There is still situation that organizations of persons with disabilities are not recognized as part of the community with influence and participation in all aspects of life. Disability is still mostly seen through social and health protection. Based on the responses of entity authorities and the interview with the Ministry of civil affairs in BiH, we can conclude that political structure of Bosnia and Herzegovina significantly influences implementation of Disability policy and the position of disabled persons in general. Due to current situation, the realization and implementation of Disability policy falls to entities while BiH institutions only have the role of coordination of authorities without any mechanism of coordination. The fact is that legal framework is very good in all fields of interest and disabled persons do have mechanisms to be used. Both entities created Strategies which determine directions to be taken in order to provide for improvement of the position of disabled persons and equalization of possibilities for all citizens with disability, but there are still no official reports on the progress in implementation of the Strategies.

Analysis confirmed already known attitudes that strategic documents in Bosnia and Herzegovina are not fully respected and implemented in practice. In this case, additional reason for not implementing the Disability Policy in BiH is the fact that it relates mostly to so-called civil persons with disabilities who are not represented as a very important interest group in the society. Other significant problem that influences the implementation is organizational structure of the Country which is really complicated and has no clear connection channels among different parts of Bosnia and Herzegovina. This fact is partly proved through the indicator that there are no plans for improvement of any field of life of disabled persons in Brcko district. On

the other hand, entities that adopted Strategies for implementation of the Disability policy do not have reports on implementation of the Strategies for three years after their adoption.

Furthermore, we noticed that there was a change of personnel in strategic positions at entity governments, and that new personnel are not familiar with the Disability Policy in BiH. This project additionally served as a tool for introducing Disability policy document as we sent the copy of the Policy together with the questionnaires not only to the entity level institutions but to all local communities included in the research. This way we influenced the level of their awareness of the document and general information.

Yet, the biggest problem is low level of understanding of local authorities on their role in implementation of the Policy, Strategies and Laws which bring reforms. Authorities in local communities do not identify persons with disabilities and do not understand their specific needs and ways in which they can help these people to solve different issues. The interview held in Istočno Sarajevo confirmed the need for more intensive actions and activities aimed at education of politicians to satisfy needs of persons with disabilities.

RECOMMENDATIONS

With a goal to improve the implementation of the Disability policy we suggest the following **general recommendations**:

- ▶ establish mechanisms for preparation of the Report on progress in implementation of the Disability policy for BiH Parliaments every two years, which would be created from entity reports on implementation of Strategies and local action plan for Brcko District.
- ▶ in Brcko District there should be created a Local action plan in accordance with the Disability policy in BiH which would answer questions on improvement of the position and equal possibilities for persons with disabilities.
- ▶ organizations of persons with disabilities should demand for the public to be regularly informed about implementation of the Disability policy and belonging Strategies.
- ▶ using public campaigns to draw attention of the public to participation of persons with disabilities in society as equal citizens, and indirectly to promote family life and preconditions for its realization.
- ▶ at all levels of authorities in BiH, entities, municipalities in all systems should be provided separate budgeting for implementation of the Disability policy and supporting Strategies.
- ▶ establish systems of financial support to organizations of disabled persons based on their results in activities and work done in accordance with needs of their members.

For implementation of Disability policy in **social protection** it necessary to:

- ▶ provide for legislation which would ensure equalization of assessment of disability in all systems where disabled persons regardless of geographical origin and disability origin.
- ▶ legislation on social services should stimulate development of social services and independent living of disabled persons.

- ▶ more intensive programs in the Ministries competent for social protection which could be supported from programs co-financed by Governments but implemented by organisations of disabled persons with experience in training organization.

For implementation of the Disability policy in **health protection** system it is necessary to:

- ▶ raise awareness of professionals in health protection system through continuous education of health professionals aimed at raising awareness of issues of disabled persons and change of the approach from medical model to social inclusion model.
- ▶ equalisation of the assessment methods of disability among different groups of disabled people.
- ▶ separate budget lines in health institutions aimed at improvement of conditions for disabled persons in health protection system.
- ▶ maintain more frequent consulting with associations of users when creating legislation respecting differences in disability.
- ▶ provide for medical appliances according individual needs of disabled persons based on functional assessment, not based on their diagnosis.
- ▶ organisations and associations of disabled persons should ask for practical implementation of their rights prescribed by legislation.

Recommendations aimed at more comprehensive implementation of the Disability policy in raising the quality of inclusion and **education** in general include:

- ▶ more comprehensive support to children with special needs in education system through better cooperation and interaction of education sector and social protection sector where assessment of needs and orientations is performed for children with developmental impairments.
- ▶ local communities should invest more resources in adaptations and support to schools with a goal to improve the quality of education in general, and to remove barriers to inclusive education.

- ▶ use of existing resources and work on raising awareness on all relevant levels and in all relevant systems on inclusive education as life philosophy and main precondition for more comprehensive participation of disabled persons in all segments of life as equal members of society.
- ▶ ensure equal possibilities for students with developmental impairments and teachers who work with them regardless of geographical position of their local community.
- ▶ establish resource centres and other forms of professional support with a goal to ensure comprehensive assessment and adequate planning of educational work in mainstream schools, and provide for each child with disabilities to have individual plan of support.
- ▶ systematically planned employment and engagement of professionals with professional competence to work with special needs children in order to provide adequate support to a child and to a teacher.

For adequate implementation of the Disability policy and improvement of **employment** of disabled persons it is necessary to:

- ▶ ensure clear guidelines for competent ministries (Ministry of Labor and Social Welfare for Federation of BiH and Ministry of Labor and War Veterans and Disabled Persons' protection for RS) in order for them to have systematic and planned programs and budgets relying on the Disability policy and supporting Strategies, and to prescribe the obligation for reporting related to above mentioned documents.
- ▶ implement activities for raising awareness of employers on significance of employment of disabled persons, their abilities and possibilities as well as benefits prescribed by laws.
- ▶ implement activities of information spreading, empowerment and raising awareness of persons with disabilities and their families on rights related to employment and mechanisms of its fulfillment.
- ▶ promote good practices of employment of disabled persons.
- ▶ raise awareness of local communities on importance of employment of disabled people as an issue of local community and urge them to participate in its realization.

1. UVOD

Vijeće Ministara BiH usvojilo je Politiku u oblasti invalidnosti BiH na 46. sjednici održanoj 08.05.2008. godine (Službeni glasnik BiH 76/08). Proces donošenja politike je uključivao blizu stotinu eksperata i lica s invaliditetom koje su obavile istraživanje stanja u oblasti invalidnosti u BiH i objavili Studiju politike u kojoj se prikazalo stanje u oblasti invalidnosti u BiH prije donošenja Politike.

Politika u oblasti invalidnosti je zasnovana na sljedećim principima: ljudska prava, jačanje socio-kulturalnih kapaciteta i institucija, jačanje lokalnih zajednica, uključivanje lica sa invaliditetom, ravnopravnost polova, socijalna uključenost, međusektorska saradnja, politika mješovite zaštite i dostupnost informacija svim licima sa invaliditetom.

Cilj ove politike Bosne i Hercegovine, njenih entiteta Federacije Bosne i Hercegovine, Republike Srpske i Distrikta Brčko, je da omogući svim licima sa invaliditetom da dostignu najviši kvalitet životnog potencijala, poštovanja i digniteta, nezavisnosti, produktivnosti i jednakog učešća u društvu u najproduktivnijem i što pristupačnijem okruženju.

Politika je dokument kojim se objedinjuju stavovi lica sa invaliditetom i institucija vlasti na osnovu inkluzivnih Standardnih pravila Ujedinjenih nacija za izjednačavanje mogućnosti lica sa invaliditetom i Konvencije Ujedinjenih nacija o pravima lica sa invaliditetom.

Standardna pravila Ujedinjenih nacija o izjednačavanju mogućnosti za lica sa invaliditetom Bosna i Hercegovina je prihvatila 2003. godine i obavezala se da će preduzimati aktivnosti s ciljem razvijanja svijesti u društvu o licima sa invaliditetom, njihovim potrebama, te potencijalima za njihovo uključivanje u društveni život. Politikom se zagovara princip koji osigurava da su pitanja invalidnosti uključena na svim nivoima saradnje relevantnih učesnika, da postoje komplementarne komponente koje će omogućiti da lica sa invaliditetom ravnopravno učestvuju sa ostalima u svrhu eliminacije postojeće diskriminacije lica sa invaliditetom.

Bosna i Hercegovina je ratifikovala Konvenciju o pravima osoba sa invaliditetom i Fakultativni protokol 12.03.2010. godine (bez rezervacija ili izjava). Za Bosnu i Hercegovinu, Konvencija je stupila na snagu 11.04.2010. godine, tridesetog dana nakon deponovanja instrumenta o ratifikaciji.

Usvajanjem Politike u oblasti invalidnosti BiH, njeni entiteti – Republika Srpska i Federacija BiH, kao i Distrikt Brčko, obavezali su se da u okviru svojih ustavnih nadležnosti preduzmu odgovarajuće korake ka unapređenju ove oblasti, što, između ostalog, podrazumijeva i izradu Strategije i akcionih planova za unaprijeđenje društvenog položaja lica sa invaliditetom.

Politika je implementirana u Strategije koje su izradila oba entiteta:

- ▶ Strategija unapređenja društvenog položaja lica sa invaliditetom u Republici Srpskoj 2010–2015
- ▶ Strategija za izjednačavanje mogućnosti za osobe sa invaliditetom u Federaciji Bosne i Hercegovine 2011- 2015
- ▶ U Distriktu Brčko nije izrađen strateški dokument.

Strategija je u Republici Srpskoj usvojena 2010. godine, a u oktobru 2011. godine predstavljena Odboru za jednake mogućnosti pri Narodnoj Skupštini RS i donešen je zaključak da Vlada RS na godišnjem nivou dostavlja izvještaj o realizaciji Strategije ovom Odboru na razmatranje. U skladu sa ciljevima Strategije (Cilj 1.2.), a da bi se osigurala koordinacija i primjena strateških dokumenata, preporučuje se osnivanje Kancelarije za lica sa invaliditetom. Vlada RS je u oktobru 2011. godine zaključkom obavezala Ministarstvo zdravlja i socijalne zaštite i Ministarstvo rada i boračko-invalidske zaštite da izrade projekat za osnivanje kancelarije. Obrazloženje zašto se to do danas nije desilo je ekonomska kriza zbog koje prijedlog nije ni iznesen pred Vladu RS.

Strategija za izjednačavanje mogućnosti za osobe sa invaliditetom u Federaciji BiH 2011. – 2015. usvojena je 28.7.2011. godine, a njeno praćenje i implementaciju trebalo bi obezbijediti kroz Ured Vlade Federacije BiH za pitanja invaliditeta koji je osnovan u decembru 2013. godine.

Oba entiteta su u obavezi godišnjeg izvještavanja o primjeni Strategija, ali se još nijedan zvaničan izvještaj nije pojavio pred organima entitetskih vlasti.

Parlamentarna Skupština BiH je na 56. sjednici Predstavničkog doma održanoj 08.07.2009. godine i 33. sjednici Doma naroda 23.07.2009. godine usvojila Zakon o zabrani diskriminacije koji jasno definiše oblike diskriminacije koji uključuju diskriminaciju po osnovu invaliditeta u svim oblastima života.

Usvajanje ovih nekoliko dokumenata optimistično djeluje na stanje ljudskih prava osoba sa invaliditetom u Bosni i Hercegovini. Koliko se stanje stvarno promijenilo u posljednjih pet godina, i da li se Politika u oblasti invalidnosti primjenjuje u praksi, pokušali smo sagledati kroz istraživanje koje smo usmjerili na nivo Vijeća ministara BiH, entiteta (Federacija BiH, Republika Srpska i Distrikt Brčko) i lokalne zajednice. Oblasti u okviru kojih smo analizirali primjenu Politike u oblasti invaliditeta su: obrazovanje, zdravlje, socijalna zaštita, rad, porodični život i položaj organizacija osoba sa invaliditetom u društvu.

Vijeće Ministara BiH je donijelo odluku o formiranju Vijeća za osobe sa invaliditetom BiH na svojoj sjednici 19.10.2010. godine. Vijeće ima 20 članova, jednu polovinu čine predstavnici svih nivoa vlasti, a drugu predstavnici organizacija osoba sa invaliditetom od društvenog interesa u entitetima. U opisu poslova kojim se Vijeće bavi nije striktno navedena Politika u oblasti invalidnosti BiH (Službeni glasnik br. 21 od 22.03.2011. godine).

Bosna i Hercegovina je u Razvojnoj strategiji BiH koja se priprema u predpristupnim obavezama prema Evropskoj Uniji definisala potrebu izrade posebnog dokumenta pod nazivom Strategija socijalnog uključivanja Bosne i Hercegovine. Ovaj dokument je u formi nacрта izrađen u junu 2010. godine i sadrži posebno poglavlje Poboľšati položaj osoba sa invaliditetom u okviru kojeg su identifikovana 3 prioriteta koja treba regulisati na svim nivoima vlasti kroz primjenu 11 mjera. Dokument još uvijek nije usvojen i pitanje je kada će dobiti odobrenje jer su razmatrane oblasti za socijalno uključenje pitanje entiteta i Distrikta Brčko, a ne države Bosne i Hercegovine.

Prva jedinstvena evidencija lica sa invaliditetom ostvarena je kroz popis stanovništva 2013. godine. Rezultati popisa još uvijek nisu objavljeni. U okviru popisa postavljeno je pet Evrostat pitanja o invalidnosti koja će nam prvi put pokazati funkcionalno stanje kod osoba sa invaliditetom.

Nekoliko lokalnih zajednica u BiH ima planove potreba za osobe sa invaliditetom, ali ni oni još uvijek nisu zaživjeli kao stvarna politika lokalne zajednice već više deklarativna.

2. ANALIZA PRIMJENE POLITIKE U OBLASTI INVALIDNOSTI U BIH

2.1. ANALIZA PROMJENA U PERIODU 2008. – 2013.

Promjena stanja od donošenja Politike u oblasti invalidnosti 2008. godine do 2013. godine – vladine institucije na državnom, entitetskim, lokalnim nivoima i organizacije osoba sa invaliditetom

Predmet analize

Predmet analize je napredak koji je postignut/nije postignut u oblastima: obrazovanje, socijalna zaštita, zdravstvo, rad i organizacije osoba sa invaliditetom, u periodu 2008 – 2013. godina a u odnosu na ciljeve definisane Politikom u oblasti invalidnosti u BiH.

Ciljevi i zadaci analize

Cilj analize je utvrditi povezanosti napretka u navedenim oblastima i implementacije Politike u oblasti invalidnosti, te uticaj na promjene koje su nastupile u oblastima obrazovanje, socijalna zaštita, zdravstvo, rad i organizacije osoba sa invaliditetom.

Kao zadatke analize definisali smo definisanje nivoa napretka i oblasti u kojima je evidentiran napredak, kao i identifikovanje poteškoća za realizaciju ciljeva definisanih Politikom u oblasti invalidnosti. Kao zadatak analize smo definisali i izradu preporuka za prevazilaženje poteškoća u realizaciji ciljeva definisanih Politikom u oblasti invalidnosti.

Metodologija

Za potrebe analize korištene su sljedeće tehnike:

- » analiza dokumentacije (dostupnih zakonskih i podzakonskih propisa, relevantne literatute iz oblasti zaštite osoba sa invaliditetom) i
- » tehnike anketiranja i intervjua.

Kao instrumenti su korišteni dva različita upitnika, posebno kreirana za potrebe ovog istraživanja. Jedan upitnik je bio namijenjen organizacijama osoba sa invaliditetom, a drugi upitnik donosiocima odluka na nivou BiH, entitetskim novoima (odnosno na nivou Distrikta), te na lokalnim nivoima, a u odnosu na pomenute oblasti života koje se ispituju.

Uzorak

Za potrebe analize definisan je namjerni uzorak koji obuhvata:

- » nivo donosioca odluka o pitanjima zaštite osoba sa invaliditetom i
- » nivo organizacija osoba sa invaliditetom što smatramo reprezentativnim za provođenje analize.

Nivo donosioca odluka – u ovom dijelu uzorka analizom su obuhvaćena tri nivoa donosioca odluka i to nivo BiH, entitetski nivo i lokalni nivo u opštinama i gradovima. Na nivou BiH smo obuhvatili Ministarstvo civilnih poslova, na entitetskom nivou resorna ministarstva (za oblasti rada, socijalne zaštite, zdravstva, obrazovanja), dostupne fondove, zavode, a na lokalnom nivou resorna odjeljenja za društvene djelatnosti i kabineti gradonačelnika/načelnika. (vidjeti prilog-Tabelarni prikaz poslanih/dobijenih upitnika). Sa predstavnicima Ministarstva civilnih poslova smo obavili intervju i pribavili podatke za sve četiri oblasti. Odziv entitetskih vlasti i opština je bio izuzetno mali sa nepotpunim odgovorima. Najmanji odziv je bio u Distriktu Brčko u kojem smo odgovore dobili samo iz oblasti zdravstva (25%). U odnosu na oblast, najviše odgovora smo dobili za oblast zdravstva 41%, zatim socijalna zaštita 36%, oblast rada 25% i oblast obrazovanja 23%.

Nivo organizacija osoba sa invaliditetom - Upitnik smo uputili u devetnaest organizacija osoba sa invaliditetom od kojih je šest (31,6%) Saveza na entitetskom nivou i 13 (68,4%) organizacija na lokalnom nivou. Svih devetnaest organizacija osoba sa invaliditetom koje smo kontaktirali odgovorilo je na dostavljene upitnike. Od lokalnih organizacija četiri organizacije su takozvane *cross disability* organizacije, a devet organizacija po tipu oboljenja.

2.1.1. Socijalna zaštita

Prvi preduslov kvalitetnog sistema socijalne zaštite je obezbjeđenje socijalne sigurnosti. U Republici Srpskoj donesen je novi Zakon o socijalnoj zaštiti, kao i novi pravilnici o načinu ostvarivanja prava iz Zakona. Novim Zakonom su povećani iznosi davanja za osobe sa invaliditetom koje su korisnici socijalnih usluga. Zakonom o socijalnoj zaštiti u RS utvrđena su prava u socijalnoj zaštiti (novčana pomoć, dodatak za pomoć i njegu drugog lica, podrška u izjednačavanju mogućnosti djece i omladine sa smetnjama u razvoju, smještaj u ustanovu, zbrinjavanje u hraniteljsku porodicu, pomoć i njega u kući, dnevno zbrinjavanje, jednokratna novčana pomoć i savjetovanje). Prioritetno, navedena prava u socijalnoj zaštiti ostvaruju lica koja su nesposobna za rad, a koji su bez vlastitih prihoda i prihoda porodice kao i podrške srodnika, te lica koja su zbog svog fizičkog i zdravstvenog stanja zavisna od pomoći druge osobe, kao i ona lica koja se iz nekog specifičnog razloga nađu u stanju socijalne potrebe. Tokom 2013. godine, a u sklopu primjene Zakona i Pravilnika o utvrđivanju sposobnosti lica u postupku ostvarivanja prava iz socijalne zaštite i utvrđivanju funkcionalnog

stanja korisnika, centri za socijalni rad su obavili postupak preispitivanja i usklađivanja visine iznosa prava na Dodatak za pomoć i njegu drugog lica sa funkcionalnim stanjem korisnika.

U FBiH se očekuje donošenje novog zakona, koji je pripremljen ali još uvijek nije u proceduri. Ponuđeni zakoni još uvijek ne uzimaju u obzir povećane troškove koji nastaju kao posljedica invaliditeta.

Kada je u pitanju obim prava u socijalnoj zaštiti, 21,1 % ispitivanih organizacija i saveza organizacija osoba sa invaliditetom smatra da nije postignut značajan napredak u povećanju obima prava, dok je daleko veći postotak onih koji smatraju da je u ovoj oblasti postignut značajan napredak (31,6%). Sa aspekta implementacije POI ovo je značajan podatak imajući u vidu složen sistem socijalne zaštite na svim nivoima vlasti.

Reforma penzionog sistema koja se kontinuirano provodi nije omogućila bolji status osobama sa invaliditetom u BiH. U tom sistemu su izbačena sva dosadašnja prava po osnovu invalidnosti, a preostalo je samo pravo na invalidsku penziju.

Kada su u pitanju programi za deinstitutionalizaciju može se reći da je to opšte opredjeljenje sistema, ali otežavajuća okolnost je recesija koja je nastupila 2008. godine. Tako su mnogi programi i projekti svedeni na minimum održivosti, a novi programi su se sveli na projekte koje provode uglavnom udruženja građana uz podršku međunarodnih donatora. U Federaciji BiH posebno se ističe razvijanje programa stanovanja uz podršku (projekat provodila organizacija „Sumero“), dok se u Republici Srpskoj posebno isticao trend razvoja usluge dnevnih centara, što predstavlja značajan pomak u odnosu na prethodni period. Anketirane lokalne zajednice ističu kao napredak razvoj partnerstva sa nevladinim organizacijama. Analizirajući stavove organizacija i saveza organizacija osoba sa invaliditetom, saznajemo da je u oblasti stvaranja uslova za deinstitutionalizaciju smanjen trend smještanja u ustanove socijalne zaštite. Organizacije OSI smatraju da je u ovoj oblasti postignut napredak sa čak 80% odgovora. Ovaj podatak je značajan iz razloga što je na nivou sistema i dalje potrebno zagovarati razvijanje sistema programa podrške u zajednici kao i programe deinstitutionalizacije.

Novim zakonom o socijalnoj zaštiti u Republici Srpskoj definisana su proširena prava iz socijalne zaštite. U Banja Luci je počev od 2008. godine razvijeno nekoliko dnevnih centara. Upućivanje

u Dnevni centar vrši se preko Centra za socijalni rad. Izbor i vrsta usluge zavise od statusa i potrebe osobe sa invaliditetom. Prilikom uvođenja sistema socijalnih usluga Banja Luka je provodila višegodišnji projekat kojim su bili obuhvaćeni korisnici, njihova udruženja, stručni radnici i donosioci odluka. Odluke o proširenim pravima dostupne su na sajtu Grada Banja Luka u Službenim glasnicima Grada, kao i na zvaničnom web sajtu Centra za socijalni rad Banja Luka. U Bijeljini nove socijalne usluge koje su uvedene određene su Odlukom o proširenim pravima Skupštine Grada Bijeljina, a korisnici imaju mogućnost izbora na podnošenje zahtjeva za neko određeno pravo i imaju mogućnost izbora pružaoca usluga. Gradiška je po ugledu na Banja Luku razvila uslugu personalne asistencije za lica sa invaliditetom. U Trebinju proširena prava su prava ustanovljena Odlukom o proširenim pravima u socijalnoj zaštiti Grada Trebinja (Službeni glasnik grada Trebinja broj 3 od 5.4.2013.godine) a pregled proširenih prava dostupan je zvaničnom web sajtu Centra za socijalni rad Trebinje.

Analizirali smo i postojanje posebnih službi za rad sa osobama sa invaliditetom kao i osoblje obučeno za rad sa osobama sa invaliditetom. Organizacije osobe sa invaliditetom smatraju da je postignut značajan napredak sa 15,8% dok veći procenat smatra da nije postignut napredak u ovoj oblasti.

Napredak u ovoj oblasti je ostvaren uz podršku vladinih programa obuke za stručne radnike, a posebno obukama koje su pripremale organizacije OSI (obuke za gestovni jezik, obuke za rad sa tjelesnim invalidima, obuke za provođenje usluge personalne asistencije).

Pitanje dostupnosti usluga za korisnike kolica, gluhe, slijepe osobe u odnosu na specifičnost potrebe, organizacije osoba sa invaliditetom ocjenjuju sa većim procentom manjeg napretka i to 57,9%. Manji broj organizacija smatra da je u ovoj oblasti postignut napredak i to 10,5% organizacija.

Kada su u pitanju programi socijalne inkluzije, ispitivane organizacije osoba sa invaliditetom cijene da u ovoj oblasti nije postignut značajan napredak, te se 47,4% organizacija izjašnjava da je postignut minimalan napredak, dok samo 10,5% smatra da je postignut napredak u ovoj oblasti. Ovaj podatak govori u prilog potrebe zagovaranja potrebe implementacije ove oblasti zaštite.

U oblasti socijalne zaštite sprovedena su istraživanja, u Vladi FBiH navode da su većinu istraživanja provodili uz pomoć konsultanata Sjetske banke, UNDP, IBHI i drugih organizacija. Usvojeni su zakoni o znakovnom jeziku, a uz pomoć raznih projektnih aktivnosti se provode obuke za Brajevo

pismo. Provode se javne kampanje u okviru implementacije Strategije za izjednačavanje mogućnosti za osobe sa invaliditetom u Federaciji BiH 2011. – 2015., zatim kampanje za jačanje svijesti o potrebama osoba sa invaliditetom u okviru djelovanja Vijeća za OSI BiH. U Gradu Banja Luci istraživačke projekte uglavnom provode organizacije OSI, a JU „Centar za socijalni rad“ radi redovno istraživanje potreba postojećih korisnika prava.

Većina lokalnih zajednica ne provodi posebna istraživanja u ovoj oblasti, i očekuju da istraživanja uglavnom provode nadležna ministarstva. Razlog tome uglavnom se nalazi u manjku stručnih kadrova za provođenje istraživanja.

Kao osnovne faktore koji utiču na implementaciju ciljeva POI u oblasti socijalne zaštite osoba sa invaliditetom ispitivani uzorak je izdvojio osnovna tri faktora:

- » Veća integracija različitih programa zaštite na svim nivoima
- » Bolji raspored sredstava koja su na raspolaganju lokalnoj zajednici
- » Efikasnija koordinacija različitih službi unutar lokalnih zajednica

Kao najodgovornije institucije za poboljšanje navedenih faktora navode se entitetske vlasti kao i organizacije osoba sa invaliditetom koje treba da budu značajan faktor u iniciranju promjena na svim nivoima. Lokalne vlasti su navedene kao značajan faktor u neposrednoj implementaciji zaštite OSI.

2.1.2. Zdravstvo

Uzrok invalidnosti, mjesto boravka i odsustvo ujednačenih kriterijuma shodno kojima se ostvaruju prava rezultovali su neujednačenošću prava lica sa invaliditetom. Nije došlo do značajne promjene u diskriminaciji po osnovu invalidnosti, bilo da se radi o razlikama po osnovu vrste invaliditeta tj. načina na koji je stečen, kao i geografskog porijekla. Prema ocjenama anketiranih predstavnika vlasti, još uvijek je obim prava ratnih vojnih invalida i civilnih žrtava rata u oblasti zdravstva veći nego kod ostalih osoba sa invaliditetom. Zakon o pravima boraca, vojnih invalida i porodica odbrambeno-otadžbinskog rata RS (Službeni glasnik RS broj 134/11, 09/12 i 40/12) je definisao da navedena lica imaju prednost u korištenju usluga u republičkim organima, ustanovama i ostalim pravnim subjektima prilikom rješavanja svojih prava i interesa. Druge osobe sa invaliditetom prednost ostvaruju u zavisnosti od odnosa osoblja u medicinskoj ustanovi manje više sa prednošću ali ne na osnovu prava.

Procjena stepena invalidnosti i dalje se u Bosni i Hercegovini vrši neujednačeno i samo na osnovu medicinskog modela, bez primjene Međunarodne klasifikacije funkcionisanja Svjetske zdravstvene organizacije.

Decentralizovanost zdravstvenog osiguranja i zdravstvene zaštite u Federaciji Bosne i Hercegovine, kao i različite ekonomske moći entiteta, Federacije Bosne i Hercegovine i Republike Srpske, kao i kantona, čine da osigurana lica ne ostvaruju jednaka prava iz obaveznog zdravstvenog osiguranja niti imaju ravnopravan pristup svim nivoima zdravstvene zaštite i odgovarajućim zdravstvenim ustanovama. Situacija u posljednjih pet godina se nije značajno promijenila. Lica sa invaliditetom imaju jednake uslove kao i drugi građani da ostvare zdravstveno osiguranje. Postoje beneficije koje omogućavaju znatno manju participaciju u liječenju nego kod ostalih stanovnika. Najveći problem i dalje čini problem neisplaćivanja plata radnicima koji povlači i neuplaćivanje zdravstvenog osiguranja tako da lica sa invaliditetom ukoliko su zaposlena u takvim uslovima ne samo da nemaju osnovnu egzistenciju već su i bez zdravstvenog osiguranja.

Proširena je mogućnost zdravstvenog osiguranja kroz Zakon o socijalnoj zaštiti, tako da lica sa invaliditetom mogu ostvariti zdravstveno osiguranje ukoliko su regulisali pravo na dotatak za pomoć i njegu drugog lica. Djeca do tri godine koja ne mogu ostvariti pravo na dodatak za pomoć i njegu drugog lica, a roditelji nemaju osiguranje, predstavljaju još uvijek najugroženiju grupu. U Federaciji BiH je Zakon o zdravstvenoj zaštiti donešen na nivou Federacije, a kantoni donose svoje posebne zakonske i podzakonske akte što je u konačnici doprinijelo neravnomjernom pristupu pravu na zdravstvenu zaštitu.

Iako je Zakon o zdravstvenoj zaštiti u federaciji BiH (Službene novine Federacije BiH 46/10) obavezao poštivanje osnovnih ljudskih prava, nije naglašeno da se dostupnost zdravstvene zaštite obezbjeđuje osobama sa invaliditetom tako da ne možemo reći da je dosljedno primjenjena Politika u oblasti invalidnosti BiH.

Predstavnici organizacija OSI su pokazali zadovoljstvo zdravstvenim osiguranjem koje je ocijenjeno sa prosječnom ocjenom četiri na rang od 1- 5.

Dostupnost zdravstvenih usluga je poboljšana u odnosu na 2008. godinu jer se npr. u Republici Srpskoj izmijenio Pravilnik o minimalnim uslovima za početak rada zdravstvene ustanove, koji je

obavezo sve državne ustanove da ispunjavaju standarde za fizičku pristupačnost. Za sada su promjene uglavnom u obezbjeđenju pristupačnosti u primarnoj zdravstvenoj zaštiti. U nekim slučajevima se kod novih objekata u potpunosti omogućila pristupačnost dok se u nekim slučajevima obezbijedila djelimična pristupačnost (primjeri iz Brčko Distrikta, Rehabilitacionim centrima). Pristupačnost u bolnicama i klinikama nije značajno promijenjena pa je bolničko liječenje još uvijek problem za fizičke invalide. Predstavnici organizacija OSI su ocijenili da je pristup kolicima u zdravstvenim ustanovama djelimično poboljšán, ali i dalje nedovoljan.

Ne postoji obaveza da u ustanovama radi lice koje poznaje gestovni govor, ali je Zakonom o zdravstvenoj zaštiti RS (Službeni glasnik RS broj 106/09) definisano da se prema potrebi može obezbijediti tumač. Praksa pozivanja tumača nije uspostavljena.

Na svim nivoima vlasti prepoznaju se Centri za mentalno zdravlje i Centri za rehabilitaciju u zajednici kao oblik rehabilitacije koji je dostupan osobama sa invaliditetom i novitet u našoj sredini, iako je proces reforme započeo 1996. godine. Pristup mobilnim zdravstvenim uslugama zavisi od opštine do opštine. U nekim slučajevima postoje mobilne laboratorije, patronažne službe i slično, ali ne postoje usluge rehabilitacije, dok u nekim opštinama uopšte ne postoje mobilne usluge. Organizacije osoba sa invaliditetom su posebno naglasile loše uslove zdravstvene zaštite žena, osoba sa invaliditetom na selu i osoba sa mentalnom retardacijom.

Fond zdravstvenog osiguranja RS proširio je usluge potpisujući ugovor sa ustanovom za rehabilitaciju oboljelih od skleroze multipleks i time proširio program.

Obuku kadrova i bolje uslove za rehabilitaciju pružaju veći rehabilitacioni centri koji su shvatili važnost tržišnog poslovanja. Primjer Zavoda za fizikalnu medicinu i rehabilitaciju „dr. Miroslav Zotović“ koji se otvara prema korisničkim udruženjima uslugama koje nisu isključivo zdravstvene, pokreće pitanje funkcionisanja pacijenata u njihovim kućama i zapošljava osoblje koje može podržati ovakav princip rada.

Situacija sa pomagalima se nije značajno promijenila jer je ekonomska kriza od 2008. godine do danas značajno uticala na smanjenje iznosa koji su namijenjeni za sva pomagala. Smanjenje cijena se vrši linearno procentualno neuviđajući razliku u važnosti za funkcionisanje. Primjer je linearni procenat smanjenja iznosa za cipele, tj. participacije od 60 KM ili elektromotornih kolica 2000 KM.

Navodi se da je smanjenje cijena u korist korisnika da plaćaju manju participaciju pri čemu se ne uviđa da je smanjenje cijene uticalo na smanjenje kvaliteta, a nije došlo do smanjenja rokova za korišćenje pomagala.

Još uvijek postoji razlika u ostvarivanju prava na pomagala, diskriminacija po uzroku nastanka i vrsti invaliditeta kao i prebivalištu, gdje se pravo na isto pomagalo ostvaruje ili ne ostvaruje pod različitim uslovima. Pomagala koja mogu da se nabave preko fondova zdravstvenog osiguranja su najčešće neodgovarajuća i ne prate tehnička dostignuća, a za pojedina lica sa invaliditetom njihova nabavka preko fondova uopšte nije moguća.

Usluge za pojedine kategorije lica sa invaliditetom kao što su stomatološke usluge za mentalno nedovoljno razvijena lica ili ginekološke usluge za žene u kolicima još uvijek su sporadično razvijene u nekim većim sredinama, ali u većini opština ih nema, niti postoji razvijena svijest o tome da su potrebne. Organizacije osoba sa invaliditetom su ocijenile dostupnost specijalista određenog profila sa srednjom ocjenom jer u nekim slučajevima uopšte nema specijalista potrebnih za podršku toj vrsti invaliditeta, a u drugim slučajevima osoblje u oblasti zdravstva postoji.

Prevenција invaliditeta postoji putem nekih standardizovanih preventivnih programa: prevenција nezaraznih bolesti, prevenција malignih oboljenja, dijabetesa, tuberkuloze, sistematski pregledi i slično.

Fond zdravstvenog osiguranja RS uveo je zaštitnika prava osiguranika koji pomaže svim građanima pa i osobama sa invaliditetom.

Kao osnovne faktore koji utiču na implementaciju ciljeva POI u oblasti zdravstvene zaštite osoba sa invaliditetom ispitanici su od ponuđenih devet konstatacija izabrali osam različityh faktora:

- » Jasna linija odgovornosti i podjela zadataka između entiteta i lokalne uprave,
- » Bolji vertikalni protok informacija i osiguranje jasnih smjernica za provođenje od strane nosioca implementacije pojedinih područja politike
- » Veća sredstva na raspolaganju za implementaciju politike
- » Pravovremeno i sistemsko planiranje aktivnosti lokalne zajednice
- » Bolji raspored sredstava koja su na raspolaganju lokalnoj zajednici
- » Bolji raspored sredstava koja su na raspolaganju entitetima

- » Efikasnija koordinacija različitih službi unutar lokalnih zajednica
- » Učestalije konsultacije sa organizacijama osoba sa invaliditetom i osobama sa invaliditetom o prioritetima u implementaciji

Kao odgovorne za sprovođenje Politike su prepoznali sve nivoe državnih vlasti, a kao poteškoću identifikovali preklapanja koja nastaju između entiteta i Distrikta Brčko.

2.1.3. Obrazovanje

Zakonska regulativa u Bosni i Hercegovini koja definiše oblast obrazovanja izmijenjena je u pravcu unapređenja poštivanja prava lica sa invaliditetom u vaspitno obrazovnom procesu prije usvajanja Politike u oblasti invalidnosti (pregled stanja prikazan u analizi dokumentacije). Izuzetak je Okvirni zakon o srednjem stručnom obrazovanju i obuci BiH koji je usvojen u julu 2008. godine i sadrži nediskriminirajuće odredbe. Na svim nivoima vlasti omogućena su jednaka prava i mogućnosti licima sa invaliditetom od predškolskog obrazovanja do obrazovanja odraslih. Strateški pravci razvoja obrazovanja BiH sa planom provođenja 2008.- 2015. kao jedan od glavnih pravaca razvoja obrazovnog sektora vide unapređenje procesa inkluzije u obrazovanju djece sa posebnim potrebama, kroz osiguranje odgovarajuće školske infrastrukture, programa i obuke nastavnika, te ustanovljavanje specijalnih ustanova kao resursnih centara i ekspertize za djecu i mlade sa izrazitim teškoćama u razvoju i učenju.

U svrhu analize primjene Politike u oblasti invalidnosti za oblast obrazovanja kreiran je upitnik koji je distribuiran resornim ministarstvima na nivou Bosne i Hercegovine, oba entiteta i Distriktu Brčko, te u šest lokalnih zajednica. Obavljena su dva intervjua, na nivou BiH i u Ministarstvu prosvjete i kulture RS, dok je od lokalnih zajednica odgovore dostavila samo Banja Luka. Ovaj podatak pokazuje da lokalne zajednice još uvijek nemaju razvijenu svijest da mogu doprinijeti o svojoj ulozi u primjeni POI s obzirom da su uglavnom upućivali na Republički pedagoški zavod kao glavnu instancu koja ima sve podatke o vaspitanju i obrazovanju lica sa invaliditetom.

Republika Srpska putem resornog ministarstva ulaže maksimalne napore da unaprijedi inkluzivnu praksu, politiku i kulturu u obrazovnom sistemu kada su u pitanju osobe sa invaliditetom. Prema njihovom mišljenju došlo je do pozitivnih promjena u proteklom periodu po pitanju školovanja djece sa smetnjama u razvoju. Broj lica sa invaliditetom u obrazovnom sistemu se svakodnevno povećava i u skladu sa propisanim zakonskim i podzakonskim aktima sva djeca ostvaruju pravo na školovanje

u redovnom sistemu obrazovanja bez diskriminacije i izdvajanja. Inkluzivno obrazovanje omogućeno je na svim nivoima obrazovanja i podaci su dostupni u okviru godišnjih programa rada obrazovnih institucija. Značajan broj škola ima pristupnu rampu na ulazu, ali ne i liftove i adekvatne toalete za osobe sa invaliditetom. U praksi je evidentirano sve više odobrenih asistenata za nastavu u školama putem sistema obrazovanja za sve, ali još uvijek nedovoljno. U Federaciji BiH, situacija je slična s tim da je u većini izvještaja istaknut nedostatak specijalizovanih ustanova za opservaciju u cilju sveobuhvatne procjene u većini kantona. I dalje je u oba ova entiteta značajan broj djece sa smetnjama u razvoju školuje u specijalizovanim ustanovama jer škole nemaju kapacitete da im omoguće adekvatnu podršku.

Obrazovanje djece sa posebnim potrebama u Brčko Distriktu nalazi se u nadležnosti Odjela za obrazovanje u okviru koga je i Pedagoška institucija u kojoj radi stručni savjetnik za socijalnu i mentalnu zaštitu koji koordinira i prati rad stručnih timova u školama (pedagog, psiholog, defektolog, logoped, tiflopedagog, socijalni pedagog, surdoaudiolog, oligofrenolog i drugi) i u predškolskoj ustanovi. Na području Distrikta ne postoje specijalne škole, ali u smislu člana 50. stav 3. Zakona o obrazovanju u osnovnim i srednjim školama BDBiH djeca sa izraženim teškoćama u psihofizičkom razvoju pohađaju nastavu u posebnim odjeljenima u školama po adaptiranim nastavnim planovima i programima.

Ministarstvo prosvjete i kulture RS nema posebnu budžetsku liniju za podršku inkluziji, ali izdvaja sredstva za podršku obrazovnim institucijama kroz finansiranje defektologa i logopeda koji pružaju podršku redovnim osnovnim i srednjim školama, plaćanje asistenata za djecu sa autizmom, te nadoknadu nastavniciima koji u odjeljenjima imaju djecu sa smetnjama u razvoju. Trenutno je angažovano do 12 defektologa u okviru mobilnog tima za podršku inkluziji i oni su na raspolaganju nastavnom osoblju u 45 škola. Na žalost, mobilni timovi uglavnom pokrivaju područje Banje Luke, dok su ostale opštine nepokrivene i nastavnici nemaju adekvatnu podršku stručnjaka. Obrazovni sistem podržava asistente u nastavi za djecu sa pervazivnim razvojnim poremećajima i asistenti se angažuju u skladu sa brojem upisanih učenika sa autizmom u redovnoj školi. Još uvijek nije jasno definisana uloga asistenata u inkluzivnoj školi (oni samo pomažu djetetu i nemaju nikakve obaveze prema nastavniku). Obrazovni sistem ne prepoznaje personalnu asistenciju s obzirom na činjenicu da je to socijalna komponenta koja zahtijeva podršku socijalnog aspekta. Ostaje pitanje definisanja pedagoškog asistenta kao podrške nastavniku u organizaciji i realizaciji časa u razredima u kojima ima dijete sa smetnjama u razvoju. Ministarstvo prosvjete i kulture finansira troškove prevoza za svu

djecu koja pohađaju osnovnu školu, dok su troškovi smještaja i hrane finansirani od strane lokalnih zajednica. U cilju podrške u izjednačavanju mogućnosti za djecu sa smetnjama u razvoju, Zakon o socijalnoj zaštiti Republike Srpske („Službeni glasnik Republike Srpske”, broj 37/12), predvidio je plaćanje troškova prevoza samo za djecu sa posebnim potrebama u srednjoj školi i na fakultetu. U nekim lokalnim zajednicama (Banja Luka) na nivou lokalne zajednice usvojene su odluke o proširenim uslugama u oblasti socijalne zaštite, pa tako i odluka o finansiranju troškova prevoza za pratioce učenika sa smetnjama u razvoju u osnovnoj školi prema procjenama stručnih timova.

Programi životnih vještina utkani su u ciljeve vaspitanja i obrazovanja koje nastavno osoblje realizuje kroz sadržaje nastavnog plana i programa. Trenutno postoje kreirani posebni nastavni planovi i programi za osnovne i srednje škole kako bi se omogućila bolja pristupačnost, odnosno odgovarajuća upotreba nastavnih sredstava, pomagala, literature. Ovi planovi i programi obavezuju na realizaciju sadržaja u skladu sa smetnjama koje učenik ima (oštećenje sluha, oštećenje vida...), kao i na upotrebu znakovnog jezika, Brajevog pisma i slično. Nema podataka o tome koliko su ovako kreirani planovi i programi opravdani i korisni za nastavno osoblje s obzirom na činjenicu da je svako dijete individua za sebe i da mu u skladu sa specifičnim potrebama treba kreirati individualni plan. U radu sa učenicima koji imaju senzorna oštećenja, nastavnici koriste udžbenike iz redovne nastave uz prilagođavanja.

U pripremi je projekat koji će biti podržan od strane organizacije UNICEF, a koji će biti fokusiran na izradu novih nastavnih planova i programa. Pored Republičkog pedagoškog zavoda, koji inače pravi prijedloge nastavnih planova i programa, u pripremu će biti uključeno 200 stručnjaka iz škola. Nadamo se da će novi nastavni planovi i programi biti fleksibilniji za nastavnike i da će predstavljati okvir za djelovanje, dok će svaki učenik u skladu sa svojim individualnim potrebama imati izrađen individualni plan i program, te da ministar neće donositi posebne planove i programe prema vrsti i stepenu ometenosti u razvoju kako to propisuje član 87 Zakona o osnovnom obrazovanju RS.

Dodatno obrazovanje nastavnog kadra nije sistemski riješeno i ne postoje godišnji planovi stručnog usavršavanja. Republički pedagoški zavod u Republici Srpskoj u skladu sa svojim mogućnostima realizuje programe dodatnog obrazovanja uz podršku resornog ministarstva i nevladinog sektora. Već ina seminara koji su u proteklim godinama realizovani bila je usmjerena na inkluzivno obrazovanje u cilju podizanja svijesti o inkluziji kao filozofiji života i podizanja nivoa kompetentnosti nastavnika i stručnih saradnika. Jedan od značajnijih programa obuke realizuje se u 2014. godini u organizaciji ministarstva prosvjete i kulture, i uz finansijsku podršku organizacije UNICEF, a koji se odnosi

na primjenu inkluzije u osnovnim školama. Projekat obuhvata obuku nastavnog osoblja za izradu individualizovanih planova i programa u 10 lokalnih zajednica i opremanje i otvaranje dvije resursne sobe u dvije geografski fokusirane lokalne zajednice, te formiranje resursnih centara po školama.

Pitanje servisa za podršku ostalo je na nivou podrške koju obezbjeđuju i pružaju specijalne ustanove. Dakle u sredinama u kojima nema specijalnih ustanova izostaje i podrška. Resursi koji trenutno postoje, ali koji nisu u dovoljnoj mjeri iskorišteni su Dokumentacioni centar ili Centar za obrazovnu dokumentaciju i inovaciju koji je oformljen uz podršku organizacije EducAid, ali koji nije profunkcionisao i nije iskorišten kao postojeći resurs i servis za podršku inkluziji. Zavod za slijepe u Derventi za potrebe nastavnog osoblja štampa udžbenike na Brajevom pismu i pruža podršku školama koje se obraćaju za podršku. Savez gluvih i nagluvih RS i lokalno udruženje u Banjoj Luci povremeno organizuju obuku za znakovni jezik za nastavnike i druge zainteresovane. Veliki je uspjeh što je pri Univerzitetu u Banjoj Luci sa radom počeo Centar za podršku studentima sa invaliditetom, ali je i dalje ovaj resurs nedovoljno iskorišten. Tu je i biblioteka za slijepe pri Savezu slijepih RS koja ima kapacitete za izradu prilagođenih udžbenika i trenutno aktuelan projekat Talking Books.

Roditelji djece sa smetnjama u razvoju su u određenoj mjeri uključeni u provođenje inkluzije jer su dio školskog stručnog tima. Oni dolaze na sastanke i učestvuju u donošenju odluka koje se tiču školovanja njihove djece i to kroz savjet roditelja. Ipak, situacija u pojedinačnim konkretnim slučajevima saradnje sa nastavnim osobljem koje radi sa djecom u razredu nije uvijek na zadovoljavajućem nivou. Nastavnicima je potrebna je podrška u radu sa roditeljima koji su vrlo često nerealni u svojim očekivanjima.

Osnovni nedostatak u procesu inkluzije djece sa smetnjama u razvoju koji je istaknut jeste nedostatak rane dijagnostike i ranog tretmana. Javni fond dječije zaštite je u nekoliko lokalnih zajednica provodio program ranog otkrivanja djece sa smetnjama u razvoju i time omogućavao centrima za socijalni rad da uz dodatne resurse identifikuju djecu u najranijoj dobi kako bi dobila odgovarajuću podršku i prije upisa u osnovnu školu. Centar za socijalni rad Banja Luka ima potpisan memorandum o razumijevanju i saradnji sa akterim u lokalnoj zajednici iz zdravstvenog, socijalnog i obrazovnog sektora u cilju ranog otkrivanja djece sa smetnjama u razvoju. Ovim dokumentom je definisana razmjena informacija o djeci koja se pojave u bilo kom sistemu kako bi se porodicama pružila pravovremena podrška u ostvarivanju njihovih prava u bilo kojoj oblasti. Međutim, ovo nije slučaj u drugim lokalnim zajednicama jer je vrlo često slučaj da djeca sa smetnjama u razvoju prvi

put budu procjenjivana na upisu u školu kada je već kasno za rani tretman koji im mnogo znači u daljem razvoju.

Kao prioritete za djelovanje u pravcu unapređenja pristupa obrazovanju i kvaliteta obrazovanja lica sa invaliditetom ispitanici su istakli sistematsku obuku nastavnika za rad sa djecom sa smetnjama u razvoju (na čemu se do sada radilo parcijalno kroz projekte), zatim izradu novih nastavnih planova i programa kao i udžbenika koji će biti prilagođeniji djeci sa različitim potrebama, te potpuniju primjenu pedagoških standarda i normativa, te izradu novih zakona o osnovnom i srednjem obrazovanju i pratećih pravilnika koji će jasnije definisati način školovanja djece sa smetnjama u razvoju. Posebno je istaknuta potreba uvezivanja škola sa ostalim sistemima u cilju bolje obaviještenosti o dostupnim sistemima podrške.

Kao osnovna prepreka u implementaciji ciljeva iz Politike u oblasti invalidnosti navodi se nedostatak finansijskih sredstava. Organizacija adekvatnih obuka nastavnog osoblja i izrada nastavnih planova i programa izdvojeni su kao koraci koji se mogu implementirati sa trenutnim resursima.

Organizacije osoba sa invaliditetom su u ovom istraživanju ocjenjivale napredak u oblasti obrazovanja od usvajanja Politike do danas u nekoliko segmenata. Prema njihovom mišljenju, u oblasti obrazovanja lica sa invaliditetom napravljen je manji napredak prvenstveno u zakonskoj regulativi, dok je primjena iste u praksi izostala. Napredak po pitanju dostupnosti adekvatnog broja asistenata u nastavi predstavnici organizacija su vrednovali srednjom ocjenom 1,84 čime je evidentiran određeni pomak u ovom segmentu. Ipak, najveći procenat ispitanih konstatovao je da je napravljen zaista mali napredak u odnosu na potrebe. Nešto veća srednja ocjena evidentirana je kod odgovora na pitanje o tome da li je djeci sa invaliditetom omogućeno pohađanje redovne nastave (srednja vrijednost odgovora 2,11). Gotovo 50% ispitanih dalo je ocjenu 2 od mogućih 5 u vrednovanju napretka u ovom segmentu. Ocjenjujući rezultate vaspitno-obrazovnog rada sa licima sa invaliditetom, organizacije osoba sa invaliditetom su konstatovale da je ipak došlo do pomaka po pitanju broja obrazovanih lica sa invaliditetom (srednja ocjena 2,21). Značajan procenat ispitanih dao je ocjenu 2 i 3 za ovaj indikator uključenosti lica sa invaliditetom u vaspitno-obrazovne procese. Ista srednja ocjena od 2,21 evidentirana je kod odgovora na pitanje o tome da li je licima sa invaliditetom obezbijeđen pristup vannastavnim aktivnostima (kursevi računara i jezika, različite sekcije, i slično). Najveći procenat ispitanih dao je ocjenu 2 za napredak u ovom segmentu. Po pitanju profesionalne rehabilitacije lica sa invaliditetom, organizacije su za svoje članove konstatovale da

ipak nije došlo do značajnog pomaka u ovom segmentu dajući srednju vrijednost napretka od 1,84. Odgovori su ravnomjerno raspoređeni na prva tri stepena napretka.

Procjenjujući faktore koji bi mogli uticati na unapređenje provođenja POI u oblasti obrazovanja dobili smo odgovore da je potrebno bolje uvezivanje i saradnja Ministarstva prosvjete i kulture sa predstavnicima lokalnih vlasti i nosiocima socijalne zaštite u lokalnim zajednicama. Tri faktora koji bi mogli pozitivno uticati na implementaciju Politike u oblasti invalidnosti u obrazovanju su:

- » Bolji vertikalni protok informacija i osiguranje jasnih smjernica za provođenje od strane nosioca implementacije pojedinih područja politike
- » Veća sredstva na raspolaganju za implementaciju politike
- » Učestalije konsultacije s organizacijama osoba sa invaliditetom i osobama s invaliditetom o prioritetima u implementaciji

2.1.4. Zapošljavanje

Analizom odgovora dobijenih od Ministarstva rada i boračko invalidske zaštite RS, odnosno Ministarstva rada i socijalne zaštite Federacije BiH, primjetno je da su sve aktivnosti vezane za stvaranje povoljnijih uslova u društvu za zapošljavanje lica sa invaliditetom prebačene na Fondove za profesionalnu rehabilitaciju, osposobljavanje i zapošljavanje. Ministarstva sama uglavnom nisu razvijala posebne programe sa ciljem provođenja mjera definisanih Politikom u oblasti invalidnosti, odnosno entitetskim Strategijama, a ako su imali aktivnosti vezane za unaprjeđenja oblasti zapošljavanja one su bile vezane za projekte koji se provode preko Fondova za profesionalnu rehabilitaciju, osposobljavanje i zapošljavanje invalida/osoba sa invaliditetom.

Entiteti nemaju programe, niti pravni osnov za davanje prednosti zapošljavanju lica sa invaliditetom u javnim ustanovama, pod uslovima posjedovanja jednake kvalifikacije, što, s obzirom na opšte nisku svijest o licima sa invaliditetom, iste stavlja u nepovoljan položaj. U Ministarstvu rada i socijalne zaštite Federacije BiH navode „kvotni sistem koji se teško primjenjuje“ kao jedini osnov koji prednost pri zapošljavanju daje licima sa invaliditetom.

Za praćenje zapošljavanja lica sa invaliditetom u oba entiteta su zaduženi Fondovi za profesionalnu rehabilitaciju, osposobljavanje i zapošljavanje. Prema podacima Fonda za profesionalnu rehabilitaciju i zapošljavanje invalida RS u 2013. godini je zaposleno 137 lica sa invaliditetom. Međutim, u

praksi se ne vidi značajan pomak na ovom polju, o čemu govore i podaci i mišljena dobijena od Organizacija osoba sa invaliditetom.

U Federaciji je, nakon usvajanja politike, 2010. godine, donesen Zakon o profesionalnoj rehabilitaciji, osposobljavanju i zapošljavanju osoba sa invaliditetom (Sl. Novine FBiH 9/10), a u Republici Srpskoj Zakon o profesionalnoj rehabilitaciji, osposobljavanju i zapošljavanju invalida (Službeni glasnik RS 37/12). Ova dva zakona, pored entitetskih Zakona o radu čine osnovu zakonskog okvira koji se odnosi na zapošljavanje lica sa invaliditetom. Ova oblast je uređena i mnogobrojnim podzakonskim aktima (*Pravilnik o evidenciji zaposlenih invalida, Pravilnik o radnim mjestima i poslovima za prioritarno zapošljavanje invalida, Pravilnik o uslovima u pogledu prostora, opreme i stručnosti radnika koje mora ispunjavati ustavo za profesionalnu rehabilitaciju* i dr.) i svi su načelno usklađeni sa Politikom u oblasti invalidnosti.

Zakoni propisuju da se zapošljavanje lica sa invaliditetom u BiH odvija na osnovu dva osnovna modela: zapošljavanje na otvorenom tržištu pod jednakim uslovima i zapošljavanje pod posebnim uslovima (posebni programi, beneficirani uslovi zapošljavanja, preduzeća za zapošljavanje lica sa invaliditetom, zaštitne radionice), a po osnovu sklapanja ugovora o radu ili samozapošljavanjem. Bez ulaženja u dublju pravnu analizu, zakonske mjere su u oba entiteta slične, a predviđaju zakonsku obavezu državnih ustanova i institucija da na svakih 16 zaposlenih zaposli 1 lice sa invaliditetom, odnosno stimulatívne mjere za privatne poslodavce, ako zapošljavaju lica sa invaliditetom, u vidu poreskih olakšica.

Ukoliko nemaju potreban cenzus za tzv. obavezno zapošljavanje, moraju izdvajati određen iznos na bruto plate zaposlenih u Fondove za profesionalnu rehabilitaciju, osposobljavanje i zapošljavanje. Pravna lica koja nemaju obavezu zapošljavanja (npr. nevladine organizacije) takođe izdvajaju određen iznos koji je procentualno manji nego u slučaju državnih subjekata. Posebno je definisan status preduzeća za zapošljavanje lica sa invaliditetom, pa tako u FBiH privredno društvo za zapošljavanje lica sa invaliditetom treba imati najmanje 40% zaposlenih sa takvim statusom, a u RS najmanje 51%.

Uprkos činjenici da zakon predviđa da lice koje se može zaposliti kao lice sa invaliditetom, pod posebnim uslovima, mora imati 40% invaliditeta odnosno 70% tjelesnog oštećenja, vrlo rijetko se zapošljavaju lica sa funkcionalno velikim oštećenjem, npr. korisnici/ce invalidskih kolica i sl.

Pored stimulativnih mjera definisanih zakonom, u RS „kroz projekte zapošljavanja poslodavci su stimulisani za zapošljavanje lica sa iznosom sredstava (različito po projektima).“

Politika u oblasti invalidnosti, odnosno njeni ciljevi koji se odnose na zapošljavanje lica sa invaliditetom nisu prepoznati kao posebna stavka prilikom kreiranja budžeta. Planiraju se i izdvajaju sredstva za finansiranje Fondova za profesionalnu rehabilitaciju i zapošljavanje, ali ne kao posljedica nastojanja implementacije Politike ili Strategija u oblasti invalidnosti.

Generalni utisak je da Politika u oblasti invalidnosti, ali ni prateće Strategije, nisu izazvale uvođenje novih mjera, programa ili akcija za unaprjeđenje oblasti zapošljavanja lica sa invaliditetom. Umjesto toga, već postojeći mehanizmi se nastoje prikazati kao dovoljni da formalno zadovolje djelovanje u skladu sa Politikom u oblasti invalidnosti.

Aktivnosti promocije zapošljavanja i samozapošljavanja lica sa invaliditetom provode se, uglavnom preko fondova za profesionalnu rehabilitaciju i zapošljavanje. Fond za profesionalnu rehabilitaciju i zapošljavanje invalida RS svake godine provodi aktivnosti na promovisanju podsticaja za zapošljavanje i samozapošljavanje invalidnih lica. Te aktivnosti uključuju prije svega organizovanje i održavanje okruglih stolova na navedenu temu kroz učešće predstavnika invalidskih organizacija, poslodavaca i predstavnika lokalnih zajednica, širom Republike Srpske. Nadležna entitetska ministarstva takođe preuzimaju inicijativu na polju promocije, prepoznajući značaj iste, pa tako u Ministarstvu rada i boračko invalidske zaštite RS, kao primjere navode: „Promocije i informativne kampanje o primjeni Zakona o profesionalnoj rehabilitaciji, osposobljavanju i zapošljavanju invalida, manifestacije *Izbor poslodavca godine koji zapošljava lica sa invaliditetom.*“

Lokalne zajednice nemaju direktnih obaveza u odnosu na zapošljavanje i nisu dale nijedan konkretan primjer aktivnosti.

Organizacije osoba sa invaliditetom na lokalnim i entitetskim nivoima nisko na skali ocjenjuju napredak postignut o oblasti zapošljavanja od usvajanja Politike u oblasti invalidnosti. Generalni napredak u zapošljavanju u odnosu na period prije donošenja Politike u oblasti invalidnosti 7 organizacija ocjenjuje ocjenom 3 (na skali od 1 do 5). Možemo pretpostaviti da je za ovu srednju ocjenu zaslužna zakonska i podzakonska regulativa.

Međutim, ukupno 20 organizacija lokalnog, entitetskog i BiH nivoa, bilježe ukupno 57 svojih članova koji su zaposleni, dok su podaci Fondova za profesionalnu rehabilitaciju i zapošljavanje znatno veći, samo za 2013. godinu. (npr. prema podacima Fonda RS u 2013. godini je zaposleni 137 lica sa invaliditetom). Organizacije navode da je radno mjesto adaptirano za 30 osoba sa invaliditetom. Ovu razliku u podacima i utisku u zapošljavanju lica sa invaliditetom možemo tumačiti činjenicom da se određen broj lica sa invaliditetom zaista zapošljava, ali to su uglavnom lica sa lakšim funkcionalnim oštećenjima kojima ne treba prilagođavanje radnog mjesta i koji najčešće nisu dio organizacija osoba sa invaliditetom i aktivisti pokreta osoba sa invaliditetom. Honorarno angažovanje lica sa invaliditetom većina organizacija negativno ocjenjuje, što govori o tome da je mogućnost privređivanja lica sa invaliditetom na svim poljima vrlo mala.

Nadležne institucije su identifikovale faktore koji bi mogli pozitivno uticati na implementaciju Politike u oblasti invalidnosti, među kojima su oni prepoznali:

- » češće konsultacije sa osobama sa invaliditetom i njihovim organizacijama,
- » bolji raspored sredstava koja su na raspolaganju lokalnoj zajednici,
- » pravovremeno i sistematsko planiranje aktivnosti,
- » veća sredstava na raspolaganju za implementaciju Politike,
- » bolji vertikalni protok informacija i osiguravanje jasnih smjernica od strane nosioca implementacije.

2.1.5. Ostvarenje ljudskog dostojanstva, ličnog integriteta, društveni, intimni i porodični život

Politika u oblasti invalidnosti definiše ostvarenje ljudskog dostojanstva, ličnog integriteta, društveni, intimni i porodični život kroz više indikatora, kao što je porodični život, ostvarenje kulturnih, sportskih i vjerskih potreba.

U anketiranim lokalnim zajednicama, centri za socijalni rad nemaju osobe obučene za savjetovanje porodica koje imaju članove lica sa invaliditetom. Takođe, ne vode se posebne evidencije za žrtve porodičnog nasilja gdje je žrtva osoba sa invaliditetom.

U Banja Luci se provode usluge za samostalan život osoba sa invaliditetom (personalna asistencija, dnevni boravak za mentalno nedovoljno razvijena lica, pomoć u kući, dnevni boravak za lica sa problemima u mentalnom zdravlju, dnevni boravak za stara lica koje posjećuju i lica sa invaliditetom,

smještaj u sopstvenu porodicu za djecu sa teškim smetnjama). Navedene usluge utiču na socijalizaciju i ukupnu uključenost osoba sa invaliditetom. Grad Banja Luka sufinansira i aktivnosti prevoza za lica sa invaliditetom.

Neke opštine, kao npr. Bijeljina, imaju kao proširena prava i usluge, dodatna novčana davanja u vidu prava na smještaj u vlastitu porodicu. Lica sa invaliditetom imaju podršku kroz prava iz Zakona o socijalnoj zaštiti i radom na terenu socijalnih i drugih stručnih radnika centra. Programi podrške porodicama koje imaju člana sa invaliditetom i samim osobama sa invaliditetom u porodičnim savjetovalištim ne postoje u okviru Domova zdravlja.

U sistemima socijalne i zdravstvene zaštite nema dovoljno savjetovališta za porodicu, a posebno savjetovališta za osobe sa invaliditetom i njihove porodice. U sistemu socijalne zaštite je pozitivno ocijenjen napredak u 16% slučajeva, a u ostalim negativno. činjenicu potvrđuju i odgovori organizacija na pitanje o porodičnim savjetovalištim koji su u 68% slučajeva da nema nikako i 31,6% da nema pomaka u posljednjih pet godina. Na pitanje dostupnosti usluga za korisnike kolica, gluhe ili slijepe i ostvareni napredak u posmatranom periodu 100% organizacija osoba sa invaliditetom ocjenjuje negativno ili kao *status quo*. Očigledan primjer su usluge ginekologa za žene korisnice kolica gdje su sve organizacije potvrdile da ne postoji ta vrsta usluge. Posmatrajuć i ove negativne odgovore vidimo da je broj osoba koje su ostvarile porodični život izuzetno mali i organizacije ne smatraju da je tu došlo do značajnih pomaka, samo jedna organizacija smatra da je u toj oblasti došlo do pomaka, a preostalih 94,7% ne vide da je pomak ostvaren.

Osobe sa invaliditetom nemaju značajne mogućnosti da pristupe i da se iskažu u kulturnim i sportskim sferama jer je samo 5,3% (1) konstatovalo da u toj sferi ima pomaka dok je preostalih 94,7 (18) ocijenilo da nema pomaka ili da je stanje isto.

Slična situacija je i sa vjerskim objektima jer je 10,5% (2) konstatovalo da je pristup vjerskim objektima poboljšán a ostalih 89,5 % smatra da nema značajnih pomaka. Još uvijek je mali broj djece i žena uključeno u sportske aktivnosti. Stavovi fokus grupe mladih na okruglom stolu u decembru 2013. godine pokazuju da je mali broj sportova za osobe sa invaliditetom uopšte i da postoje predrasude da je sport naporan za osobe sa invaliditetom. Na isti način su ocijenili i stanje u kulturi. Postoje određeni programi koji se razvijaju i osobe sa invaliditetom učestvuju u njima, ali je to još uvijek nedovoljno.

Svi ovi preduslovi obeshrabrujuće djeluju za afirmaciju žena sa invaliditetom pa nije postignut značajan napredak u afirmaciji žena sa invaliditeom unutar organizacija osoba sa invaliditetom i cijeloj zajednici (pozitivan odgovor samo tri organizacije 15,8%).

Nedostatak porodične podrške i predrasude javnosti utiču i na opšti status osoba sa invaliditetom u političkom životu što potvrđuje negativna procjena organizacija osoba sa invaliditetom u 94,5 % slučajeva.

2.1.6. Status organizacija osoba sa invaliditetom u društvu

Status organizacija osoba sa invaliditetom je posebno prepoznat u Politici u oblasti invalidnosti BiH kao oblast na osnovu koje treba mjeriti ukupan status osoba sa invaliditetom u društvu. U Republici Srpskoj postoji pravilnik o načinu na koji organizacije stiču status od društvenog interesa i postigli su ga svi Savezi koji su po tipu invaliditeta što im omogućava da imaju osnovno finansiranje rada saveza putem Ministarstva za lokalnu upravu i samoupravu. Opštinske organizacije se finansiraju iz lokalnih budžeta ali uglavnom u veoma malim iznosima nedovoljnim za osnovni rad. U Federaciji BiH se finansiranje ovih organizacija bazira na finansiranju iz sredstava Lutrije BiH, budžeta Federacije, kantona i opština. Situacija sa finansiranjem na lokalnom nivou zavisi od ekonomske situacije u pojedinom kantonu tako da u nekim slučajevima kao što je kanton Sarajevo finansiranje je zadovoljavajuće, a u drugim uopšte nemaju finansiranje rada udruženja.

Analizu ovih pitanja smo usmjerili ka ovoj oblasti kroz dio upitnika namijenjen organizacijama osoba sa invaliditetom. Na osnovu odgovora ispitanika možemo vidjeti da u većini opština tj. na nivou entiteta (73%) nema sistem vrednovanja rada organizacija osoba sa invaliditetom. Velika većina (84%) organizacija tvrdi da nisu imali povećanja budžeta za rad organizacija od 2008. godine do danas. Analogno tome možemo zaključiti da se i raspodjela sredstava za rad organizacija vrši po *ad hoc* sistemu.

Još uvijek se ne poklanja dovoljno pažnje pitanjima invaliditeta na entiteskim i lokalnim nivoima jer su organizacije potvrdile da u najvećem broju slučajeva ne postoje planovi potreba za lica sa invaliditetom na lokalnom nivou što upućuje da se tema invalidnosti ne nalazi na dnevnom redu skupština opština. Ovu tvrdnju smo potvrdili i uvidom u podatke dostupne na web stranicama ispitivanih opština. Postoji izvjesna sklonost opštinskih vlasti za poboljšanje uslova za rad jer je

52% organizacija dalo odgovor da su dobili podršku kroz stvaranje boljih uslova za rad, ali su ta sredstva bila dovoljna samo u 55% organizacija. Kod ostalih četiri organizacije su donacije bile djelimične.

Jedno od mjerila uvažavanja organizacija osoba sa invaliditetom kao važnih sagovornika vlastima, jer zastupaju prosječno 10% populacije, postavlja se konsultantsko učešće u procesima donošenja pravne regulative. Možemo reći da se situacija ukupno poboljšava jer je 68% ispitanika potvrdilo da učestvuje u konsultacijama.

Organizacije osoba sa invaliditetom su se rijetko pozivane na događanja od važnosti za cjelokupnu zajednicu, a taj pokazatelj govori o društvenom priznanju i organizacija i njihovih članova. Manji napredak po pitanju broja događaja na koji su pozivani, a koji nemaju direktnu vezu sa invaliditetom, ostvaren je prema 21% odgovora, dok u 79% slučajeva nema napretka ili je stanje loše. Ovi pokazatelji govore da nema napretka u prihvatanju filozofije uključivanja pitanja invalidnosti u glavne tokove u društvu na svim nivoima društva.

Ove tvrdnje potvrđuju i činjenice da u posljednjih pet godina nije bilo značajnog napretka u broju poziva i učešća na seminarima u odnosu na period prije 2008. godine. Samo 20% ispitanika je navelo da je povećan broj poziva, ostali 80% smatra da je na istom nivou ili čak manje nego ranije. Nekoliko ispitanika ima sumnju prema povećanju broja poziva jer se uglavnom radi o seminarima namijenjenim osobama sa invaliditetom. U komentarima su registrovali da je povećan broj organizacija kojim osobe sa invaliditetom nisu ciljna grupa, a vode veće projekte namijenjene osobama sa invaliditetom.

Novoformirane organizacije koje svoje članove okupljaju na principu i filozofiji samostalnog života (cross-disability organizacije) nisu priznate u zajednici i uglavnom se finansiraju na osnovu projekata ili socijalnih usluga stranih donatora.

2.2. ANALIZA DOKUMENTACIJE

Za potrebe istraživanja analizirali smo zakonsku regulativu za svaku oblast pojedinačno. Također smo se koristili izvještajima koji su objavljeni o stanju u oblasti invalidnosti od 2008. godine do danas (Inicijalni izvještaj o primjeni UN Konvencije koji je BiH dostavila dvije godine poslije

ratifikacije, Izvještaj organizacija osoba sa invaliditetom u sjeni i druge materijela iz liste u prilogu ovog izvještaja).

Obzirom da nismo imali zadovoljavajući odziv iz opština analizirali smo rad njihovih Skupština putem web sajtova. Posmatrajući dnevne redove Skupština uvidjeli smo da se tema invalidnosti ne nalazi na njihovim razmatranjima.

Ministarstvo civilnih poslova BiH ima samo koordinirajuću ulogu u oblasti socijalne zaštite, zdravstva, obrazovanja i rada, a prava regulisanja ove oblasti su na nivou entiteta i Distrikta Brčko.

Oblast socijalne zaštite lica sa invaliditetom u Bosni i Hercegovini regulisana je aktuelnim zakonima o socijalnoj, dječijoj i porodično-pravnoj zaštiti i spada u nadležnost entitetskih vlada. Dva entiteta primjenjuju dva različita sistema socijalne zaštite regulisanja različitim zakonima. Na nivou Entiteta u Republici Srpskoj odgovornosti su podijeljene između entitetskog i lokalnog nivoa, a u Federaciji BiH odgovornost je podijeljena između entiteta, kantona i lokalnih zajednica.

U Republici Srpskoj je u maju 2012. godine stupio na snagu novi Zakon o socijalnoj zaštiti kojim je regulisan širi obim prava, te predviđeni prateći pravilnici koji dodatno regulišu oblast zaštite osoba sa invaliditetom u skladu sa Politikom u oblasti invalidnosti BiH i UN Konvencije o pravima osoba sa invaliditetom. Tri su osnovna zakona koja obezbjeđuju zaštitu osoba i porodica osoba sa invaliditetom Zakon o socijalnoj zaštiti RS (Službeni glasnik RS 39/12), Zakon o dječijoj zaštiti RS (Službeni glasnik RS 4/02), Porodični zakon (Službeni glasnik RS 54/02).

Prava prema Zakonu o socijalnoj zaštiti RS predviđena su prava: novčana pomoć, dodatak za pomoć i njegu drugog lica, podrška uizjednačavanju mogućnosti djece i omladine sa smetnjama u razvoju, smještaj u ustanovu, zbrinjavanje u hraniteljsku porodicu, pomoć i njega u kući, -dnevno zbrinjavanje, jednokratna novčana pomoć, savjetovanje.

Osiguranje većeg dijela prava je obaveza Republike Srpske, znači sredstva se osiguravaju iz bužeta entiteta i Fonda dječije zaštite, dok opštine obezbjeđuju sredstva za finansiranje 50% prava na novčanu pomoć, dodatak za njegu i pomoć drugog lica i zdravstveno osiguranje, te 100% sredstava za realizaciju ostalih prava iz socijalne zaštite i funkcionisanje centara za socijalni rad.

U Federaciji BiH pripremljeni su radni tekstovi zakona koji uređuju oblast zaštite osoba sa invaliditetom, ali na žalost još uvijek nisu u proceduri usvajanja. Prava iz socijalne zaštite osiguravaju se kroz federalni i kantonalne zakone o socijalnoj zaštiti, zaštiti civilnih žrtava rata i zaštiti porodice sa djecom (u daljem tekstu Federalni zakon). Prava iz socijalne zaštite se u Federaciji BiH ostvaruju na nivou kantona. Ukoliko neka prava nisu određena kantonalnim zakonima primjenjuje se Federalni zakon. Prava koja su Utvrđena zakonom Federacije BiH: novčana i druga materijalna pomoć, osposobljavanje za život i rad, smještaj u drugu porodicu, smještaj u ustanove socijalne zaštite, usluge socijalnog i drugog stručnog rada, kućna njega i pomoć u kući.

Socijalna zaštita u Distriktu Brčko je regulisana Zakonom o socijalnoj zaštiti, Porodičnim zakonom I Zakonom o dječijoj zaštiti. Navedeni zakoni su doneseni na nivou Skupštine Distrikta Brčko BiH, a dostupni su na web sajtu Skupštine Distrikta Brčko.

U oblasti zdravstva uspostavljeni Zakoni su u domenu entiteta i distrikta Brčko, tako da smo analizirali Zakone o zdravstvenom osiguranju i Zdravstvenoj zaštiti kao i odgovarajuće pravilnike. Značajan pomak je postignut jer se u novim Zakonima poziva na ljudska prava svih građana pa i osoba sa invaliditetom.

U skladu sa zakonom o ministarstvima i drugim organima uprave u BiH, Ministarstvo civilnih poslova ima prvenstveno koordinirajuću ulogu u oblasti obrazovanja, uključujući nadzor nad primjenom okvirnih zakona iz oblasti obrazovanja u BiH.

U Federaciji Bosne i Hercegovine, u skladu sa Ustavom Federacije Bosne i Hercegovine, kantoni su nadležni za utvrđivanje obrazovne politike i donošenje propisa o obrazovanju i osiguravanje obrazovanja. U Republici Srpskoj, ova oblast je u nadležnosti Ministarstva prosvjete i kulture. Distrikt Brčko reguliše pitanja obrazovanja putem Odjeljenja za obrazovanje u Vladi Brčko distrikta. Vijeće ministara BiH je 2012. godine, na prijedlog Ministarstva civilnih poslova, donijelo Odluku o usvajanju Okvirne politike unapređenja ranog rasta i razvoja djece u Bosni i Hercegovini. Okvirna politika stavlja, između ostalog, u fokus ranu intervenciju u djetinjstvu, što predstavlja ohrabrujuć i napredak. Ovo je novi pristup za Bosnu i Hercegovinu i omogućava usluge podrške za razvojne aktivnosti za porodice sa novorođenčadi i malom djecom koja imaju teškoće u razvoju, imaju invaliditet ili atipično ponašanje, sa ciljem promovisanja „zdravog“ razvoja djeteta i njegove lakše inkluzije u školu i zajednicu.

U Okvirnom zakonu o predškolskom odgoju i obrazovanju u BiH u članu 6. (Zabrana diskriminacije) se navodi da svako dijete ima jednako pravo pristupa i jednake mogućnosti učešća u odgovarajućem vaspitanju i obrazovanju bez diskriminacije po bilo kom osnovu.

Okvirnim zakonom o osnovnom i srednjem obrazovanju u BiH regulisano je pitanje zabrane diskriminacije. članom 3. definisani su opšti ciljevi obrazovanja, koji podrazumijevaju zagovaranje poštovanja ljudskih prava i osnovnih sloboda, i pripremu svake osobe za život u društvu koje poštuje načela demokratije i vladavine zakona (tačka c) i osiguranje jednakih mogućnosti za obrazovanje i mogućnost izbora na svim nivoima obrazovanja, bez obzira na pol, rasu, nacionalnu pripadnost, socijalno i kulturno porijeklo i status, porodični status, vjeroispovijest, psihofizičke i druge lične osobine (tačka e).

Pitanja vaspitanja i obrazovanja djece sa smetnjama u razvoju na entitetskom nivou u Republici Srpskoj su riješena Zakonom o predškolskom vaspitanju i obrazovanju koji obavezuje ustanove da obezbjede uslove za jednako učešće djeci sa posebnim potrebama.

Na entitetskom nivou, pitanje pristupa osnovnom obrazovanju je riješeno Zakonom o osnovnom obrazovanju i vaspitanju. Ovim zakonom se, takođe, propisuje da svako dijete ima jednako pravo pristupa i jednake mogućnosti u osnovnom obrazovanju i vaspitanju bez diskriminacije po bilo kojem osnovu.

U Okvirnom zakonu o srednjem stručnom obrazovanju i obuci u BiH, u članu 3. (Ciljevi srednjeg stručnog obrazovanja i obuke), navodi se da se, osim opštih ciljeva obrazovanja definisanih Okvirnim zakonom o osnovnom i srednjem obrazovanju u BiH, u okviru srednjeg stručnog obrazovanja i obuke pod jednakim uslovima učeniku osigurava pravo na srednje stručno obrazovanje i obuku u skladu sa njegovim interesima i sposobnostima.

Članom 21. Okvirnog zakona o srednjem stručnom obrazovanju i obuci u BiH naznačeno je da škole mogu organizovati obuku odraslih u okviru svojih registrovanih aktivnosti, uz saglasnost nadležnih obrazovnih vlasti.

U Okvirnom zakonu o visokom obrazovanju u BiH u članu 7. navodi se da pristup visokom obrazovanju imaju svi oni koji su završili četverogodišnju srednju školu u Bosni i Hercegovini.

U dokumentu Strateški pravci razvoja obrazovanja u BiH sa planom implementacije 2008 – 2015 pod tačkom 4.5. (Podsticanje trajnog profesionalnog razvoja nastavnika, direktora i drugih zaposlenih u vaspitno-obrazovnim ustanovama) navodi se da iza svake uspješne reforme obrazovanja stoji stručan, kompetentan, motivisan i komunikativan kadar koji je spreman na stalno lično usavršavanje.

Republika Srpska je donijela Strategiju razvoja obrazovanja Republike Srpske 2010-2014 u kojoj se posebna pažnja posvećuje i djeci sa posebnim potrebama i poboljšanju njihovog položaja. Jedan od opštih ciljeva je i podići nivo obrazovanja. Oblast obrazovanja razrađena je i u Strategiji unapređenja društvenog položaja lica sa invaliditetom u Republici Srpskoj 2010–2015.

Oblast rada je regulisana na entitetskom nivou za koju postoji razvijena opšta zakonska regulativa, zakoni namijenjeni osobama sa invaliditetom i njihovoj profesionalnoj rehabilitaciji, kolektivni ugovori i ostala prateća regulativa u skladu sa Međunarodnom organizacijom rada.

3. ZAKLJUČCI I PREPORUKE

3.1. ZAKLJUČCI

Prema stavovima ispitanika, Politika u oblasti invalidnosti BiH se ne primjenjuje u praksi na odgovarajući način, po čemu dijeli sudbinu mnogih strateških dokumenata u BiH. Organizacije osoba sa invaliditetom su iznijele mišljenje da se primjena Startegija proizašlih iz Politike u oblasti invalidnosti BiH ne prati redovno i niko ne može sa sigurnošću reći da li postoji napredak u realizaciji ovih dokumenata.

Analizirajući odgovore organizacija osoba sa invaliditetom možemo reći da je najveći napredak ostvaren u socijalnoj zaštiti, zatim zdravstvu, dok obrazovanje i zapošljavanje imaju jednake vrijednosti, a najmanji napredak je u oblasti porodičnog života.

Napredak u prihvatanju filozofije uključivanja pitanja invalidnosti u glavne tokove nije značajan u posljednjih pet godina. Još uvijek se ne uvažavaju organizacije osoba sa invaliditetom kao dio zajednice koji ima učešće u svim sferama života. Invalidnost se još uvijek najviše sagledava kao sfera socijalne zaštite i zdravstvene zaštite.

Na osnovu odgovora entitetskih vlasti i obavljenih intervju sa Ministarstvom civilnih poslova BiH zaključujemo da politička struktura Bosne i Hercegovine značajno utiče i na sprovođenje Politike u oblasti invalidnosti i ukupno položaj lica sa invaliditetom. Koordinirajuća uloga BiH organa im ne omogućava da adekvatno prate sprovođenje Politike u oblasti invalidnosti BiH. U Ministarstvu civilnih poslova kao instituciji zaduženoj za implementaciju Politike u oblasti invalidnosti zapažaju „deklarativan ton“ politike, ali i ističu da institucije na nivou BiH imaju samo „koordinacijsku nadležnost, ali bez mehanizama koordinacije“, tako da realizacija Politike ostaje na entitetima. Takođe, ističu da postoji dobar zakonski osnov u svim oblastima, te da je osobama sa invaliditetom na taj način ostavljen prostor, odnosno mehanizmi za djelovanje, koji bi trebalo da iskoriste.

Oba entiteta su izradila Startegije koje određuju pravce kretanja poboljšanja položaja i izjednačavanja mogućnosti za građane sa invaliditetom, ali još uvijek nema zvaničnih izvještaja o napretku u sprovođenju strategija.

Distrikt Brčko nema jasno definisanu politiku u odnosu na osobe sa invaliditetom pa su i napretci u ključnim oblastima bili mali. Zadužena lica za pojedine oblasti ne prepoznaju potrebu definisanja ciljeva rada u skladu sa Politikom u oblasti invalidnosti BiH.

Prateći analizu stanja u oblasti socijalne zaštite možemo zaključiti:

- ▶ Analiziranjem poteškoća u provođenju ciljeva definisanih POI u ispitivanom uzorku vladinih organizacija kao najveće poteškoće se navode neusvajanje novog Zakona u FBiH kao i nedostatak sredstava za povećanje obima prava.
- ▶ Razumijevanje pitanja invalidnosti nije dovoljno razvijeno kod stručnih radnika jer još uvijek postoje stavovi da troškove invalidnosti treba da snosi sama osoba sa invaliditetom ili njena porodica ukoliko ima status iznad socijalnog minimuma.
- ▶ Određeni napredak u RS je ostvaren novim Zakonom o socijalnoj zaštiti ali su socijalne usluge još uvijek slabo razvijene u većini opština u BiH.
- ▶ U anketiranim lokalnim zajednicama, centri za socijalni rad nemaju osobe obučene za savjetovanje porodica koje imaju članove lica sa invaliditetom. Takođe, ne vode se posebne evidencije za žrtve porodičnog nasilja gdje je žrtva osoba sa invaliditetom.

Prateći analizu stanja u oblasti zdravstva možemo zaključiti:

- ▶ Uslovi za zdravstvenu zaštitu osoba sa invaliditetom su dijelom zakonski regulisani, ali se u praksi teško sprovode. Zakonska regulativa formalno prepoznaje pitanje invalidnosti, ali osoblje ga ne razumije i ne sprovodi na adekvatan način.
- ▶ Najveći problemi su za lica sa oštećenjem sluha koja imaju pravo na jednake uslove pri liječenju, ali to se još uvijek ne dešava jer nemaju mogućnost da koriste gestovne tumače i da se pravilno upute u toku liječenja.
- ▶ Postoje evidentne razlike u procjeni stepena invaliditeta od sistema do sistema i u odnosu na geografsko područje što prouzrokuje diskriminaciju u oblasti zdravstva, ali i realizaciji drugih prava koja se realizuju na osnovu procjene stepena invaliditeta.
- ▶ Pitanja pomagala se rješavaju u odnosu na finansijske potrebe i lične procjene članova komisija, a ne na osnovu stvarnih potreba korisnika.

Analizirajući stanje u oblasti obrazovanja lica sa invaliditetom možemo zaključiti:

- ▶ Zakonska regulativa u oblasti obrazovanja u Bosni i Hercegovini predstavlja povoljan okvir za konkretne aktivnosti u cilju unapređenja procesa inkluzije na svim nivoima obrazovanja.

- ▶ Ne postoje razvijeni sistemski mehanizmi rane dijagnostike i ranog tretmana u cilju smanjenja potreba djeteta u kasnijem razvoju.
- ▶ Svijest o inkluzivnom obrazovanju kao filozofiji života nije dovoljno razvijena jer nema inicijativa za prilagođavanje sistema svakom pojedinačnom djetetu već se dijete sa svojim specifičnostima pokušava uklapati u postojeće okvire.
- ▶ Postojeći resursi nisu u dovoljnoj mjeri iskorišteni i nema razmjene informacija između sistema o dostupnim vidovima podrške.
- ▶ Nivo pripremljenosti škole za prihvatanje djece sa smetnjama u razvoju zavisi od stepena razvijenosti lokalne zajednice i geografskog položaja.
- ▶ Specijalne ustanove za vaspitanje i obrazovanje djece sa smetnja u razvoju nisu u dovoljnoj mjeri iskorištene, a imaju značajne kadrovske potencijale i profesionalna iskustva
- ▶ Nastavnici nemaju adekvatnu dodiplomsku obuku za rad sa djecom sa smetnjama u razvoju u redovnoj nastavi, a stručna usavršavanja nisu planska već zavise od projekata nevladinih i međunarodnih organizacija.
- ▶ U većini škola širom BiH izostaje podrška nastavnicima koji u razredu imaju dijete sa smetnjama u razvoju. Ne samo da škole nemaju adekvatnu stručnu službu (nedostatak defektologa) već su im često nedostupni i ostali vidovi stručne podrške u smislu savjetovanja i davanja fleksibilnosti u radu i primjeni nastavnih planova i programa u radu sa ovom djecom.
- ▶ Lokalne zajednice nemaju razvijenu svijest o svojoj ulozi i mogućnostima podrške školama u procesu inkluzije.
- ▶ Nedostatak finansija najčešća je prepreka unapređenju kvaliteta obrazovanja lica sa invaliditetom i djece sa teškoćama u razvoju.

Iz analize stanja u oblasti zapošljavanja možemo zaključiti:

- ▶ Oba entiteta su obezbijedila zakonsku regulativu i mehanizam za njeno provođenje, ali je problem zapošljavanja prepušten prije svega Fondovima. Organi vlasti na svim nivoima ne poštuju zakone i rijetko zapošljavaju odgovarajuću kvotu osoba sa invaliditetom.
- ▶ Praksa pokazuje da i pored stimulativnih mjera iz zakona, relativno mali broj poslodavaca koristi ove mogućnosti i da radije biraju da izdvajaju sredstva za Fondove nego da se upuštaju u zapošljavanje lica sa invaliditetom.
- ▶ Postojeća zakonska regulativa nije stimulativna za zapošljavanje osoba sa invaliditetom koje trebaju asistenciju na poslu.

- ▶ Vlada distrikta Brčko, ni nakon nekoliko urgencija nije dostavila odgovore na pitanja iz oblasti zapošljavanja što upućuje na pretpostavku da nemaju razvijene procedure koje bi poboljšale zapošljavanje osoba sa invaliditetom.
- ▶ Vidljivo je da lokalne zajednice, bez obzira na to što nisu direktno delegirane za provođenje mjera vezanih za zapošljavanje, ne prepoznaju značaj zalaganja za unaprijeđenje zapošljavanja lica sa invaliditetom, čime bi smanjili broj socijalno ugroženih porodica, a to jeste u direktoj vezi sa nadležnostima lokalnih zajednica.
- ▶ Nadležne institucije su identifikovale faktore koji bi mogli pozitivno uticati na implementaciju Politike u oblasti invalidnosti na polju zapošljavanja: „češće konsultacije sa OSI i njihovim organizacijama OSI“, „bolji raspored sredstava koja su na raspolaganju lokalnoj zajednici“, pravovremeno i sistematsko planiranje aktivnosti“, veća sredstava na raspolaganju za implementaciju Politike“, „bolji vertikalni protok informacija i osiguravanje jasnih smjernica od strane nosioca implementacije“.

3.2. PREPORUKE

U cilju poboljšanja primjene Politike u oblasti invalidnosti BiH, predlažemo slijedeće generalne preporuke:

- ▶ Uspostaviti mehanizme pripreme Izvještaja o napretku u primjeni Politike u oblasti invalidnosti za Parlament BiH svake dvije godine, a koji bi se kreirao iz entitetskih izvještaja o sprovođenju starijih i lokalnog akcionog plana za Distrikt Brčko.
- ▶ U distriktu Brčko izraditi Lokalni akcioni plan koji bi u skladu sa Politikom u oblasti invalidnosti BiH odgovorio na pitanja poboljšanja položaja i izjednačavanja mogućnosti osoba sa invaliditetom.
- ▶ Organizacije osoba sa invaliditetom trebaju tražiti da se javnost redovno izvještava o primjeni Politike u oblasti invalidnosti i njoj pripadajućih Strategija.
- ▶ Javnim kampanjama skrenuti pažnju javnosti na učešće osoba sa invaliditetom u društvu kao jednakopravnih građana, a posredno promovisati porodični život i preduslove za njegovu realizaciju.
- ▶ Na svim nivoima vlasti BiH, entiteta, opština u svim oblastima treba obezbijediti posebne budžetske linije za provođenje Politike u oblasti invalidnosti i Strategija proisteklih iz njih.
- ▶ Uspostaviti sisteme finansiranja organizacija osoba sa invaliditetom na osnovu njihovih rezultata rada u skladu sa potrebama članova.

Za primjenu Politike u oblasti socijalne zaštite neophodno je :

- ▶ Obezbijediti Zakonsku regulativu koja bi omogućila izjednačavanje procjene invalidnosti u svim sistemima u kojima se pojavljuju sobe sa invaliditetom bez obzira na geografsko porijeklo i porijeklo invaliditeta.
- ▶ Zakonima o socijalnim uslugama stimulisati razvoj socijalnih usluga i samostalan život osoba sa invaliditetom.
- ▶ Intenziviranje programa obuke koji se mogu podržati iz programa koje sufinansiraju vlade, a implementiraju organizacije osoba sa invaliditetom koje imaju iskustvo za organizovanje treninga.

Za primjenu Politike u oblasti zdravstva neophodno je:

- ▶ Podizanje svijesti stručnjaka u oblasti zdravstva putem kontinuirane edukacije zdravstvenih radnika u cilju osvještavanja o problemima osoba sa invaliditetom, izmjene pristupa baziranog na medicinskom modelu ka modelu socijalne inkluzije,
- ▶ Izjednačavanje načina procjene invaliditeta između različitih grupa osoba sa invaliditetom,
- ▶ Odvajanje budžetskih linija za poboljšanje uslova za osobe sa invaliditetom u zdravstvenom sistemu.
- ▶ češće konsultacije sa korisničkim udruženjima uvažavajući različitosti invalidnosti.
- ▶ Obezbjedenje pomagala u skladu sa individualnim potrebama osoba sa invaliditetom, a ne na osnovu dijagnoze.
- ▶ Organizacije osoba sa invaliditetom trebaju tražiti da se u praksi realizuju prava koja su im data u zakonima.

Preporuke u cilju potpunije primjene Politike u oblasti invalidnosti i podizanja kvaliteta inkluzije i obrazovanja uopšte:

- ▶ U cilju sveobuhvatnije podrške djeci sa posebnim potrebama u sistemu obrazovanja naglašena je potreba da se bolje uvežu i više sarađuju sistemi vaspitanja i obrazovanja i sistem socijalne zaštite u okviru koga se vrši procjena potreba i usmjeravanje djece sa smetnjama u razvoju.
- ▶ Lokalne zajednice trebaju uložiti više resursa u adaptiranje i podršku školama u cilju unapređenja kvaliteta obrazovanja uopšte, te otklanjanje prepreka inkluzivnom obrazovanju.

- ▶ Iskoristiti postojeće resurse i raditi na podizanju svijesti na svim nivoima i u svim sistemima o inkluziji u obrazovanju kao filozofiji života i osnovnom preduslovu za potpunije uključivanje lica sa invaliditetom u sve segmente društvenog života kako bi bili ravnopravni članovi društva.
- ▶ Obezbijediti jednake mogućnosti učenicima sa smetnjama u razvoju i nastavnicima koji sa njima rade bez obzira na geografski položaj lokalne zajednice u kojoj žive.
- ▶ Razvijati resursne centre i druge oblike stručne podrške u cilju sveobuhvatnije procjene potreba i adekvatnog planiranja vaspitno obrazovnog rada u redovnim školama, i obezbijediti da svako dijete sa smetnjama u razvoju ima individualni plan podrške.
- ▶ Potrebno je sistemski planirati zapošljavanje i angažovanje stručnjaka koji posjeduju profesionalne kompetencije za rad sa djecom sa smetnjama u razvoju kako bi se nastavniku i djetetu pružila adekvatna podrška.

Za dosljednu primjenu Politike u oblasti invalidnosti i unapređenje zapošljavanja osoba sa invaliditetom neophodno je:

- ▶ Osigurati jasne smjernice za nadležna ministarstva (Ministarstvo rada i socijalne zaštite za FBiH odnosno Ministarstvo rada i boračko invalidske zaštite za RS) da svoje programe sistematično i planski formiraju i budžetiraju oslanjajući se na Politiku u oblasti invalidnosti i prateće Strategije, te propisati obavezu izvještavanja u odnosu na pomenute dokumente.
- ▶ Provoditi aktivnosti za podizanje svijesti poslodavaca o značaju zapošljavanja lica sa invaliditetom, njihovim mogućnostima ali i benefitima koji su propisani zakonom.
- ▶ Provesti aktivnosti informisanja, osnaživanja i podizanja svijesti lica sa invaliditetom i njihovih porodica o pravima iz oblasti zapošljavanja i načinima njihovog ostvarivanja.
- ▶ Promovisati primjere dobre prakse zapošljavanja lica sa invaliditetom.
- ▶ Podići svijest lokalnih zajednica o tome da pitanje zapošljavanja lica sa invaliditetom ipak jeste pitanje lokalne zajednice i podsticati ih da se uključe u njegovo rješavanje.

LITERATURA

1. Ustav BiH
2. Ustav Federacije BiH
3. Ustav Republike Srpske
4. Konvencija UN o pravima lica sa invaliditetom, IBHI POI projekat, (2008), DEP, MZSZ RS, FMRSP, Sarajevo – Banja Luka.
5. Politika u oblasti invalidnosti u Bosni i Hercegovini, IBHI POI projekat (2008), DEP, MZSZ RS, FMRSP, Sarajevo – Banja Luka.
6. Strategija za unapređenje društvenog položaja lica sa invaliditetom u RS 2010-2015, (2010), Vlada RS, Banja Luka
7. Strategija za izjednačavanje mogućnosti za osobe sa invaliditetom u Federaciji BiH 2010-.2014.
8. Inicijalni izvještaj Bosne i Hercegovine o provođenju Konvencije Ujedinjenih nacija o pravima osoba sa invaliditetom (2012)
9. Zakon o socijalnoj zaštiti Republike Srpske („Službeni glasnikRS”, broj: 37/12),
10. Zakon o dječijoj zaštiti Republike Srpske(„Službeni glasnik RS”, br. 4/02, 17/08, 1/09),
11. Zakon o osnovama socijalne zaštite, zaštite civilnih žrtava rata i zaštite porodica sa djecom FBiH, Službene novine FBiH 36/99, 54/04, 42/06
12. Zakon o dječijoj zaštiti u Brčko distriktu BiH, prečišćen tekst, 51/11
13. Zakon o izmjenama i dopunama Zakona o socijalnoj zaštiti u Brčko distriktu BiH (Službeni glasnik Brčko distrikta br. 4/04);
14. Zakon o socijalnoj zaštiti u Brčko distriktu BiH, (Službeni glasnik Brčko distrikta,br. 1/03);
15. Porodični zakon Republike Srpske (“Službeni glasnik RS, broj 54/02, 41/08).
16. Pravo na socijalnu zaštitu u Bosni i Hercegovini, OSCE, 2012,
17. Zakon o pravima boraca, vojnih invalida i porodica odbrambeno-otadžbinskog rata RS (Službeni glasnik RS broj 134/11, 09/12 i 40/12)
18. Zakon o zdravstvenoj zaštiti („Službene Novine Federacije BiH”, broj 29/97)
19. Zakon o zdravstvenom osiguranju RS („Službeni glasnik Republike Srpske”, broj: 18/99, 51/01, 70/01, 51/03, 57/03, 17/08, 01/09, 01/09, 106/09),
20. Zakon o zdravstvenom osiguranju Brčko Distrikta BiH („Službeni glasnik Brčko Distrikta BiH”, br. 1/02 7/02 19/07 2/08 i 34/08).

21. Pravilnik o pravu na ortopedska i druga pomagala («Službeni glasnik RS» 42/09, 51/09, 64/09, 101/09, 02/10, 10/10, 73/10, 101/10, 17/11, 42/11).
22. Zakon o zdravstvenoj zaštiti Federacije BiH (Službene novine Federacije BiH 46/10)
23. Zakonom o zdravstvenoj zaštiti (Službeni glasnik RS broj 106/09)
24. Pravilnik o minimalnim uslovima za početak rada zdravstvene ustanove RS,
25. Pravilnik o bližim uvjetima prostora, opreme i kadra za osnivanje i obavljanje zdravstvene djelatnosti u zdravstvenim ustanovama (Službene novine Federacije BiH 26/12)
26. Okvirna politika unapređenja ranog rasta i razvoja djece u Bosni i Hercegovini (2012)
27. Politika za unapređenje ranog rasta i razvoja djece u Republici Srpskoj 2011-2016
28. Okvirni zakon o predškolskom odgoju i obrazovanju u BiH („Službeni glasnik BiH“, broj 88/07)
29. Zakonom o predškolskom vaspitanju i obrazovanju („Službeni glasnik Republike Srpske“, br. 119/08 i 1/12)
30. Okvirni zakon o osnovnom i srednjem obrazovanju u BiH („Službeni glasnik BiH“, broj 18/03)
31. Zakon o osnovnom obrazovanju i vaspitanju („Službeni glasnik Republike Srpske“, br. 74/08, 71/09 i 104/11)
32. Zakonom o srednjem obrazovanju i vaspitanju („Službeni glasnik RS“, br. 74/08, 106/09 i 104/11)
33. Okvirni zakon o srednjem stručnom obrazovanju i obuci u BiH („Službeni glasnik BiH“, broj 63/08)
34. Okvirni zakon o visokom obrazovanju u BiH („Službeni glasnik BiH“, broj 59/07)
35. Zakon o visokom obrazovanju u Republici Srpskoj („Službeni glasnik RS“, br.73/10 i 104/11)
36. Zakon o obrazovanju odraslih („Službeni glasnik Republike Srpske“, broj 59/09)
37. Strateški pravci razvoja obrazovanja u BiH sa planom implementacije 2008 – 2015 („Službeni glasnik BiH“, broj 63/08)
38. Strategija razvoja obrazovanja Republike Srpske 2010-2014
39. Zakon o radu Federacije BiH („Službene novine FBiH, br 43/99 i 32/00)
40. Zakon o radu – prečišćeni tekst („Službeni glasnik RS“ 55/07)
41. Zakon o profesionalnoj rehabilitaciji, osposobljavanju i zapošljavanju invalida RS („Službeni glasnik RS“ 54/09, Banja Luka)
42. Zakon o profesionalnoj rehabilitaciji, osposobljavanju i zapošljavanju osoba sa invaliditetom (Službene novine FBiH 34/10)
43. Zakon o zapošljavanju („Službeni glasnik RS 54/05 i 64/06)

44. Zakon o posredovanju pri zapošljavanju i socijalnoj sigurnosti nezaposlenih osoba FBiH (Službene novine FBiH 41/01)
45. Bešlija E., Halepović D., Jonjić D., Lepir Lj., Marinović I., Trkulja S., (2014) Mi smo tu – analiza trenutnog stanja svih osoba sa invaliditetom i mogućnosti njihovog zapošljavanja i samozapošljavanja, Sarajevo: FSU u BiH.

TESTIMONIAL

H0 Partner Banja Luka is an organization recognized in society as organization which is profoundly dedicated to its goals and as responsible accountable organization. This fact was truly helpful in some situations where we lobbied to get responses through the questionnaires. Due to the fact that we actively participated in the process of creation of the Disability policy, we are acknowledged as an organization which is relevant and competent to implement a research on its application in practice.

During this action we re-established cooperation with some state officials and nongovernmental organizations and reconsidered possibilities for joint future actions. This action had significantly improved our relationships and contacts which can be of crucial importance for future activities planned with a goal to implement recommendations stated in the document in practice.

ABOUT THE AUTHORS

Olivera Mastikosa was born on December 18th 1964 in Sarajevo, Bosnia and Herzegovina. Master of Science in Technology and Master of Social Work. For twenty years in disability movement, as a person with muscular dystrophy she started working in the Union of people with dystrophy in 1993. After that she worked on many international projects dedicated to persons with disabilities. She published scientific and professional papers in this field, manuals for working with persons with disabilities as well as for persons with disabilities themselves. She was founder and director for the first ten years of Humanitarian organization Partner, and now she is a volunteer there. For the last eight years she works at the Social Work Centre on introduction of new services and performing analysis in the field of social protection. She is also appointed as National coordinator for persons with disabilities with the Ministry of health and social welfare. Married with one child she lives in Banja Luka, BiH.

Sandra Dobrijevic Sipka was born on January 18th 1980 in Sanski Most, Bosnia and Herzegovina. Studied Social Work at University of Banja Luka. After graduation, she holds MSW degree from University of Sarajevo in political science. Graduate Master of Social Work with master theses titled "Education as a human resources element of Social Work in Bosnia and Herzegovina". Since 2005 employed in Public institution Social Work Center Banja Luka, as a social worker in Community social work department, and since 2008 as Coordinator for activity development. Currently holds the position of Deputy Director. She is president of "Regional Association of social activities experts Banja Luka". Her research interests involve: the impact of public policies on elderly and Persons with disabilities, poverty and inequality. Married with one child she lives in Banja Luka, BiH.

Sanja Malic was born on October 3rd 1978 in Tuzla, Bosnia and Herzegovina. Secondary school – Gymnasium finished in Zvornik, and university degrees at the University of Banja Luka. Graduated at Faculty of Philosophy department for English language and literature in 2004 and gained Master degree in Pedagogy – Inclusion and individualization in Education in 2008. Master theses titled “Professional competency of foreign language teachers for individualized education”. Currently works on approved doctorate theses related to methods of working with special needs children in mainstream schools. She also holds the Approved Court Interpreter and Lead Auditor for ISO 9001 QMS certificates. Published several scientific and professional papers related to inclusion and disability issues. Her working experience started in 1997 as translator/interpreter for OSCE field office Zvornik in the elections department. After that, she worked as English Language Teacher at secondary school in Banja Luka and at the Workers University – language courses. For two years worked as assistant/interpreter of Social Work Advisor at Social Work Centre Banja Luka. Since 2005 she is employed at the position of Coordinator for cooperation and public relations at PI “Social Work Centre” Banja Luka. Her research interests are professional competence, inclusive education, disability issues, and networked social work. She is married with two children living in Banja Luka.

Tanja Mandic Djokic was born on October 1st 1980 in Banja Luka. She graduated from the Faculty of philosophy Banja in 2004 as Teacher of Philosophy and Sociology, and gained her Master degree in Sociology at the Faculty of political sciences Banja Luka in 2012. Also possesses Share – see Trainer for inclusion of disability issue in local policies, training in field of personal assistance for disabled people and Leader of peer support groups participating in project „Community based rehabilitation“. Since March 2006 she works as Public relations manager in the Institute for physical medicine and rehabilitation „Dr Miroslav Zotovi}“ Banja Luka. From June 2010 she is engaged as President of Humanitarian organization „Partner“, and as President of Board of Association of disabled youth „InfoPart“. She was involved in many projects and activities aimed at inclusion of disabled youth and improvement of life of disabled people. She is married and lives in Banja Luka.



CONTRACTING NGOs FOR SOCIAL SERVICES IN BOSNIA AND HERZEGOVINA

Milena Kozomara



SUMMARY & RECOMMENDATIONS

The government sector has been slow to recognize the value of NGOs as service providers and offer its full support, either through providing funding or by entrusting NGOs with delivering certain services, which would increase the quality and quantity of the services needed. Non-governmental organizations in BiH can play an important role in delivering services, especially due to their experience in many areas in which they are active. They have a hands-on experience and direct insight to the needs and gaps of target groups they are assisting, and the capacity, experience and flexibility to provide the services they need.

This paper is focused on the role and modalities that the non-governmental sector may take in providing social services. There are over 12,000 registered NGOs in Bosnia and Herzegovina with large potential to deliver services in social areas where public institutions are not efficient enough and the private sector does not find attractive for the lack of profit. This potential has not been evaluated and the role of NGOs in providing social services has not been considered.

Successful partnerships in delivering social services can be implemented together with NGOs as they can provide good local networks and knowledge on needs and gaps that services need to address. Examples from other countries show that social services provided by NGOs tend to be more effective, more client oriented and utilized more frequently than public facilities.

This paper presents two options for partnering with the NGO sector for delivering social services, one that is project based and executed through grants or donations and the

other that arranged like public private partnership in which services are outsourced to NGOs. Advantages of each option are considered and a set of recommendations made.

Experiences from countries that regularly contract NGOs for services show that there are certain preconditions that have to be met in order to make this arrangement viable and long-term sustainable. Those include:

- » a reliable source of funding must be secured for at least mid-term long period. Without this, contracts cannot be executed and accountability for results and the quality of services will not be possible.
- » a transparent and open competitive process with clear and precise requirements of the services to be delivered together with the evaluation and selection criteria have to be developed.
- » a well and precisely defined contract, including detailed description of the services to be provided together with expected results is another important precondition for successful outsourcing to NGOs.
- » a well developed system for monitoring contractors' work and the quality of services provided need to be established. It is absolutely necessary to require reporting and accountability to ensure that organizations use the funds and deliver services in the intended manner.

NON-GOVERNMENTAL SECTOR IN BIH

Significant development of the NGO sector in Bosnia and Herzegovina started during the war in the 1990s and intensified after the war. This development was mainly influenced by the large number of international organizations, humanitarian mostly, that were implementing projects and a locally established NGO would usually be one of the results of their work. At first, those were mainly organizations dealing with humanitarian issues and used to work in a small geographic area, mostly in large cities. Almost two decades after the end of the civil war in BiH there is no doubt that the non-profit sector has developed and accumulated remarkable capacities.

Today, civil sector in BiH includes a diversity of actors that range from individual citizens and organizations, modern NGOs, community service organizations, informal and grassroots organizations, sports, cultural and arts organizations, veterans groups, political organizations and workers unions to NGO coalitions and networks operating in various fields. Even though dominated by sports associations, civil society organizations in BiH work in a range of areas including children, youth, women's issues, education, environmental protection and volunteering and advocacy. While there is no reliable data and comprehensive database of all registered civil society organizations in the country, it is estimated that there are over 12,000 registered organizations, however, only about 6,600 seem to be active (UNV, 2011). When this number of organizations registered is compared to other countries in the region, the results show that BiH is among the countries with the most NGOs relative to the number of population in the Western Balkans (IBHI, 2012).

Most available sources indicate that the NGO sector in BiH receives almost all of its funds from donors through grants or donations. While, on one hand, NGOs heavily depend on support from the international community, on the other hand, funding from local sources, including government, private, and corporate donors, remains negligible and primarily benefits organizations such as charities, sports associations, and veterans associations (USAID, 2013).

The reliance on the international community forces organizations, especially those working for the public benefit, to operate on project based funding in areas that match donors' interests and priorities. As a result, NGOs in BiH are often not able to focus on activities and projects that are in line with local development needs and priorities (UNV, 2011).

NGO SECTOR CAPACITIES

An important question for further discussing outsourcing to NGOs for social services delivery is their readiness, professionalism, and capacity to take on this role and adequately deliver services.

An overview of the development and capacities of the NGO sector in the country is available from the USAID assessment *“2012 CSO Sustainability Index for Central and Eastern Europe and Eurasia”*. This assessment is published yearly and provides an overview of the strength and overall sustainability of the NGO sector in 29 countries in the region, allowing thus comparisons among countries and subregions over time. The assessment provides analysis and ratings to seven components: legal environment, organizational capacity, financial viability, advocacy, service provision, infrastructure, and public image.

Organizational capacity of BiH NGOs is rated 3.4¹. While some other sources state that overall capacities in the sector are low and only few NGOs managed to become fully professional (UNV, 2011) USAID index rating is showing slow but steady improvement in overall capacities over years.

In terms of service provision, BiH NGOs scored 3.9². The report states that there were no significant changes compared to previous years as NGOs continue to provide a variety of services to marginalized groups, youth, and rural communities, among others. However, the report points out that the majority of issues addressed reflect the current trends and demands of the EU and donor community in BiH and not necessarily the needs and priorities of the local population (USAID, 2013). NGOs continue to be leaders in the provision of basic social services, such as soup kitchens, elderly care, and informal education. Despite this, the government is slow to recognize their importance and offer its full support, either in terms of finances or certifications that would enable these NGOs to offer better quality services.

In 2004, a DFID supported project conducted a qualitative study on the status of the NGO sector as a stakeholder in employment and provision of social services. The study concluded that the NGO sector

1 Ratings range from 7 (The civil society sector’s sustainability is significantly impeded by practices/policies in this area) to 1 (The civil society sector’s sustainability is enhanced significantly by practices/policies in this area)

2 Ibid.

in BiH provided services to 29% of the total BiH population in 2004, where the main activity sectors were: culture and sports, provision of economic and social services, civil services and advocacy. Organizations on average spent 57% of their time on service provision, 27% on advocacy and 16% on other activities (SDC, 2008).

GOVERNMENT – NGO RELATIONSHIP

Low levels of cooperation and coordination are the main characteristics of NGOs and government institutions relationship across all levels in BiH. NGO/government or government/NGO interactions and relationships including financial ones, tend to be based on self-interest over interests common to both parties and are characterized by a certain level of distrust (UNV, 2011).

One of the main reasons for this as well as for still limited number of examples of outsourcing social services to NGOs, lies in mistrust between state and NGO sectors. Governmental sector still engages NGO mostly on donor or development partner insistence and with donor funds. Further, the Government sector still sees NGO sector as non-transparent and this perception of the lack of financial transparency can significantly undermine the image and perception of the civil society sector in the eyes of both the public and government. The lack of transparency – financial or otherwise – prevents members of the public and government from being able to judge whether or not NGOs are actually conducting the work that they have been mandated with. This lack of accountability also undermines the credibility of NGOs when calling for increased government transparency and accountability, with respect to the allocation of government funds or outsourcing certain services to NGOs (UNV, 2011). Further, the government still does not perceive the NGO sector as competent and despite all capacities demonstrated there is still fear that if outsourced the service will not be provided adequately and eventually will come back to the state service.

Laws at different level in BiH determine the legal framework for providing social services and overall there are no major legal obstacles for NGOs to engage in providing social services. Most of competencies are within the local level government, with few exceptions when entity or cantonal levels are in charge.

THE BENEFITS OF CONTRACTING SERVICES TO NGOS

When governments, for any reason, are not able to deliver good quality and affordable services, alternative models should be considered. There are several mechanisms that can be employed to provide alternative to governments delivering services. Some of them include inter-municipal cooperation, public private partnerships (PPP) and contracting of either non-profit organizations or private entities. Any of these measures, if implemented properly, can improve service delivery without increasing overall public sector spending.

Despite complex political and administrative/institutional system in BiH³, and various levels of mandates and responsibilities, there are overall no legal barriers at any level that would prevent the administration to use any of these modalities for alternative service delivery. The only discouraging factor is the Law on Public Procurement that allows local governments to contract out service delivery for the period of only one year.

When service providers are government entities they usually lack incentives to improve their performance. In BiH, municipal service providers operate in an information vacuum (The World Bank, 2009). They are completely isolated from the feedback they need to receive in order to improve performance. In addition, there are no performance standards and monitoring in order to be able to evaluate the quality of services provided and to improve the performance.

One of the options commonly used in many countries is engaging NGOs and contracting out certain social services. NGOs have large potential as contractors to local administrations for providing social services and many NGOs are already involved in these services such as counseling, special education, personal assistance services to people with disabilities, employment support and many other areas where local governments have the primary responsibility.

Positive aspects of such arrangements are that priority needs are met through the provision of service and also interventions are locally owned, which helps improve the relationship and trust between

3 According to the BiH Constitution adopted as an Annex IV of the General Framework Peace Agreement for BiH (Dayton Peace Agreement), BiH is a complex state consisting of two Entities - the Federation of BiH that is further divided into ten Cantons, and Republika Srpska. There is one more administrative entity - the Brcko District. Both entities/Cantons in FBiH are further divided into cities and towns.

beneficiaries and institutions. Also, by outsourcing services, the government sector can focus on its core function. And finally, such models of cooperation allow service providers to compete for provision of services in a transparent way and under the same conditions.

Advantages that NGOs bring along when contracted to deliver social services are numerous as NGOs bring a significant and valuable experience as a number of them have been active in these areas for years.

Next, NGOs will be able to provide services at lower price than the private sector as their operating costs and resources used are significantly lower than in private companies.

As NGOs are already working in all these areas and are working as non-profit organizations, it is assumed that their dedication to providing good quality services to beneficiaries will lead to client satisfaction.

NGOs AS SERVICE PROVIDERS – “PROJECTISATION” OPTION

One of the most common ways to engage NGOs in delivering social services is through grants and project based. In BiH, most NGOs working in the social sector operate through projects that are donor funded and that are not always addressing needs of their beneficiaries. Therefore, the so called “projectisation” of NGO services is a prevailing model of cooperation between the Government and the NGO sector and still there are no discussions to move toward more systemic solution and contracting or outsourcing social services to NGOs.

There are examples of successful contracting of NGOs to provide social services in BiH, mostly between international donors and organizations (UNICEF, SIDA, UNDP, etc.) and local NGOs. These examples demonstrate the ability of certain NGOs to identify needs and gaps in services provision, address those through implementing targeted and well designed activities, ensuring at the same time sustainability of actions (e.g. securing budget allocations from municipalities).

Civil Society Promotion Centre in its recent study shows when NGOs are engaged to provide certain services, those are almost always short or mid-term contracts. One of the obstacles for long-term contracts is government budget planning cycle, which is still done on a yearly basis (CSPC, 2014). In addition, if an NGO as a service provider is to be selected through a procurement process it also can be done for one year only as those are current provisions according to the BiH Law on Public Procurement.

The same source reveals that when projects are awarded to NGOs, the entrusted service provision has a complementary character, as usually the government institution does not have the capacity or resources to provide particular services. In such cases, NGOs or the private sector actors are engaged and receive funding to implement the activities or services in question. In contrast to European countries, there are no cases in BiH where provision of a service in one sector, for example in social or health care, is completely entrusted to NGOs (CSPC, 2014).

Shortcomings from such type of partnerships are mostly along the lines that since all these arrangements are within limited timeframe, usually there is little control over services provided and their quality (CSPC, 2014). Even though, there are no obstacles in the legislative framework to monitor and control services provided by NGOs, monitoring is limited to periodical reporting back to institutions as there is no incentive for institutions to develop a comprehensive monitoring framework. Access to information on provision of services and service quality is available mainly on the websites of relevant institutions or NGOs that delivered services.

Finally, the issue of sustainability and scaling up is also a significant one, as all those examples were still project driven and not the solution at the system level.

NGOs AS SERVICE PROVIDERS – “OUTSOURCING” OPTION

Outsourcing services in the social sector to NGOs, especially at the local level, has become a common practice in developed countries and has already demonstrated effectiveness compared to government institutions providing such services (Struyk, 2003). In line with this so called “new public management” administrations in developed countries are encouraging the outsourcing of as many administrative tasks and services as possible.

Governments contracting out and outsourcing to NGOs and even to private sector companies for the delivery of certain services is, in many cases, an efficient alternative to providing the same services with government own resources. This allows getting better quality services at lower costs. Besides improving efficiency in service delivery, outsourcing can increase transparency and accountability of using public resources. Contractors will tend to request payments for services provided and limit the ability of administration to shift funds to other, non-service related purposes.

In terms of monitoring the quality of services provided, outsourcing provides the possibility to properly monitor and evaluate results achieved through the service delivery by NGOs. When government institution or agency is a service provider, it is by default being monitored by its beneficiaries, but as such arrangements are usually monopolistic no other institution is supervising or correcting the quality of services delivered. When services are outsourced to NGOs to provide them, both the administration and end users or beneficiaries are monitoring the quality and effectiveness of services. If, for any reason, any dissatisfaction with the quality of services delivered exists, corrections to services can be made or the NGO providing services can be easily replaced, which is simply not possible when the government is service provider.

THE WAY FORWARD

Governments all over the world enter into agreements with NGOs to deliver services. This trend has been increasing in the US and Western Europe, however, in BiH it is still at the initial, piloting phase. Experiences show that this type of partnership positively contributed to both governments and NGOs. Since the government already is and will increase to be a critical source of funding for many nonprofits, the manner in which that funding is executed has an effect on the efficiency and costs incurred by NGOs.

Governments can use two modalities to enter into partnerships with NGOs: grants and contracts. While contracts are more demanding and more challenging to manage and execute because they assume the procurement process, compared to grants that would normally be awarded in a simple competitive process, they are still preferred option for partnering NGOs in delivering services.

Experiences from countries that regularly outsource services to NGOs show that there are certain preconditions that have to be met in order to make this arrangement viable and long-term sustainable (Struyk, 2003).

First, a reliable source of funding must be secured for at least mid-term long period. Without this, contracts cannot be executed and accountability for results and the quality of services will not be possible. Since local government administration is mandated for most of social services, the majority of funding should come from this source.

Next, a transparent and open competitive process with clear and is precise requirements of the services to be delivered together with the evaluation and selection criteria have to be developed. Currently government support for NGOs is most often channeled through public calls for funding proposals and the legal framework enables timely, informative, transparent and fair allocation procedures. Even though, there are no legal barriers in BiH to outsource service delivery to NGOs, BiH Public Procurement Law allows the administration to contract out service delivery for the period of only one year. Even though this provision is closely linked to the government planning and budgeting cycle, which is also one year, it should be changed or adjusted to allow multiyear contracting. The involvement of the NGO (or private sector) in the provision of services requires the existence of long-term contracts and this provision within the legislation discourages institutions from considering PPPs and outsourcing.

Third, a well and precisely defined contract, including detailed description of the services to be provided together with expected results is another important precondition for successful outsourcing to NGOs. Government administration at all levels in BiH is already contracting out for some kind of services, be it garbage collection, building renovation, housing, roads construction, etc, so there should be adequate capacities and experience in defining contracts and outsourcing. In terms of payments, two most commonly used payment methods are cost-reimbursement and fixed-price or flat payments and the contract should specify the type of payment that will be used. While cost-reimbursement payment option might be more appropriate to private sector players, upfront payments are preferred options for NGOs. The initial step that could be considered is developing some kind of operation guidelines for the administration to support them in properly designing contracts. This can also be done with the assistance of the NGO sector.

Finally, a well developed system for monitoring contractors' work and the quality of services provided need to be established. It is absolutely necessary to require reporting and accountability to ensure that organizations use the funds and deliver services in the intended manner. An initial solution could be to engage an international partner that could act as a mentor for this, especially in overseeing first phases of outsourcing and assist in developing a proper monitoring framework.

Once these preconditions are all in place and the administration has capacities to implement them properly, the question is why NGOs would be preferred partners to some other players that can also provide services such as private sector companies. There is no doubt that a significant number of NGOs are already involved in providing services, most of which are social services (e.g. services to marginalized groups, youth, women, people with disabilities, education, etc.). Numerous benefits of contracting NGOs were previously described. In addition to that, one of the strongest arguments for contracting NGOs, is that private sector companies can be more flexible and adjust more effectively to changing needs in delivering social services, so there is always the possibility that companies may go too far in pursuing efficiency, at the expense of service quality (Struyk, 2003).

Compared with traditional government agencies providing social services there is no doubt that NGOs would be better organized and exercise greater control, especially when the service is outsourced and operating under contracts, versus receiving grants.

REFERENCES

Civil Society Promotion Centre. (2014). *Monitoring Matrix on Enabling Environment for Civil Society Development – Bosnia and Herzegovina Country Report*. CSPC: Sarajevo, BiH.

Initiative for Better and Humane Inclusion. (2012). *Why is NGO Potential Unrealised? Qualitative analysis of the NGO sector in BiH – What can be done?.* IBHI: Sarajevo, BiH

Swiss Agency for Development and Cooperation. (2008). *Government Allocations for the NGO Sector in Bosnia and Herzegovina in 2007*. SDC: Sarajevo, BiH.

Struyk, R. J. (2003). *Contracting with NGOs for Social Services - Building Civil Society and Efficient Local Government in Russia*. The Urban Institute: Washington, D.C.

The World Bank. (2009). *From Stability to Performance. Local Governance and Service Delivery in Bosnia and Herzegovina*. The World Bank: Washington, D.C.

United Nations Volunteers Programme. (2011). *Civil Society in Bosnia and Herzegovina - Seeking the Way Forward*. UNV: Sarajevo, BiH.

USAID. (2013). *2012 CSO Sustainability Index for Central and Eastern Europe and Eurasia, 16th Edition*. US Agency for International Development: Washington, DC.

TESTIMONIAL

Under the project, a research was carried out to identify the potential role that the NGO sector in BiH may take in providing social services through some kind of PPP or contracting modality. The research covered identification of current situation in this area as well as main gaps and barriers to expanding this practice to more areas of social services as well as to include more NGOs in their delivery. Main recommendations to overcome barriers and obstacles were provided.

The analysis of BiH institutional and legal framework for social services delivery and PPPs, discussions with relevant stakeholders at entity levels as well as NGOs, and with current social service providers were conducted. Two main products were produced - policy paper and policy brief. The main purpose of the policy paper is to inform the policy making process and to serve as a decision making tool. On the other hand, the policy brief was developed with the purpose of convincing policy and decision makers of the importance of the issue and need to expand social services delivery to the NGO sector. Policy brief was printed in the leaflet form in both BHS languages and English. A presentation of the research was organized in April 2014 in Banjaluka, BiH. Policy briefs were distributed and the more detailed policy paper presentation made to participants that included representatives of the NGO sector, local and entity institutions representatives as well as media.

Discussion with both sides, in this case NGOs as potential service providers and institutions as potential contract providers were positive. Both sides agree that the current level of cooperation should be upgraded and short –term engagement of NGOs for services delivery need to become recognized as an asset and expanded both in terms of timeframe and services provided. Further, during the implementation of this project, our vision and understanding of the situation in the field has improved significantly and this kind of activities will influence our work in the future, therefore, we will continue to advocate for greater NGO involvement in social services delivery.

ABOUT THE AUTHOR

Milena Kozomara holds a Master's degree in International Environmental Policy from the Monterey Institute of International Studies, United States of America. During the past years, she worked within numerous projects in the Balkans region, financed and implemented by international organizations as well as NGOs. Her main areas of focus include environmental policy and aligning to EU standards, biodiversity protection and climate change. Since 2005, she has been working with UNDP on energy and environmental projects in BiH and Serbia.

Center for Research and Development – CERD is a non-political, non-government and non-profit organization, founded in Bosnia and Herzegovina. The Center is working on implementing its objectives through four main program areas: promotion of sustainable development, environmental protection and public awareness raising, poverty reduction, human and minority rights protection and social inclusion of vulnerable and marginalized groups, and balanced economic development through human resources development and employment.

Contact information:

Centar za istraživanje i razvoj – CERD

Petra Pecije 67A, 78000 Banjaluka

Bosna i Herzegovina

cerdcentar@gmail.com



COUNTERING MARGINALIZATION AND DISCRIMINATION THROUGH THE PRODUCTION OF ALTERNATIVE DISCOURSES IN THE PUBLIC SPHERE: THE CASE FOR A 'ROMA COMMUNITY RADIO' IN ALBANIA

Blerjana Bino



Tirana, September 2014

SUMMARY

The research project addresses the discourses of discrimination regarding marginalized groups with a particular focus on the Roma community in Albania. The research project investigates how the production of alternative discourses in the public sphere, for instance through the establishment of a 'Roma Community Radio', could enable the marginalized groups to resist multifaceted marginalization and exclusion from a dominant mainstream transcript (ideology, policy and discourses). This research project suggests that the establishment of a 'Roma Community Radio' could serve as a platform to construct subaltern counterpublics, i.e. alternative public spheres of marginalised Roma community. This will contribute towards the enhanced participation and engagement of Roma community in the policy-making processes and the public sphere as the radio offers opportunity for them to voice their issues; raise awareness and hold the government accountable. In addition, these alternative public spheres and discourses will generate positive transformations in regards to the interrelations between the Roma community and Albanian mainstream society, a better understating of the Roma culture and values and a mutual coexistence whereby the rights of the Roma people, their lifestyles and culture and fully respected. The research adopts a qualitative methodology approach by using document analysis, in-depth interviews and critical discourse analysis.

CONCLUSIONS AND RECOMMENDATIONS

The research shows that the dominant approach in Albania has been that of refusing to acknowledge the existence of the 'other different' by claiming to be homogeneous society. In addition the main policy approaches have the normalisation approach and the integration one, which do not fully recognize the 'other' as a social actor. In this sense, the main issues hindering the development of alternative communication spaces for the marginalised communities in Albania: the attempt to patronize minorities by bracketing their complex identities and diverse profiles and attempting to make them more like 'us'; the reproduction of already existing negative perceptions and stereotypes of Roma and Egyptian communities through the mainstream media: (beggars, thieves, delinquents, a danger to the rest of the society, not educated, not cleaned etc.); very limited communicative spaces for the Roma communities to 'tell their version of the world' and create their own meanings based on their own terms, not those of the majority.

Drawing from the literature and the insights from the qualitative data of the research project, the principle merit of alternative media such as a community radio, is the encouragement of the grassroots access to media as well as participation in producing media formats and content. The fundamental idea of the alternative media is that they are citizen-owned medium and serve as alternatives to the mainstream media and telecommunication organisations. Community radio is of particular relevance in the case of the Roma community in Albania because of low literacy levels and it can serve as a medium to improve community interrelations, distribute information and empower the community by creating alternative communication spaces. However, community radio can also be destructive if it is used for hatred speech and contents.

Despite of the constraints of alternative media, it is considered as a basic democratic procedure to empower marginalised communities, encourage their self-management and the production of alternative formats and contents. Community radio as an

alternative radio implies the involvement of people into programming, management and distribution. Therefore the potential of the community radio for the Roma in Albania as in other cases of alternative media lies in the external and internal pluralism. External pluralism refers to the provision of different voices and perspectives as opposed to the public or private media organisations. Internal pluralism refers to being internally democratic, non-commercial and non-professional and not institutionalised, thus providing a platform for diversity of formats, content and styles.

Recommendations for the development of alternative media:

- ▶ it all starts from the assessment of needs of the community – fully understanding their context, their perspectives, their needs, their aims, their vision for their future;
- ▶ it cannot be done as another benevolent act of the majority to the minority – the communities need to be enabled to develop alternative communicative spaces themselves;
- ▶ education is key but also concrete training on certain competences and capacity development on media, projects, communication, writing skills etc.;
- ▶ working with the community activists and leaders and promoting the role models;
- ▶ working with diverse groups: Roma, Egyptian, Albanians and enable them to build networks (alliances) for the present and the future.

1. INTRODUCTION

1.1. RESEARCH BACKGROUND AND PROBLEM STATEMENT

The Roma community in Albania faces social and economic exclusion, negative perceptions from the mainstream society and thus is placed at the margins of the society. There is a lack of understanding and appreciation for their culture, values and lifestyles. The discourse in the public sphere in Albania regarding the Roma community reinforces already existing aspects of their social deprivation, marginalization and discrimination. They are not represented in politics and decision-making processes and they lack a medium, such as newspaper, radio, website etc. to make their voices heard. In this light, some of the key concerns are: (i) lack of civic and political engagement and participation of Roma community in policy making processes and public sphere in Albania; (ii) lack of understanding and sometimes negative connotations about the Roma community culture, their language and the dynamics of their lifestyles; (iii) lack of intercultural understanding between the mainstream society and the marginalized groups such as the Roma in Albania; (iv) limited deliberation in the public sphere (media, academia, politics) about the existing and emerging issues about the Roma such as their civic and political engagement, participation and representation; (v) the need to improve the skills, competences and capacities of Roma community and particularly young people.

A review of the current scholarship in this regard, shows that there are relatively limited efforts to examine the policy discourses of the mainstream public sphere on Roma community and the role that alternative media could play towards their civil and political empowerment. Roma community in Albania cope with multifaceted marginalisation and discrimination. An important dimension here is the lack of communication instruments to make their voices heard and to counter discriminatory discourses of the mainstream settings: media, policy or society at large. Also, there is limited deliberation in the public sphere (media, academia, policy) about the existing and emerging issues of the Roma such as their civic and political engagement, participation and representation. The critical discourse analysis on policy framework shows that the discourse on the Roma community in the public sphere (re)produces and reinforces already existing aspects of social deprivation, marginalization and discrimination. There are limited efforts to elaborate the concepts of 'marginalised community' and 'Roma' and that there is confusion in policy regarding the use of the terms. In addition, research shows two main policy approaches: (i) correctional or repressive-oriented policy approach invite intervention programmes that tend to 'normalise' Roma; (ii) protective or rehabilitative policy approaches, i.e.

emphasising Roma needs and aiming at protecting and re-integrating them in mainstream society. The paper takes a critical stance on the current policy discourse and the consequent policy approaches of 'normalisation' and 'integration' and argues for the importance of producing counter discourses and constructing subaltern counterpublics which can be possible via the establishment of the Roma Community Radio.

1.2. RESEARCH OBJECTIVES

The research project addresses the discourses of discrimination regarding marginalized groups with a particular focus on the Roma community in Albania. The research project is interested in investigating how the production of alternative discourses in the public sphere, for instance through the establishment of a 'Roma Community Radio', could enable the marginalized groups to resist multifaceted marginalization and exclusion from a dominant mainstream transcript (ideology, policy and discourses). This research project explores how the establishment of a 'Roma Community Radio' could serve as a platform to construct subaltern counterpublics, i.e. alternative public spheres of marginalised Roma community. The analysis focuses on the impact that alternative media could have towards participation and engagement of Roma community in the policy-making processes and the public sphere. In addition, these alternative public spheres and discourses will generate positive transformations in regards to the interrelations between the Roma community and Albanian mainstream society, a better understating of the Roma culture and values and a mutual coexistence whereby the rights of the Roma people, their lifestyles and culture and fully respected. The research adopts a qualitative methodology approach by using document analysis, in-depth interviews and critical discourse analysis.

1.3. RESEARCH PROJECT RELEVANCE

This project is highly relevant as it tackles some of the major priorities regarding the situation of Roma community in Albania and it seeks to involve Roma NGOs, individuals and other actors on social inclusion and human rights. The policy recommendations of the research project will be distributed to relevant stakeholders in a time when the national strategies and policy framework on social inclusion are being re-designed for the period 2014-2020.

2. RESEARCH METHODOLOGY

The research project included two main research phase, i.e. desk research and field work. The first phases included the literature review, the development of the conceptual framework on alternative media and marginalisation as well as the review of policy documents in place in Albania regarding the Roma community. The field work refers to the collection of the primary data through the use of in-depth interviews with relevant stakeholders and focus groups with Roma community. The data gathered was then interpreted through critical discourse analysis. The sample of the research project was six in-depth interviews with representatives of Roma NGOs, international as well as government organisations in order to explore the intervention programmes and strategies on Roma communication channels. In addition, two focus groups with Roma and non-Roma NGOs working with marginalised groups were organised in order to assess and understand the needs of the Roma community in regards to developing their own medium of expression and communication channel.

3. CONCEPTUAL FRAMEWORK

3.1. THE PUBLIC SPHERE AND MARGINALISATION

3.1.1. Conceptualising multiculturalism and marginalised communities

Multiculturalism as a paradigm, stance, discourse, policy and practice is associated with the politics of identity and the narrative of ‘recognition’, i.e. as recompense to historically marginalized groups who have suffered multifaceted exclusion and discrimination from the mainstream transcript (ideology, policy and discourses). Multiculturalism is thus embedded in the demand for recognition of marginalised groups such as ethnic and cultural minorities based on their group identity. This conceptualisation of multiculturalism entails an embodiment with essentialist notions of group identity as already-formed or pre-given identity. This paper takes a critical stance on essentialized conceptualisation of group identities as it fails to capture the dynamics and complex interrelations between *‘unconscious identifications, conscious alliances and strategic affiliations that shape many people’s experiences today’* (Cornell & Murphy, 2002: 421). In terms of political representation, Laclau and Mouffe (2001) argue that there is more to representation than a transparent reflection of already formed and pre-given identities interest and wills. According to this perspective, political

representation must be considered as a site of political struggle. A major contribution in the conceptualization of multiculturalism and political representation is that of Anne Phillips (2008; 2009) which will be reviewed below and followed by the elaboration of the merits and limits of the concept of public sphere in regards to political representation of marginalized groups.

Phillips (2009) attests to a non-corporatist notion of multiculturalism which rejects essentialized conceptions of culture and identity and gives priority to the needs and rights of individuals, rather than groups. In this sense, Phillips (2009: 9) concentrates on the role of human agency and challenges the dominant discourses on multiculturalism that overemphasizes the group by defining individuals through their cultures. The dominant discourses on multiculturalism promote cultural stereotypes by exaggerating the extent of cultural differences and referring to highly homogenized conceptualization of culture (Martineau & Squires, 2010: 147). These discourses have highlighted the relevance and legitimacy of cultural diversity in order to point out the inequalities, exclusion and marginalisation along cultural and ethnic lines that marginalised groups encounter. Whereas the non-corporatist conceptualization of multiculturalism questions the explanation of human behaviour through invoking cultural explanatory variables and maintains that actions can be explained in *'cross-cultural and human terms'* (Phillips, 2009: 47). In this light, Phillips (2009: 165) argues for a *'multiculturalism without culture, i.e. in developing a case for multiculturalism, it is the rights of individuals, and not the rights of groups, that matter'*. The implication here is the rejection of an over-emphasised notion of culture and cultural differences and the understanding of culture more in terms of human agency and rights of the individual. There is a tension in the attempt to advocate for multiculturalism without culture and at the same time to assert that culture is still relevant and it matters because it describes the ways in which we inhabit our world (Martineau & Squires, 2010: 149). The tension is theoretically overcome by Phillips (2009) as she points to a coherent account of multiculturalism that is suspect of essentialized and reified conceptions of culture and group identity. The theory on multiculturalism, cultural diversity and group identity affects the ways in which political representation of marginalized groups functions in practice.

The non-corporatist notion of multiculturalism, i.e. multiculturalism without culture as developed by Phillips (2008; 2009), entails practices and mechanisms for political representation of marginalized groups that focus on the individuals rather than on the unity of the group. Phillips is in favour of instruments that seek to increase the representation of marginalized groups, while *'avoiding imposing unity upon disparate groups and installing representatives as the definitive voice of "their" group'* (Phillips, 2008: 558). The acknowledgement that there is a need for greater political representation of

marginalised groups couched in terms of individuals is informed by the idea that the 'interests of the group' do not reflect and encompass the diverse range of identities, interests and perspectives that individuals within a group hold (Phillips, 2009: 166). The 'group' is not a homogenous and unified entity; rather it is characterised by internal disagreements which cannot be underestimated. In this sense, while a non-corporatist notion of multiculturalism supports mechanisms for increasing the political representation of marginalised groups, it rejects the attempt to emphasise the group rights over the individual ones. This is so based on non-essentialized and reified conceptions of culture and group identity. Martineau and Squires (2010: 151) raise the question of whether it is politically effective to reject essentialized and reified conceptions of culture and group identity and yet continue to promote a version of multiculturalism. The attempt to endorse political representation of marginalized groups drawing from 'multiculturalism without culture' may in practice reproduce the essentialist accounts of multiculturalism based on group identity. The concept of the public sphere is relevant in this discussion as it implies some key aspects such as public associations, discussions, consensus, identity and difference.

3.1.2. Habermasian model of public sphere

Habermas (1974) defines the public sphere as the realm where all citizens come together as private individuals to form the public opinion. Access is guaranteed to all citizens, as well as the freedom of assembly and association and the freedom to express and public their opinion on matters of general interests. In the words of Habermas: *'the bourgeois public sphere may be conceived as the sphere of private people come together as a public...to engage them in a debate over the general rules governing relations in the basically privatized but publicly relevant sphere of commodity exchange and social labor. The medium of this political confrontation was: people's public use of their reason'* (Habermas, 1989: 27). The public sphere mediates between society and state, whereby the public organizes itself as the bearer of public opinion. The Habermasian public sphere is based on the Enlightenment paradigm and the unfinished project of modernity and its main premises are: (i) access to the public sphere is guaranteed to all citizens as well as freedom of association and freedom to express and public ones opinions; (ii) private individuals come together as a public body to discuss matters of general interest, not private issues or private interests; (iii) individuals are formed in the private realm, which is the realm of freedom and has to be protected from the dominance of the state authority.

Habermas conceives bourgeois public sphere as a category that is typical for an epoch that cannot be abstracted from the unique developmental history of that 'civil society' originating in the European

High Middle Ages (Calhoun, 1992:6). According to Habermas the concept of public sphere and public opinion were introduced for the first time in the eighteenth century and they arose from certain historical conditions of the bourgeois society (Habermas, 1974:50). The bourgeois public sphere emerged as the sphere of private individuals assembled together into a public body, who used intellectual newspapers against the public authority. The bourgeois public sphere institutionalized not just a set of interests and an opposition between the state and society, but a practice on rational critical discourse on political matters. The very idea of the public was based on the notion of general interest and the discourse about it needed not be distorted by private interests (Calhoun, 1992). According to Habermas the concept of public sphere, the medium of public discussion was unique and without historic precedents: people's public use of their reason. The means of the bourgeois public sphere were: newspapers, journals, pamphlets, coffee shops, salons. Britain, France and Germany served as the model of the development of the public sphere. As per this model of public sphere, at that time (19th century), newspapers and the press in general remained institutions of the public itself, effective in the manner of mediator and intensifier of public discussions. They were not just mediums for spreading the news and not yet the medium of a consumer culture.

The Habermasian model of public sphere is considered to be a liberal model for it conceives the public sphere as mediating between society, as a sphere of private autonomy, and the state, restricted to a few functions. Habermas (1989) argues that the liberal model of the public sphere cannot be applied to the conditions of the advanced industrialized societies which are organized in the form of welfare state mass democracy. The conditions in which the public sphere emerged were transformed in the twentieth century in the following main ways: (i) the sharp delineation of state and society has become blurred and individuals have become increasingly dependent upon the state; (ii) the relationship of the individual to the state has increasingly become one of the client or consumer of services, rather than citizen; (iii) political debate and discussions in the public sphere are not based on consensus and rationality, but on utilitarian discussions about distribution of resources and private interests. In addition the debate is monopolised by professional politicians and public relations experts and not the citizens; (iv) the meaning of public opinion has been reduced to merely statistical results of polling surveys. Under the influence of Adorno and Horkheimer critique on culture of mass production and consumption, Habermas (1974; 1989) argues that public opinion is no longer the ultimate authority, but an object and target of intervention strategies designed to manipulate and control it.

Consequently, the historical conditions of the emergence of the public sphere have been transformed in the contemporary political systems. The new developments at that time related to the capitalist economy and national state led to an idea of society separated from state and of private realm separated from the public (Calhoun, 1992:7). When this clear separation began to be undermined by the development of welfare social state mass democracy, the bourgeois public sphere started its decline, to which Habermas (1974) refers to as the degeneration of the bourgeois public sphere or as *Refeudalization*. The structural transformation of the public sphere came about as state and society became interlocked, thus undermining the very condition of the bourgeois public sphere: the separation between private and public realm (Habermas, 1989:175-176). However, the public sphere may be instructive for contemporary political systems in terms of its requirements for information to be accessible to the public. Habermas is concerned with the social conditions for a rational-critical debate about public issues conducted by private individuals. Therefore, the concept of the public sphere is relevant to the political representation and democratic theories. In Habermasian terms, public discourse as communicative action is a mode of coordination of human life as well as market economies and state power. The main difference is that state and market economy are non-discursive mode of coordination, while public sphere is a discursive mode of human coordination (Habermas, 1989). The importance of the concept of the public sphere lies in its potential as a mode of societal integration.

Critiques of Habermasian model of public sphere can be divided in two main perspectives: historical and conceptual. Many scholars (Dahlgren, 1997; Sparks, 2001; Fraser, 1993; Benhabib, 1992, 1996) have criticized the historical perspective of the Habermasian public sphere. Drawing from revisionist historical investigations, Fraser maintains that Habermas does not take into account other public spheres that existed in the XVIII-XIX century: non liberal, non bourgeois competing public spheres (Fraser, 1993:7). However, the main aim of this essay is to focus on the conceptual criticism on Habermas, rather than on the empirical or historical one. Within the conceptual criticism of Habermasian model of public sphere I will make a distinction between two levels of critical commentaries. On one hand, there are scholars (Fraser, 1993, Benhabib 1992, 1996) who remain within the Enlightenment paradigm of rationality and agreement. On the other hand, one may identify scholars (Laclau & Mouffe 2001; Mouffe, 1999, 2000; Foucault, 1978) who reject the Enlightenment approach.

3.1.3. Identity, difference and the public/private dichotomy

The central presuppositions of Habermasian model of the public sphere that will come under critical assessment in this paper are: (i) the metaphor of the sphere; (ii) issues of identity and bracketing difference; (iii) the dichotomy of public versus private realm; (iv) issues of language and reaching agreement; (v) the issue of consensus and rationality within the paradigm of unfinished project of modernity. Addressing the model of the public sphere in quantitative terms implies dealing with the issue of openness and accessibility, boundaries and limits of participation. While a qualitative addressing implies dealing with the issues of identity of the (non)participants, of bracketing or thematizing difference.

In academia, public sphere is understood as an abstract notion, not a venue. As Hartley and McLee have argued the public sphere is not a sphere, it is a metaphorical term that is used to describe the virtual space where people can interact (McLee, 2004:4). Furthermore Sparks claims that '*public sphere as a reality does not exist and has not existed in the past, the only justification for retaining the concept in circulation is its normative status*' (Sparks, 2001:76). Even though it is neither a sphere nor a concrete place, the metaphor of *the sphere* is very relevant to the discussion about the flaws of the concept of public sphere. The idea of the sphere presupposes, drawing from geometry, that there is a centre from which every other point is equidistant and that the sphere has an internal symmetry. As Gitlin argues the metaphor of 'the public sphere' is based on the suppositions that: (i) it is singular, *the sphere*, not *a sphere*; (ii) it has a unity image; (iii) the sphere has a perfect symmetry, it permits no privileged vantage point; (iv) no direction is superior to any other direction (Gitlin, 1998:68). This way of conceptualizing the space of interaction and communication between individuals as a sphere, a closed entity with an internal perfect symmetry, is problematic. From an empirical or historical point of view one may argue that the public sphere has never been a unified all-inclusive space of interaction (Dahlgren, 1997; Sparks, 2001; Fraser, 1993; Benhabib, 1992, 1996). From a normative point of view one may say that this metaphor of the sphere is not even desirable, for it does not embody the diversity and the dimension of differences in society, which are crucial points in the discussions about marginalized groups.

Many scholars criticize Habermas' model of a singular, overarching public sphere, where all citizens enter as private individuals to discuss matters of general interests. Taking this as a starting point, scholars like Fraser, Benhabib, Asen move towards multiplicity and they discuss about public spheres not *the* public sphere. Asen (2000) points out that the conceptual movement toward multiplicity of

public spheres recognizes the social complexity and sociocultural diversity, which were ignored by the model of a singular encompassing public sphere. In the same line is also Benhabib (1996), who rejects the notion of a singular, overarching public sphere in favour of a 'plurality of modes of association', but, who is, as Dahlberg (2005) points out, one of the sympathetic critics of Habermas, who attempt to develop, rather than discard, the Habermasian public sphere. In addition, rather than deconstructing the Habermasian model of the public sphere, Fraser (1993) critically examines it and then reconstructs the model as a valid category for theorizing the limits of actually existing democracy. Fraser uses the term *subaltern counterpublics* to refer to the alternative publics of subordinated groups: 'they are parallel discursive arenas where members of subordinated social groups invent and circulate counter discourses, so as to formulate oppositional interpretations of their identities, interests and needs' (Fraser, 1993:14).

Fraser's reading of *Structural Transformation of the Public Sphere* is first of all concerned with the issue of bracketing status differentials in public deliberation. Fraser (1993) claims that the problem with the Habermasian model is that it requires the bracketing of inequalities and status differentials rather than their elimination. Her main point is that for participatory parity in the public sphere, elimination of social inequalities is required. While Fraser has a good point when arguing against the bracketing of inequalities and differences and claiming for their thematization, the conclusions she draws are also problematic. As Goode (2005) suggests, the claim for substantive social justice is a noble one, but it is based on an undifferentiated notion of equality and it is oversimplified in Fraser's critique, for it does not embrace a wider discussion about justice and equality. Fraser's inferences from her critique on bracketing differential positions and inequalities do not offer an adequate alternative to the flaw of Habermasian conception of identity issues and difference.

Concepts of individual and social identity, difference and plurality are salient to the issues of political participation and representation of marginalized groups in political institutions and media. The way issues of identity and difference are elaborated in the Habermasian model represents another conceptual flaw, which consequently is inappropriate for addressing theoretically and politically matters of marginalized groups. Habermas' conception of individuals as fully constituted and shaped in the private realm before participating in the public deliberation in the public sphere, omits the impact of language and discourse in constituting identities.

Habermas is right when he claims for a model of public sphere, where quality of discussion and the issue of openness and accessibility matter. As Calhoun argues '*a public sphere adequate to a democratic*

polity depends upon both the quality of discourse and the quantity of participation' (Calhoun, 1992:2). However, the flaw rests upon the way Habermas conceives the quality of discussion and the quantity of participation. In the Habermasian model of the public sphere the quality of discourse refers to the rational critical debate, in which the best arguments are essential, rather than personal statutes, identities or social differential positions. First, this conception, as mentioned above, leads to the exclusionary character of the public sphere, for rational critical discussion was conducted by educated and property-owner men of the European society of that time. Most importantly the emphasis on rational-critical debate in the public sphere falls short to adequately consider issues of identity and difference.

A valid observation is made by Calhoun (1992), who maintains that in the Habermasian model individuals are understood to be formed in the private realm, which is considered as a realm of freedom to be defended against the state intervention. Calhoun argues that the treatment of identities and interests as settled within the private world and then brought fully formed into the public sphere, impoverishes the Habermas' own theory (Calhoun, 1992:35). Habermas ignores the possibility that individuals' interests, opinions or identities might be challenged, influenced or even changed by the discourse in the public sphere. Public deliberation is not only about already established interests or common good, it is a way of clarification of the common good (Fraser, 1993) or even constitution of interests and identities (Calhoun, 1992). Referring to Wittgenstein's philosophy of language, one may argue that social identities are artificial constructs, created by language and discourse, i.e. by the perspective of the world that language and discourse offer. This is why, contrary to Habermas perspective, individuals who enter the public sphere to discuss matters of general interests are affected by public deliberation. As Mouffe rightly argues 'political practice in a democratic society does not consist in defending the rights of preconstituted identities, but rather in constituting those identities themselves' (Mouffe, 1999:753).

Habermas' distinctions between justice and good life, public matters of norms as opposed to private matters of value, public interest versus private needs, are reflected in the distinction between public and private realm. In the public sphere participants discuss about issues of justice, not of good life, issues of public interests not of private needs, issues of norms not of values. This dichotomy presents another conceptual flaw when addressing issues of political participation of marginalized groups, for it has been part of a discourse of domination, which excludes certain issues from the arena of public deliberation. Fixing an already established ordering of public and private often advantages those in

power by silencing the concerns of excluded persons and groups. Moreover the dichotomy 'public' versus 'private' assumes *a priori* distinctions between 'public' and 'private', but 'public' and 'private' are not fixed, content-specific categories that structure the public sphere prior to discourse. Rather, 'public' and 'private' emanate from social interaction and discussion (Asen & Brouwer, 2001).

Another implication of this perspective is that these distinctions are external to deliberation in the public sphere, the participants in the public sphere deliberate within this given framework of these dichotomies. Consequently, differentiation between 'public' and 'private' does not allow for questioning and discussing the notion itself of what is a public or a private issue (Benhabib, 1992). Participants in the public sphere do not discuss or question these distinctions themselves, they are pre-defined before entering the discussion in the public sphere. Another constraint implies the questions of who define which issues are of public interests and which are not. The difficulty is where to draw the line between 'public' and 'private' and who has the legitimate power to draw such a line. One may argue that those who make this decision have the power of excluding from the public deliberation important issues only by considering them as private. This is a particularly sensitive issue for marginalized groups, for it implies the possibility for a discourse of domination, which confines marginalized groups' issues as private, thus legitimizing their oppression. Instead, Benhabib (1992) claims that one of the most important function of public debate is to challenge and redefine conceptions of common good and what constitutes general interests. However, her conception of public sphere is still within the paradigm of rational agreement: *'central to practical rationality is the possibility of free public deliberation about matters of mutual concern to all'* (Benhabib, 1996: 87). Contrary to this, a critical approach to rationality and consensus of the public sphere has been developed by other scholars drawing from the critical social theory.

3.1.4. Rationality, consensus and the Enlightenment paradigm

Scholars (Asen and Brouwer, 2001; Laclau and Mouffe, 2001) who criticize Habermas on a more fundamental level would deal with his conceptions of rationality and consensus. Scholars argue that consensus needs not to be viewed as the end of discourse in the public sphere. Besides deliberation oriented toward agreement, discourse in the public sphere may serve a number of purposes, including expressing identity, raising awareness, celebrating difference, enabling play (Asen and Brouwer, 2001:12). Also McCarthy points out the tension between the reality of multiple value-perspectives and the ideal of rationally motivated consensus (McCarthy, 1992:63). Political participation of marginalized groups in public deliberation is closely linked to the recognition of difference, plurality,

multiple viewpoints and differential contexts. These sensitive issues are ignored in the Habermasian model of deliberation in public sphere, which is based on rationality and which aims at consensus and reaching agreement. Laclau and Mouffe's criticism on Habermas offer a more adequate perspective to deal with political participation of marginalized groups.

Habermas elaborates a communicative notion of rationality, whose focal points are dialogue, the force of the best argument and the exchange of reasons. Habermas' conception of rationality is developed within the framework of the 'unfinished project of modernity', which allows him to make a claim for the emancipatory potential of the rational, that is he considers Enlightenment and the process of rationalization as potentially more enlightened and democratic way of organizing society (Roberts & Crossley, 2004:7). Contrary to the Habermasian perception that the critique of Enlightenment universalism and rationality will undermine the modern democratic project, is Laclau and Mouffe's deconstruction of universal values and rationality as perceived in the Enlightenment paradigm.

Mouffe refers to Wittgensteinian perspective on language as a form of life and agreement on the use of language as a way of deconstructing the basic assumptions of Habermasian model of public sphere: consensus and the procedures of reaching rational agreement. Wittgenstein argues that in order to have agreement in opinions, we must agree on the use of the language and this implies agreement in forms of life. Wittgenstein (1953) conceives language as a "form of life", it is what we do, what we are, how we behave that gives meaning to the language, so the meaning of the word is just a way it is used in a language game. Following Wittgenstein, Pleasants, similar to Mouffe, criticizes the Habermasian conception of communication and reaching rational agreement. He argues that Habermas perceives the idea of rationality as intrinsic in the structure of language: rationality is understood to be purely procedural (Pleasants, 1999:156). On the contrary, to Wittgenstein (1953) agreement does not mean Habermasian rational consent, it means 'language games'. Wittgenstein says that agreement is not based on grounds; it is not reasonable or unreasonable. It is there like our life. *'It is what human beings say that is true or false, and they agree in the language they use'* (Wittgenstein 1968: 241, quoted in Pleasants, 1999: 156). As Mouffe (1999) argues, this implies to reintroduce in the deliberation scene the rhetorical dimension, which Habermasian discourse model tries to discard. Wittgenstein's conception of agreement on the use of language is at odds with Habermasian idea that people reach agreement/understanding before they can mean anything at all.

Mouffe's critique then turns to the 'ideal speech situation'. While Habermas and his followers consider the limitations of the 'ideal speech situation' to be empirical, due to limitations of social life, Mouffe

counter argues that these limitations are in fact ontological. Mouffe (1999) draws from Lacan approach, to conclude that one has to give up the Habermasian idea that discourse is non-authoritarian, based on intersubjectivity communication free of constraints where only the best argument wins out, that is the free and unconstrained public deliberation is a conceptual impossibility.

Habermasian conception of rationality and consensus are closely related to issues of power and discourse in public sphere. Habermasian model of public sphere, which implies the elimination of power and reaching consensus through rational debate in public deliberation, can be strongly criticized by the Foucauldian conception of power as constitutive of the political and that cannot be dismissed. Foucault suggests that power is co-extensive with the social body, that there are multiple forms of relations of power and that there are no relations of power without resistance (Foucault, 1998: 142). Contrary to Habermas and based upon the work of Foucault on power relations, Laclau and Mouffe (2001) would argue that power need not be eliminated, but it should be acknowledged as constitutive of the social. By asserting the hegemonic nature of social order, Laclau and Mouffe (2001) are claiming, in opposition to Habermas, that power is not necessary a threat to democratic project. Their concept of hegemony, which entails the link between legitimacy and power, is very useful when discussing about deliberation of marginalized groups in the public sphere. This implies a reference to Laclau and Mouffe's interpretation of Gramsci's concept on cultural hegemony: the domination of a discourse that tries to transform the values of the 'dominant' group in universal ones, through a common language, a public space and a dominant discourse.

Mouffe's critiques on Habermas, based on a post-structuralist approach, are of particular importance for the discussion of political participation of marginalized groups. Contrary to Habermas, who excludes passions from rational debate in the public sphere, Mouffe recognizes the role of passions in public deliberation and defends a conception of public sphere as 'multiplicity of voices and complexity of power structures in society' (Mouffe, 1999: 757). What is at stake for Mouffe's agonistic democracy, as an alternative to Habermasian deliberative democracy, is *'to acknowledge the existence of relations of power and the need to transform them, while renouncing the illusion that we could free ourselves completely from power'* (Mouffe, 1999:753). Mouffe recognizes the role of passions in public deliberation and defends a conception of public sphere as *'multiplicity of voices and complexity of power structures in society'*(Mouffe, 1999:753). Mouffe is very critical of the rationalistic and universalistic approach of Habermas and his followers. She claims that democratic theory and practice is on the wrong track because they are based on the belief that a universal rational consensus is

possible. She maintains that universal rational consensus is impossible even from a conceptual point of view. Instead of designing institutions which would reconcile all conflicting interests and values, the task for democratic theorists and politicians should be to envisage the creation of a vibrant agonistic public sphere of contestation where different hegemonic political projects can be confronted.

3.2. THE CONCEPT OF PUBLIC SPHERE AND ALTERNATIVE MEDIA

So far, it has been argued that even though the public sphere is a key concept for democratic theories and democratic political practice regarding multiculturalism and marginalized communities, the model elaborated by Habermas is conceptually flawed and it is not adequate when addressing issues of communication and media of marginalized groups, for: (i) it presupposes a metaphor of sphere as an enclosed entity with internal symmetry; (ii) by considering individuals as fully formed in the private realm before entering the public sphere, it discounts the impact that discourse has in creating meanings and constituting identities; (iii) the separation between 'public' and 'private' has been part of a discourse of domination, which excludes certain issues from the arena of public deliberation, mostly those concerning marginalized groups; (iv) rationality and procedures of rational debate are conceptually impossible. Habermas does not consider that deliberation in public sphere may have other functions except of reaching agreement; (v) power and conflict cannot be eliminated, for they are constitutive part of the 'political'.

Habermasian model of the public sphere was assessed from two main levels of normative criticism: for and against the Enlightenment paradigm. Even though Fraser and Benhabib follow the Enlightenment paradigm of rationality, it is worth mentioning two important critical points of their respective commentaries on Habermas - Fraser's critique on bracketing difference and Benhabib's critique on the dichotomy 'public' versus 'private' - which are significant for the discussion of communication spaces of marginalized groups. Mouffe's main point is that Habermasian model of public sphere and deliberative democracy is missing the dimension of the political and the relevance of passions and conflicts in politics, thus it is not able to offer a good understanding of democratic practices. In conclusion, in order to explore the role of alternative media in countering marginalization, it is thus necessary to consider Fraser's concept of public spheres rather than one public sphere.

4. FINDINGS AND ANALYSIS

4.1. MAINSTREAM VS. ALTERNATIVE MEDIA IN THE CONTEXT OF ALBANIA

After the breakdown of communist regimes, countries in Central, Eastern and South Eastern Europe went through various political, economic and social changes, which also affected the structure, the landscape and the functions of media. Mass media have a significant impact on the quality of democratic institutions and processes in post-communist countries and therefore on the issues of social inclusion of marginalised communities including representation, participation and communication spaces. However, this relation between media and democratization is not self-evident and it is a very complex one. After the collapse of communist regime Albanian media had to redefine their role in society within a different economic and political system. Albanian had to adopt a new legislation on media to replace restrictive media laws of communist regime. Print media is mostly based on self-regulation instead of too much regulation by the Parliament. The Law on Press, which was adopted by the Parliament after the political changes of the early '90s, sanctions: 'The press is free; Freedom of press is protected by law' (Law on Press, no. 8239, 1997). Albanian legislation on print media is very vague and leaves room for various interpretations, which implies that the press is operating in a landscape of freedom from government interference, but also that there are abuses and speculations. According to Freedom House report, the Albanian media market is saturated, but fragmented, as evidenced by the high number of daily newspapers and low circulation. There are 27 national dailies with fewer than 100,000 copies sold altogether, which is an imbalance for a country with 3.5 million people. The ways in which marginalised communities are represented in the daily press constitutes an important dimension of the media marginalisation of the Roma community in Albania.

The study of Albanian media system carried out in the frame of South Eastern Network for the Professionalization of Media observes that, in contrast to print media, the broadcast media is regulated by a fairly detailed Law on Public and Private Radio and Television and a regulatory body, National Council of Radio and Television (Londo, 2004:41). Broadcasting media is regulated also by: the Commercial Law, applicable to media companies similar to other businesses and companies; and the Competition Law, which aims to provide the rules against market concentration and distortion of competition. According to the National Council on Radio and Television, Albania has 85 television

stations and 49 radio broadcasters, including the national public Albanian Radio Television. The access of the Roma community in the mainstream broadcasting media is very limited.

Even though the Albania's Constitution guarantees freedom of expression and freedom of the press and the government has made a commitment to press freedom, Albanian media face various challenges, which limit media's ability to advance democratic processes. As Freedom House and Reporters without Borders suggest, financial resources and ownership structures in the media market continue to be a concern, as well as state interference and difficult access to public information and politically-inspired distribution of government advertising. Another problem is considered to be journalistic independence from media owners, media legislation does not include provisions that would explicitly address editorial independence from the publisher or owner, nor mechanisms for ensuring such independence (Hrvatín & Petković, 2004:31). However, this essay will argue that what contributes to democratic processes in post-communist Albania is not editorial independence, rather the only media independence that should be required as a normative demand is that of independence from state interference. These concerns directly impact the opportunities of marginalised communities such as Roma to participate in mainstream media in Albania.

This research shows that the main assumptions of the reproduction of discriminatory discourse on development through media representation of the 'Other' are: (i) the dichotomy of 'us' versus 'they', i.e. 'us' as the majority Albanian society and 'they' as the Roma community or other marginalised communities; (ii) there is one direction of progress and development, i. e. what the Albanian majority considers a normal course of evolution and progress has to be considered as the universal truth and all the rest of the groups have to embrace this course of evolution and progress; This is not only the case in Albania, but it is observed in other countries, whereby the majority holds the monopoly of 'the truth'; (iii) the messianic claim of salvation of the Roma community by normalisation and integration approach or the modernization of 'the other' by bracketing their differences and patronizing them; (iv) the paternalistic attitude of the Albanian majority and policy discourse towards the Roma community, i. e. the majority knows what is best for the rest of the society; (v) what is different is considered to be abnormal and the majority defines what is 'normal'. In order to give voice for political representation and participation for the Roma community, alternative public sphere and communication spaces need to be developed. Alternative media could be one of the instruments to achieve this.

4.2. ALTERNATIVE MEDIA AND THE REPRESENTATION OF THE 'OTHER'

The research project uses media in a wider sense, referring to not only the press, the radio, the television or the internet, but also to literature, work of art and the world of cinema. In the liberal tradition, media's main functions are: (i) inform citizens and the diverse interest groups in society with "objective" information; (ii) to exercise critical surveillance over the activities of the government; (iii) to stimulate an arena of meaningful and quality public debate on politics which will affect society; and (iv) to serve as platforms of access for groups and politicians to put their positions forward, as well as educational and cultural tools for citizens to have knowledge about their nation and the world (Blumer & Gurevitch, 1995:97). Scholars argue that media do not only provide information to the citizens or just foster an arena of debate, actually media provide the conceptual framework in which this information is located and also media set the agenda of the issues and topics to be discussed (Lichtenberg, 1990). The media's ability to define a certain conceptual framework and to set the agenda of discussion is particularly relevant in the case of media representation of the 'Other'. As Bourdieu argues, 'the journalistic field produces and imposes to the public a particular vision of the political field, a vision that is grounded in the very structure of the journalistic field and in their specific interests produced in and by that field' (Bourdieu, 1998:2). The media and their role in representing the 'Other' are highly relevant to the issue of alternative communication spaces for marginalized communities.

Furthermore the relation between the media and individual political attitudes and the relation of the structure of media systems and politics (Gunther & Mughan, 2000) are very complex and do not always follow the normative standards about media functions. This is why it is important to acknowledge the impact of the market and the government on media as well as economic and political pressures. Political elites have developed media policies and regulation that best serve their political, economic and social interests and goals, for they do consider the media to be very important means of influencing, structuring and shaping public opinion and citizens' attitudes and behaviours (Gunther & Mughan, 2000:3). The media impact in shaping and influencing public opinion is also very significant in the case of media representation of the 'Other'.

Another aspect of media, which is related to the discussion of media representation of the 'Other', is the use of language and symbolic power. Media are situated in a complex landscape and power relations are a constitutive part of it as well as conflict, passion and antagonism. Media's symbolic

power is reflected in their ability of producing representations and of the construction of social reality. Referring to media symbolic power Bourdieu argues that 'television does not record reality, it creates the reality' (Bourdieu, 1998:22). Bourdieu's work on language and media as symbolic power is very interesting for the purposes of this paper. Bourdieu (1991) rejects a semiotic analysis of language as elaborated by Saussure, for they focus on the internal constitution of language structure and do not consider social or historical conditions. Building on this line of criticism on the semiotic analysis of language, I will adopt a constructionist approach to meaning in language, which argues that we construct meaning using representational systems – concepts and signs (Hall, 1997:25).

Hall defines representation as 'the production of meaning through language' (Hall,1997: 16). Furthermore he argues that meaning can never be finally fixed, for it is not the result of something fixed in nature, but it is a result of our social, cultural and linguistic conventions and utterances (Hall: 1997:23). The question is: Where is meaning produced? Hall lists three main 'venues': (i) meaning is produced and exchanged in every personal and social interaction; (ii) meaning is produced in mass media; and (iii) meaning is produced whenever we express ourselves in, make use of, consume or appropriate cultural things (Hall, 1997:3). The production and circulation of meanings through mass media is particularly significant for arguing that the way Western-media represent the 'Other' contributes in reproducing the Eurocentric discourse on development.

Media are the mediums or the means by which ideas, project, concepts, feelings; political programs and so on are represented through language, whether being sounds, written words, images or objects. Therefore the way the media use language is very important in the production and circulation of meanings and viewpoints about the world. Drawing from the work of Wittgenstein in the philosophy of language, one may argue that social, cultural and political identities are constructed by language, i.e. is by the production and circulation of meanings. Wittgenstein (1953) conceives language as a "form of life", it is what we do, what we are, how we behave that gives meaning to the language, that is the meaning of the word is just a way it is used in a language game. Two main points can be made here: (i) things in themselves rarely if ever have anyone, single, fixed and unchanging meaning (Hall: 1997:3). It is through cultural practices that we give meaning to things or, in Wittgenstein's term, meanings rest upon 'forms of life'; (ii) the necessity to acknowledge diversity of meanings and different ways of interpreting the world. So far I have argued, building from the work of Hall (1997) and Wittgenstein (1953), that culture is about shared meanings and common ways of interpreting the world; meanings and viewpoints about the world are constructed by language, which is conceptualized as a 'form of life'.

Another important insight related to language and meaning is that of discourse as developed by the Foucault, who is more concerned with discourse and power relations rather than with language. Foucault (1998) argues for a discursive formation sustaining a regime of truth, that is knowledge linked to power, not only assumes the authority of the 'truth' but has the power to make itself true (Hall, 1997: 48-49). This is why Foucault (1998) claims that different power means different knowledge. In each period discourse produced different forms of knowledge, for meanings exist only within discourse formation in a certain context. Foucault conceives power in terms of relations and not domination, power is constitutive of the social, it circulates and it is never monopolized by a centre.

Based on Foucault conception of discourse and power, Laclau and Mouffe (2001) have also developed a discourse analysis of society. They are concerned about the construction of meaning and the constitution of identities, rather than the existence of objects. Laclau and Mouffe argue that physical objects do exist, but they have no fixed meaning; they only take on meaning and become objects of knowledge within discourse (Hall, 1997:45). Based on Wittgenstein, they argue that it is impossible to determine the meaning of an object outside of its context of use. Laclau and Mouffe (2001) argue that society is discursively construed, it is a field of meaning where identities do not have an inherent positivity or essential core, but are relational, constituted in a system of differences.

The role of the 'Other' is very important in the constitution of individual and collective identities. Taking as a starting point the psychoanalytic approaches to the constitution of the *I*, one may draw similarities with the way collective identities are constructed. The origin of such a discussion dates back to the work of Freud in psychoanalysis. However, Freud conception of individual identity was an essentialist one. For Freud the ego is represented as a psychical map, a projection of the surface of the body. Therefore the ego is the representation of the subject's perceived and libidinalized relation to its body (Grosz, 1990:32). While for Lacan, who developed further more Freud's psychoanalysis, the role of the other is very important. Lacan (1966) emphasises the role of the 'other' in constituting individual identity through what he refers to as the 'mirror stage'. The mirror stage is a process of identification, the child is able to constitute the *I* through the presence of the 'other' (the mother) (Lacan, 1966:2-6). The mirror stage is conditioned on the child's first recognition of a distinction between itself and the (m)other, thus the ego is partially a consequence of socially structured psychological relations between itself, the others and its body image (Grosz, 1990:32). This psychoanalytic perspective is relevant to our discussion about the representation of the 'other' in Western media, for it gives

insights of how media help to reproduce the Eurocentric discourse on development and to create continually the distinction between us and them, the necessity of a negative identification through the presence of the 'other.

4.3. PARTICIPATION AND ALTERNATIVE MEDIA

Some of the main problems with mainstream media are related to the barriers of entry, the unresponsive nature, the high costs and strict deadlines (Beckett: 2008, 46). On the contrary, alternative media offer a solution to these issues. The new media and alternative media are characterized by permeability, interactivity, infinite technology, cheap costs, 24/7 news platform, multiple platforms and multi-dimension (Beckett: 2008, pp. 47-48; Dalhgren, 2001: p. 67-69). According to Beckett's conceptualization of networked journalism, the latter creates quality by adding value to the news in three main ways: (i) editorial diversity as it creates more substantial and varied news from various sources and perspectives; (ii) connectivity and interactivity, the audience is active and participatory and generates content; (iii) it relates to audiences and subjects in ways that create new ethical and editorial relationships to news (Beckett: 2008, p. 52). The downturn is that quantity does not necessarily mean quality of information and editorial plurality. Diverse, plural and strong media outlets are paramount for the democracy and the freedom of expression in society.

Participatory media and diverse online new platforms offer an opportunity to marginalised groups to express themselves and discuss their interests, issues and perspectives, which are not covered by the mainstream news media. As the mainstream media is becoming more diverse and fragmented with the digital switchover and online platforms, ethnic minorities abandon traditional news for a diversity of satellite and digital offerings (Beckett: 2008, p. 25). Citizen journalism and participatory media overcome an absolutist interpretation of media neutrality and impartiality and thus offer various social groups the opportunity to participate in public debates and represent themselves in the public space (Carpentier et.al., 2009: p. 171). Citizen journalism and participatory media are rhizomatic, i.e. they are characterized by diversity and cut across different boundaries generated by the state and the market (Carpentier et.al., 2009: p. 172). In this light, citizen journalism offers a number of opportunities for the citizenry to engage in public debate and participate in news production.

5. CONCLUSIONS AND RECOMMENDATIONS

The research shows that the dominant approach in Albania has been that of refusing to acknowledge the existence of the 'other different' by claiming to be homogeneous society. In addition the main policy approaches have the normalisation approach and the integration one, which do not fully recognize the 'other' as a social actor. In this sense, the main issues hindering the development of alternative communication spaces for the marginalised communities in Albania: the attempt to patronize minorities by bracketing their complex identities and diverse profiles and attempting to make them more like 'us'; the reproduction of already existing negative perceptions and stereotypes of Roma and Egyptian communities through the mainstream media: (beggars, thieves, delinquents, a danger to the rest of the society, not educated, not cleaned etc.); very limited communicative spaces for the Roma communities to 'tell their version of the world' and create their own meanings based on their own terms, not those of the majority.

Drawing from the literature and the insights from the qualitative data of the research project, the principle merit of alternative media such as a community radio, is the encouragement of the grassroots access to media as well as participation in producing media formats and content. The fundamental idea of the alternative media is that they are citizen-owned medium and serve as alternatives to the mainstream media and telecommunication organisations. Community radio is of particular relevance in the case of the Roma community in Albania because of low literacy levels and it can serve as a medium to improve community interrelations, distribute information and empower the community by creating alternative communication spaces. However, community radio can also be destructive if it is used for hatred speech and contents.

Despite of the constraints of alternative media, it is considered as a basic democratic procedure to empower marginalised communities, encourage their self-management and the production of alternative formats and contents. Community radio as an alternative radio implies the involvement of people into programming, management and distribution. Therefore the potential of the community radio for the Roma in Albania as in other cases of alternative media lies in the external and internal pluralism. External pluralism refers to the provision of different voices and perspectives as opposed to the public or private media organisations. Internal pluralism refers to being internally democratic, non-commercial and non-professional and not institutionalised, thus providing a platform for diversity of formats, content and styles.

Recommendations for the development of alternative media:

- ▶ it all starts from the assessment of needs of the community – fully understanding their context, their perspectives, their needs, their aims, their vision for their future;
- ▶ it cannot be done as another benevolent act of the majority to the minority – the communities need to be enabled to develop alternative communicative spaces themselves;
- ▶ education is key but also concrete training on certain competences and capacity development on media, projects, communication, writing skills etc.;
- ▶ working with the community activists and leaders and promoting the role models;
- ▶ working with diverse groups: Roma, Egyptian, Albanians and enable them to build networks (alliances) for the present and the future.

BIBLIOGRAPHY

Albanian Press Freedom 2007. *Freedom House*, available at <http://www.freedomhouse.org/template.cfm?page=251&year=2006>. (11 January 2009).

Albanian Annual Report 2006. *Reporters without Border*, available at http://www.rsf.org/article.php3?id_article=17334&Valider=OK (11 January 2009).

Asen, R., and Brouwer, D. C. 'Introduction: Reconfigurations of the Public Sphere', in Asen, R., and Brouwer, D. C. (Eds) (2001) *Counterpublics and the state*. New York: State University of New York Press. pp. 1-35.

Asen, R. (2000). 'Seeking the "Counter" in Counterpublics.' *Communication Theory*. Vol., 10, No. 4, pp. 424 – 446.

Beckett, C. (2008) *Supermedia - Saving Journalism so it can save the world*. London: Blackwell.

Benhabib, S. (1992). 'Models of public sphere: Hannah Arendt, the liberal tradition and Jurgen Habermas', in Calhoun, Craig. (Eds) (1992) *Habermas and the Public Sphere*. Cambridge: The MIT Press. pp. 73 – 99.

Benhabib, S. (1996). 'Towards a deliberative model of democratic legitimacy', in Benhabib, S. (1996). *Democracy and Difference: Contesting the Boundaries of the Political*. Princeton University Press. pp. 67-95.

Bennett, W. L., & Entman, R. M. (2001). *Mediated Politics. Communication in the Future of Democracy*. Cambridge University Press.

Bourdieu, P. (1991) *Language and Symbolic Power*. London: Polity Press.

Bourdieu, P. (1998) *On Television*. New York: The New Press.

Calhoun, C. (1995). *Critical Social Theory*. Oxford UK: Blackwell.

Calhoun, C. (1992). 'Introduction: Habermas and the Public Sphere', in Calhoun, Craig. (Eds.) (1992). *Habermas and the Public Sphere*. Cambridge: The MIT Press. pp. 1-48.

- Calhoun, C. (1994). 'Preface', in Calhoun, C. (Eds.) (1994). *Social Theory and the Politics of Identity*. Oxford UK: Blackwell. pp. 1-9.
- Calhoun, C. (Eds.) (1994). *Social Theory and the Politics of Identity*. Oxford UK: Blackwell. pp. 10-37.
- Cammaerts, B., (2005) 'ICT-Usage among Transnational Social Movements in the Networked Society – To Organize, to Mobilize and to Debate', R. Silverstone (Ed.), *Media, Technology and Everyday Life in Europe: From Information to Communication*, Aldershot: Ashgate: pp. 53-72.
- Carpentier, N et. al. (2009) 'Citizen Journalism and the North Belgian peach march', in S. Allan & E. Thorsen (Eds.), *Citizen Journalism: Global Perspectives. Global Crises and the Media*. New York: Peter Lang: pp. 163-175.
- Carpentier, N., (2007) 'Coping with the agoraphobic media professionals: a typology of media practices re-enforcing democracy and participation', in B. Cammaerts & N. Carpentier (Eds.), *Reclaiming the Media: Communication Rights and Democratic Media Roles*, Intellect Books: pp. 157-176.
- Cornell, D., & Murphy, S. (2002). 'Anti-racism, multiculturalism and the ethics of identification'. *Philosophy Social Criticism*. Vol. 28, No 4, pp. 419–449.
- Dahlberg, L. (2005). 'The Habermasian public sphere: Taking difference seriously?'. *Theory and Society*. Vol. 34, pp. 111–136.
- Dahlgren, P. (1997). 'Introduction' in Dahlgren, P. and Sparks. C. (Eds.) *Communication and Citizenship: journalism and the public sphere*. London/New York: Routledge, pp. 1 – 27.
- Foucault, M. (1998). *Power/Knowledge. Selected Interviews*. New York: Harvester Wheatsheaf.
- Fraser, N. (1993). 'Rethinking the Public Sphere: A contribution to the Critique of Actually Existing Democracy' in Robbins, B. (1993). *The Phantom Public Sphere*. Minneapolis: University of Minnesota Press. pp. 1-33.
- Gitlin, T. (1998). 'Public sphere or public sphericules?', in Liebes, T. and Curran, J. (Eds.) (1998). *Media, Ritual and Identity*. London and New York: Routledge. pp. 168 – 174.
- Goode, L. (2005). *Jürgen Habermas: Democracy and the Public Sphere*. London: Pluto Press.

Gunther, R. and Mughan, A. (Eds) (2000) *Democracy and the Media: A Comparative Perspective*. Cambridge UK: Cambridge University Press.

Habermas, J. (1974). 'The public sphere: an encyclopaedia article'. *New German Critique*. Vol. 1, No. 3, pp.49-55, Telos Press Ltd.

Habermas, J. (1989). *The Structural Transformation of the Public Sphere*. Cambridge: Polity Press.

Habermas, J. (1981). 'Modernity: An Unfinished Project', in D'Entrèves, M. P., & Benhabib, S. (Eds). (1996). *Habermas and the Unfinished Project of Modernity*. Cambridge: Polity Press. pp. 38-59.

Hall, S. (1997) 'Introduction', in Hall, S. (Eds) *Representation: Cultural Representations and Signifying Practices*. London: Sage Publications. pp. 1-13.

Hall, S., (1997) 'The Spectacle of the Other', in Hall, S., *Representations: cultural representations and signifying practices*. Sage Publications. pp. 223-290.

Hall, S. (1997) 'The work of representation', in Hall, S. (Eds) *Representation: Cultural Representations and Signifying Practices*. London: Sage Publications. pp. 13-75.

Hrvatín, S. B., & Petković, B. (2004) 'Regional Overview', in *Media Ownership and its Impact on Media Independence and Pluralism*. Ljubljana: SEENPM. pp. 9-39.

Karppinen, K. (2007). 'Against naïve pluralism in media politics: on the implications of the radical-pluralist approach to the public sphere'. *Media, Culture & Society*. Vol. 29, No. 3, pp. 495–508.

Laclau, E., & Mouffe, Ch. (2001). *Hegemony and Socialist Strategy. Towards a Radical Democratic Politics*. 2nd Edition. London: Verso.

Londo, I. (2004) 'Albania', in *Media Ownership and its Impact on Media Independence and Pluralism*. Ljubljana: SEENPM. pp. 39-61.

Martineau, W., & Squires, J. (2010). 'Reviving multiculturalism, reviewing representation', *Economy and Society*. Vol. 39, No. 1, pp. 146-154.

McCarthy, T. (1992). 'Practical Discourses: On the relation of morality to politics', in Calhoun, Craig. (Eds.) (1992). *Habermas and the Public Sphere*. Cambridge: The MIT Press. pp. 51- 73.

McLee, A. (2004). *The Public Sphere: An Introduction*. Cambridge: Cambridge University Press.

- Mouffe, Ch. (1999). 'Deliberative Democracy or Agonistic Pluralism?'. *Social research*. Vol. 66, No. 3, pp. 745 – 758.
- Mouffe, Ch. (2000). *The Democratic Paradox*. London: Verso.
- Phillips, A. (2008). 'More on culture and representation'. *Social and Legal Studies*. Vol. 17, No. 4, pp. 555-568.
- Phillips, A. (2009). *Multiculturalism without culture*. Princeton, NJ: Princeton University Press.
- Roberts, M., & Crossley, N. (2004). 'Introduction', in Crossley, N., & Roberts, M. (Eds.) (2004). *After Habermas: New Perspectives on the Public Sphere*. Oxford: Blackwell Publishing/The Sociological Review. pp. 1-28.
- Robbins, B. (1993). 'Introduction: The Public as Phantom' in Robbins, B. (Eds) *The Phantom Public Sphere*. Minneapolis: University of Minnesota Press. pp. vii-1.
- Sparks, C. (2001). 'The Internet and the Global Public Sphere' in Bennett, W. Lance. & Entman, R. M. (2001). *Mediated Politics. Communication in the Future of Democracy*. Cambridge University Press.
- Young, I. M. (1990). 'The ideal of community and the politics of difference' in Nicholson, Linda J. *Feminism/Postmodernism*. New York and London: Routledge. pp. 300 – 324.
- Young, I. M. (2002). *Inclusion and Democracy*. Oxford University Press.
- Wittgenstein, L. (1953). *Philosophical Investigations*. Blackwell Publishing.

ABOUT THE AUTHOR

Blerjana Bino is the Executive Director of the UET Centre, a CSO working on research and capacity building projects on social inclusion, human rights and good governance in Albania and affiliated with the European University of Tirana. Blerjana is experienced in project management, research, lecturing and youth mentoring. Her areas of interest include: social inclusion of marginalized groups; alternative media and empowerment; political representation and participation, public sphere and democracy. Ms Bino holds a Master of Science Degree in Politics and Communication from the London School of Economics and Political Science in UK. Blerjana is currently at the final stage of her doctoral studies, working on research project that focuses on the role of alternative media and communication technologies in the political empowerment of marginalised communities.

e-mail: bbino@uetcentre.org



INSTITUTIONAL MECHANISMS FOR PREVENTION AND PROTECTION FROM FAMILY VIOLENCE AND THEIR APPLICATION IN MONTENEGRO

Biljana Zeković
Aleksandra Gligorovic

SOS Telephone for Women and Children
Victims of Violence (Montenegro)



SUMMARY

SOS telephone for Women and Children Victims of Violence - Podgorica (SOS Podgorica) has conducted an assessment of existing policies and their practical implementation in the field of protection from domestic violence in Montenegro. The subject of the analysis was to review the field of development and quality of social and other support services to victims of domestic violence, collaborative support networks, policies, procedures, mechanisms and criteria according to which are functioning existing institutions and their departments responsible for the implementation of the “Protocol on the treatment, prevention and protection from domestic violence” (centers for social work, health and police services, judicial authorities, educational institutions and non-governmental organizations are recognized as service providers in this area).

As the Protocol organizes the joint work of all the systems in the implementation of laws and conventions related to domestic violence, it is of big concern that the Protocol is not in a visible place in any of the surveyed institutions, nor is it easy available to employees or to potential customers. Except the members of Multidisciplinary teams (who are functioning at the level of the Centres for Social Work), other officials, particularly in health and education institutions, are not familiar with the content of the Protocol and the obligations prescribed in it.

Regardless of the fact that the Protocol requires urgent establishment of cooperation between all stakeholders in the protection of victims of domestic violence, it seems that the relevant institutions consider that the formation of multidisciplinary teams in 10 Montenegrin municipalities was enough for an effective response to violence.

They all seriously ignore the fact that the multidisciplinary teams are only a link in the chain of support, and they can not be effective if other officials with whom the victim comes into contact (especially in the acute phase of violence), don't know how to react appropriately. The Protocol gives clear treatment guidelines, but for the officials responsible for its implementation, there are still a number of uncertainties, and lack of basic tools for effective treatment - such as clear matrix for risk assessment and the development of individual plans for support of adult victims of domestic violence - make this problem even more complicated.

Key problem areas identified during this research are: the inability for good monitoring of the phenomenon of domestic violence in all its forms; incompatibility of laws and institutional mechanisms; lack of capacity of all relevant entities who provide services for victims of domestic violence in accordance with the Protocol; high degree of uninformed stakeholders (both employees of institutions and the victims themselves) about existing mechanisms of assistance and protection; lack of coordination and networking of entities relevant for the implementation of this legislation. In accordance with the identified problems the following **recommendations** are given:

► **Monitoring of domestic violence:**

It is necessary to design a uniform questionnaire unique for all Centres for the social work, police, justice, health services and non-governmental sector, and in accordance with Article 12 of the Protocol it is necessary at least twice annually to submit reports to the relevant ministries.

► **Laws and institutional mechanisms:**

Urgently prepare proposals for amendments to the Law on Free Legal Aid, which will include the possibility of free legal assistance to all victims of domestic violence (not only those who are without any property and income). It is also necessary to create conditions for the implementation of Article 4 of the Protocol, which refers to the taking of testimony over a child outside the official premises. It is necessary to create individual forms of treatment for all institutions in the system of protection and design a program of psychosocial treatment for violators (abusers) with the aim to effectively implement the existing protective measures.

► **Capacities:**

It is necessary to provide adequate training for the staff of all institutions that in the execution of their daily tasks come into contact with victims of domestic violence. All institutions involved in the protection of domestic violence need to establish their internal team for dealing with violence, and those teams should have preventive work as well. In police departments it is mandatory to systematize workplaces and introduce the position of main inspector for domestic violence. It is necessarily to design matrix of risk and Plan for support to adult victims of domestic violence.

► **Awareness**

For officials of all institutions it is necessary to provide the required information on the methods of using the possibility of Law on free legal assistance in Montenegrin courts. It is necessary to print and distribute leaflets / information sheets with the address book of institutions, organizations and other associations that can be contacted by victims of domestic violence for support and services, and ensure that these information booklets are placed in a visible place in institutions and are easily available to users. It is mandatory to highlight the phone numbers of the Centre for Social Work and NGOs dealing with protection against domestic violence in visible places in the ambulances. It is also necessary to ensure informative/ educational materials designed for teachers and children victims and potential victims of violence;

► **Coordination and networking:**

All institutions need to delegate a person to monitor the Protocol, and each of the institutions and organizations in the chain of protection from domestic violence needs to precisely define the scope of their work in this area. It is necessary to improve cooperation between all institutions, especially educational and health institutions with the Centers for social work, and a minimum once in six months to ensure meetings of cross-sectoral character in order to exchange knowledge, experiences and examples of good and bad practice.

1. UVOD

Nasilje u porodici je ozbiljan i složen problem sa kojim se susreću kako same porodice, tako i obrazovne i socijalne ustanove, organi unutrašnjih poslova i institucije pravosudnog sistema. Analizom postojećih ratifikovanih dokumenata, zakona, strategija i pravilnika, može se sa sigurnošću ustvrditi postojanje snažnog utemeljenja za uvođenje politika i procedura u skladu sa međunarodnim standardima, međutim sva navedena dokumenta koji tretiraju problem nasilja u porodici u praksi su teško primjenjiva, što čini da se problem i posljedice nasilja u porodici minimalizuju, ne razvijaju odgovarajući programi prevencije i zaštite koji su u skladu sa potrebama osoba ugroženih nasiljem u porodici, a samim tim onemogućava adekvatna intervencija društva.

SOS telefon za žene i djecu žrtve nasilja Podgorica je sproveo procjenu postojećih praktičnih politika i njihove implementacije u oblasti zaštite od nasilja u porodici u Crnoj Gori. Rezultati monitoringa su obezbijedili podatke koji precizno definišu problem, uslove zaštite i slabe tačke intervencije u svim fazama, ali i mogućnosti i potencijale za efikasniju implementaciju zakona i politika, što će obezbijediti šansu za razvijanje konkretnih praktičnih predloga za poboljšanje zaštite i socijalne sigurnosti žrtava i igradnju pozitivne prakse na lokalnom i nacionalnom nivou.

“Nasilje nad ženama je možda najsramnije kršenje ljudskih prava. Ono ne poznaje ni geografske ni kulturne granice, niti granice bogastva. Sve dok se ono nastavlja, mi ne možemo tvrditi da činimo istinski pomak ka jednakosti, razvoju i miru”

Kofi Annan, bivši Generalni sekretar UN-a.

Svrha istraživanja je analiza institucionalnih i administrativnih kapaciteta i transparentnosti rada javnih ustanova relevantnih za sprovođenje Protokola o postupanju, prevenciji i zaštiti od nasilja u porodici. Predmet analize nalazi se na polju preispitivanja razvijenosti i kvaliteta socijalnih i drugih servisa podrške žrtvama nasilja u porodici, saradničkih mreža, pravila, procedura, mehanizama i kriterijuma po kojima funkcionišu postojeće službe. Kako je Protokolom uređen zajednički rad svih sistema u toku sprovođenja zakona i konvencija vezanih za nasilje u porodici, oblasti istraživanja su Centri za socijalni rad, zdravstvene i policijske službe, pravosudni organi i obrazovne institucije. Analizom su obuhvaćene i nevladine organizacije prepoznate kao dugogodišnji pružaoci servisa u ovoj oblasti. U cilju realizacije postavljenih zadataka izvršena je:

- ▶ Analiza ključnih ratifikovanih međunarodnih konvencija i nacionalnog institucionalno-pravnog okvira
- ▶ Analiza prikupljenih statističkih podataka o vrsti i broju evidentiranih slučajeva nasilja u porodici tokom 2013 godine u centrima za socijalni rad, upravi policije, državnom tužilaštvu, osnovnim sudovima, organima za prekršaje i NVO na teritoriji Crne Gore.
- ▶ Procjena postojećih kapaciteta u državnom i NVO sektoru i optimalnih kapaciteta za pružanje stručne podrške žrtvama porodičnog nasilja;
- ▶ Definisane su ključne problemske oblasti u socijalnoj i drugoj zaštiti i obezbijedene smjernice za planiranje i dizajniranje efektivnih programa zaštite od nasilja.
- ▶ Metodologija postavljena kao okvir za postizanje planiranih ciljeva sastojala se iz metoda i tehnika koje čine osnov participativnih istraživanja (Analiza statističkih podataka; Polustrukturirani intervjui; Anketna ispitivanja; Uporedna analiza). Upotrijebljene tehnike i instrumenti su obezbijedili sagledavanje problema iz različitih perspektiva (stručnjaci, krajnji korisnici) uključujući i ključne preporuke za poboljšanje administrativnih kapaciteta, koji su pretpostavka za sprovođenje zakona i umrežavanje nadležnih subjekata za primjenu legislative.

2. OPIS PROBLEMA

2.1 SOCIJALNI KONTEKST

Najčešći a najskrivljeniji vid nasilja kojim se osigurava moć i dominacija je nasilje muškaraca nad ženama u međupartnerskim odnosima. Istraživanja pokazuju da je nasilje muškaraca nad ženama posebno rasprostranjeno u zemljama u tranziciji kojima pripada i Crna Gora. Smanjena socijalna i ekonomska sigurnost, povećana nezaposlenost, siromaštvo i socijalni stres, koji prate proces tranzicije, pojačavaju agresivnost i nasilničke sklonosti muškaraca. Visok stepen tolerancije nasilja u skladu sa patrijarhalnim društvenim kontekstom u velikoj mjeri podržava nasilničko ponašanje. Naslijeđeno iskustvo patrijarhalne moći, koje muškarcima daje pravo na privilegovan položaj u odnosu na žene, još uvijek je jedna od ključnih prepreka u ostvarivanju prava na zaštitu od nasilja u porodici koje su žene spremne dugo da tolerišu. Prema podacima posljednjeg istraživanja, 68,6% žena doživjelo je neki oblik nasilja od muža - partnera. U Crnoj Gori većina žena još uvijek prihvata patrijarhalni model raspodjele moći u porodici i međupartnerskim odnosima. Sa tvrdnjom da dobra

žena uvijek treba da sluša muža, slaže se ili nije sasvim sigurno da se ne slaže preko 37% žena, dok četiri od pet žena misli da o problemima nastalim u porodici samo u porodici treba i razgovarati. Znatno broje žena, svih starosnih grupa, vjeruje, ili je neodlučno u uvjerenju, da postoje situacije u kojima muž ima razloga da primijeni nasilje nad ženom. Procenat žena koje ne prihvataju postojanje razloga za nasilje partnera“ je 57%. Ostale žene prihvataju mogućnost opravdavanja razloga nasilja partnera ili su neodlučne.¹

2.2 RASPROSTRANJENOST I VRSTE NASILJA U PORODICI

Centri za socijalni rad na nivou Crne Gore su u 2013 god. evidentirali 637 slučajeva nasilja od čega su u 42% slučajeva žrtve nasilja bila djeca, 45% žene, 8% osobe muškog pola i 4% stare osobe. Kroz rad multidisciplinarnih timova koji funkcionišu u 10 crnogorskih gradova obrađeno je 65% (385) predmeta koji pripadaju kategoriji porodičnog nasilja. U slučajevima porodičnog nasilja nad ženama i drugim punoljetnim članovima porodice najčešće je prepoznato emocionalno, fizičko i ekonomsko nasilje. Kod evidentiranog zlostavljanja djece od strane roditelja i bližih srodnika zabilježeno je fizičko, seksualno i emocionalno zlostavljanje djece, podsticanje na prosjačenje, razvijanje loših navika, neodržavanje ličnih odnosa sa djetetom sa kojim ne živi.

Najveći broj preduzetih mjera odnosio se na savjetovanje, zatim psihološku podršku, pravnu pomoć, procjenu rizika, izradu individualnog plana za žrtvu, određivanje voditelja slučaja², smještaj u postojeća skloništa i određivanje povjerljivog lica od strane CSR. Određivanje voditelja slučaja se ne odnosi na odrasle žrtve porodičnog nasilja, jer ovaj sistem rada koji zahtijeva postojeća reforma socijalne zaštite je tek u razvoju, već se isključivo odnosi na djecu i uglavnom u slučajevima sa elementima maloljetničke delikvencije. Imajući u vidu broj predmeta obrađenih u centrima za socijalni rad iznenađuje mali broj usluga povjerljivog lica³ pruženih od strane CSR (svega 9 na nivou Crne Gore), što može da bude pokazatelj nedostatka povjerenja klijenata u zaposlene u centrima, ali i nespremnosti samih službenika za ovakvo angažovanje, koje bi službenicima centra i onako opterećim mnogobrojnim i zahtjevnim zadacima predstavljalo dodatni napor.

1 Radulović, J., Ljaljević, A.: Rodna ravnopravnost i zdravlje žena u Crnoj Gori, Univerzitet Crne Gore, Filozofski fakultet – Nikšić, 2009.

2 “Voditelj slučaja” označava stručnog radnika koji je zadužen za konkretan slučaj koji utvrđuje i koristi potrebne profesionalne i druge resurse iz centra ili iz drugih ustanova i organizacija u lokalnoj zajednici

3 Povjerljivo lice - član 16 Zakona o zaštiti od nasilja u porodici. Žrtva može izabrati lice koje će prisustvovati svim postupcima i radnjama u vezi zaštite. Povjerljivo lice može biti član porodice, lice iz organa, ustanove, nevladine organizacije i drugog pravnog lica ili drugo lice u koje žrtva ima povjerenje. Povjerljivo lice ne može biti učinilac nasilja.

Uprava policije je tokom 2013. god. procesuirala 1198 slučajeva nasilja u porodici, od kojih je 164 kvalifikovano kao krivično djelo, a 1034 kao prekršaj. Ukupan broj žrtava u 2013. godini iznosio je 1350 lica. Od 190 žrtava krivičnih djela iz nasilja u porodici, 149 (78,4%) su osobe ženskog pola, 36 (18,9%) osobe muškog pola i 5 (2,6%) maloljetnih lica. Žrtve izvršenih prekršaja su 1160 lica, od čega 745 (64,1%) čine osobe ženskog pola, a 335 (28,9%) osobe muškog pola, kao i 80 (7%) maloljetnih lica. Podaci za 2013 pokazuju porast broja žrtava nasilja u odnosu na 2012 godinu za 100%. Nedostatak jedinstvene forme evidentiranja na nivou centara bezbjednosti otežava analizu podataka jer podaci po polnoj strukturi žrtava krivičnih djela i djela prekršaja ne daju jasnu sliku o međupartnerskom nasilju. Nedostaju pojašnjenja o rodbinskom odnosu između žrtve i počinioca nasilja zbog čega postoji rizik od pogrešne interpretacije postojećih podataka.

Državno tužilaštvo je u prethodnoj godini primilo krivične prijave protiv 211 lica. Iz ranijeg perioda prenijete su u rad prijave protiv 41 lica, što ukupno čini krivične prijave protiv 252 lica. Državni tužioci su imali ukupno u radu 238 optuženja, zajedno sa optuženjima koja su prenijeta u rad iz ranijih godina, dok je krivični postupak završen protiv 139 lica. U završenim krivičnim postupcima u 82% predmeta donešena je osuđujuća presuda, dok preostalih 18% čine oslobađajuće i odbijajuće odluke i obustava postupka. Podaci državnog tužilaštva odnose se na krivično djelo nasilje u porodici ili u porodičnoj zajednici iz člana 220 KZ-a.

Osnovni sudovi su u 2013. godini za krivična djela nasilja u porodici ili porodičnoj zajednici riješili 132 predmeta, od čega su 63 (48%) bile osuđujuće presude, 19 (14%) oslobađajuće i 50 (38%) odbijajuće. Visok nivo presuda oslobađajućeg i odbijajućeg karaktera, je osnov za pretpostavku blage kaznene politike, koju potvrđuju i vrste kazni u osuđujućim presudama, od kojih 64,5% čine uslovne kazne, 6,5% novčane, dok zaštitne mjere ili mjere bezbjednosti čini svega 5,5%. Nefunkcionisanje sistema u praćenju izvršenja uslovnih osuda i praksa nastavljanja vršenja nasilja u tom periodu, dovodi u pitanje svrhu izricanja ovolikog broja uslovnih kazni, posebno u situacijama kada je kontinuitet u vršenju nasilja prepoznat.

Organi za prekršaje su imali ukupno u radu 1129 predmeta, od čega je na kraju godine završeno 942 ili 83,43% predmeta, na način što su u 336 (35,5%) izrečene novčane kazne, kazne zatvora u 109 (11,5) predmeta, uslovnih osuda 114 (12%), opomena 89 (14%), obustava 15 (2,4%), vaspitnih mjera 4 (0,6%), odbačaja 7 (1%), oslobađajućih 225 (35%) i zaštitnih mjera 267 (41,5%). Najveć i je procenat predmeta gdje su izrečene zaštitne mjere, što je veliki pomak u odnosu na prethodne

godine, ali brine broj novčanih kazni koje čine 35,5% i broj oslobađajućih presuda kojih je 35%. Ukupno je bilo 970 žrtava nasilja, od čega 658 (67,83%) ženskog pola i 312 (32,17%) muškog pola. I u ovim podacima kao i kod ostalih institucija nedostaje prikaz rodbinskih odnosa između žrtve i počinioca nasilja. Podaci pokazuju da je oko 7% maloljetnih žrtava nasilja u porodici, što je pozitivan pomak u otkrivanju i sankcionisanju ovih djela.

Zdravstvene ustanove u Crnoj Gori su evidentirale svega 86 slučaja nasilja u porodici, od čega je 50 evidentirano u Ugrentnom centru a 36 slučajeva i 3 sumnje na porodično nasilje u ostalim zdravstvenim institucijama. Jedino u protokolima Urgentnog Centra porodično nasilje koje je prijavljeno od strane povrijeđene osobe se posebno obilježava, dok u drugim zdravstvenim službama takva praksa ne postoji.

Nevladine organizacije koje obezbijavaju servise podrške žrtvama nasilja u porodici su u prethodnoj godini imale 1025 klijentica. Besplatna pravna pomoć obezbijedena je za 528 klijentkinja. U Skloništa je smješteno ukupno 237 osoba od čega 152 žene i 174 djece. Psihološka pomoć je pružena za 126 klijentkinja od čega je 5-oro djece. Broj usluga povjerljivog lica je 248, dok je grupama samopodrške obuhvaćeno 80 žena.

3. ANALITIČKI OKVIR

3.1 MEĐUNARODNE KONVENCIJE KOJE JE CRNA GORA RATIFIKOVALA ODNOSNO ČIJA JE ČLANICA

Crna Gora je potpisnica mnogih međunarodnih pravnih akata Ujedinjenih nacija i Evropske unije. Neka od ključnih dokumenata značajnih za priznavanje nasilja u porodici kao kršenja ljudskih prava po međunarodnom pravu, kao i za priznavanje odgovornosti države za privatne akte nasilja nad ženama su:

- ▶ **Deklaracija Ujedinjenih nacija o ukidanju svih oblika nasilja nad ženama** (1993.) koja problematiku nasilja nad ženama sagledava kroz nejednakost muškaraca i žena u društvu.
- ▶ **UN Konvencija o eliminaciji svih oblika diskriminacije nad ženama CEDAW** (1979.) koja predviđa usvajanje zakona koji će osigurati zaštitu žena od svih oblika diskriminacije i

nasilja kao i pravnu zaštitu kroz afirmativne akcije i programe bez odlaganja – što znači da se ova obaveza države ne može odložiti uz opravdanje teške ekonomske situacije u zemlji.

- ▶ **Opšta preporuka br.19 Komiteta za eliminaciji svih oblika diskriminaciji nad ženama** iz 1992.godine UN DocA/47/38(1992) usvojena radi jačanja CEDAW-a kao sredstva za osiguranje ženskih ljudskih prava, posebno u oblasti nasilja u porodici.
- ▶ **Pekinška deklaracija i Platforma za akciju** (1995.) sadrži specifične aktivnosti vlada, nevladinih organizacija, privatnog sektora, obrazovnih institucija i drugih subjekata koje treba da preduzmu u cilju suprostavljanja i borbe protiv nasilja nad ženama, uključujući i jačanje nacionalnog pravnog sistema u vezi sa nasiljem u porodici.
- ▶ **Preporuka Rec (2002) 5 Odbora ministara državama članicama o zaštiti žena protiv nasilja** zahtijeva pravne reforme i efikasnu primjenu prava, zaštitu i podršku žrtvama, sprečavanje sekundarne viktimizacije, programe rehabilitacije za počinitelje, obrazovanje i usavršavanje državnih službenika, podizanja svijesti javnosti, uspostavljanje sistema prikupljanja podataka i monitoring na nacionalnom nivou.
- ▶ **Konvencija Savjeta Evrope o sprječavanju i suzbijanju porodičnog nasilja i nasilja nad ženama**, poznata kao Istambulska konvencija, predviđa zaštitu, prevenciju, procesuiranje, sankcionisanje i kreiranje politike rada u oblasti borbe protiv nasilja nad ženama i nasilja u porodici. Konvencija je potpisana 11. maja 2011. godine. Zakon o potvrđivanju donesen je 2013. god.

Međutim, ovi jako važni međunarodni akti nijesu konkretizovani u dovoljnoj mjeri u našem zakonodavstvu, iako na to obavezuje Ustav CG, koji navodi da „ratifikovani međunarodni ugovori i opšteprihvaćena međunarodnog prava imaju primat nad domaćim zakonodavstvom i neposredno se primjenjuju kada odnose uređuju drugačije od unutrašnjeg zakonodavstva“. Navedena definicija jeste afirmativna za međunarodne propise, ali je njena primjena u praksi otežana jer je uspostavljen primat nad „domaćim zakonodavstvom“, ali ne i nad Ustavom, kao i time što se neposredno primjenjuje samo ako se prethodno dokaže da „odnose uređuju drugačije od unutrašnjeg zakonodavstva“. Izostalo je i važno uputstvo da će se međunarodni dokumenti primjenjivati u skladu sa njihovim tumačenjem od strane međunarodnih tijela nadležnih za nadzor nad njihovom primjenom.⁴

⁴ Međunarodni standardi ljudskih prava i ustavnih garancija u Crnoj Gori (Akcija za ljudska prava, 2008)

3.2 NACIONALNI INSTITUCIONALNO - PRAVNI OKVIR

Ustav Crne Gore (2007.) u članu 8, stav 2 navedi da se diskriminacijom ne smatra primjena posebnih mjera koje su usmjerene na stvaranje uslova za ostvarivanje rodne ravnopravnosti, dok članovi 19. i 21. „garantuju pravo na zaštitu jednakih prava i sloboda i na pravnu pomoć“.

Krivični zakonik Crne Gore (2004.god.) članom 220 propisuje krivično gonjenje za djela nasilja u porodici koje se vrši po službenoj dužnosti. Izmjenama i dopunama (2013. god.), uvedene su dvije nove mjere bezbjednosti: zabrana približavanja (član 77a) i udaljenje iz stana ili drugog prostora za stanovanje (član 77b), koje se mogu izreći prema učiniocu krivičnog djela nasilje u porodici ili u porodičnoj zajednici.

Porodični zakon (2007.god.) ne sadrži odredbe o zaštiti od nasilja u porodici, ali definiše mogućnost suda da u slučajevima nasilja donese odluku o odvajanju djeteta od roditelja kao i ograničavanje prava djeteta da održava lične odnose sa roditeljem sa kojim ne živi.

Zakon o zaštiti od nasilja u porodici (2010.) propisuje sprečavanje i suzbijanje nasilja u porodici, zaštitu osoba izloženih nasilju i primjenjuje se u prekršajnom postupku. Zakon daje jasnu definiciju radnji koje predstavljaju nasilje u porodici i autentično tumačenje ko se smatra članom porodice, određuje institucije nadležne da se bave zaštitom od ove vrste nasilja (policija, Organ za prekršaje, Državno tužilaštvo, Centar za socijalni rad, zdravstvene ustanove...) i definiše mogućnost odabira povjerljivog lica. Ovim zakonom su po prvi put u naš pravni sistem uvedene zaštitne mjere za žrtve nasilja i to: udaljenje iz stana ili drugog prostora za stanovanje; zabrana približavanja; zabrana uznemiravanja i uhođenja; obavezno liječenje od zavisnosti; obavezni psihosocijalni tretman.

Zakon o besplatnoj pravnoj pomoći, usvojen 5. aprila 2011. godine, građanima/kama slabijeg imovinskog stanja obezbjeđuje pravo na besplatnu pravnu pomoć koje obuhvata pravno savjetovanje, sastavljanje pismena, zastupanje u postupku pred sudom, Državnim tužilaštvom, Ustavnim sudom, kao i u postupku za vansudsko rješavanje sporova. Zakonom je omogućeno pružanje besplatne pravne pomoći siromašnima i osjetljivim kategorijama, kao što su korisnici materijalnog obezbjeđenja porodice, djeca bez roditeljskog staranja, lica sa posebnim potrebama i žrtve krivičnog djela nasilje u porodici ili u porodičnoj zajednici.

Strategija zaštite od nasilja u porodici (2011.-2015.) sadrži ciljeve i mjere za unapređenje socijalne i druge zaštite, sa akcentom na podizanje nivoa svijesti građana/ki o problemu nasilja, razvoj programa prevencije nasilja; podršku porodici; razvoj normativnog okvira u oblasti zaštite; jačanje saradnje organa, ustanova, organizacija koja se bave zaštitom; sticanja novih znanja i vještina; unapređenje sistema za prikupljanje i analizu podataka i izvještavanje.

Protokol o postupanju, prevenciji i zaštiti od nasilja u porodici (decembar 2011.) definiše procedure i institucionalnu saradnju u toku sprovođenja zakona i konvencija, kao i obaveze preduzimanja potrebnih mjera za osiguranje organizovanosti, opremljenosti i edukovanosti dovoljnog broja specijalizovanih stručnjaka. Potpisnici protokola su Ministarstvo pravde, Vrhovni sud, Vrhovno državno tužilaštvo, Ministarstvo prosvjete i sporta, Ministarstvo zdravlja, Ministarstvo rada i socijalnog staranja, Uprava policije i Vijeće za prekršaje Crne Gore.

4. INSTITUCIONALNI I ADMINISTRATIVNI KAPACITETI JAVNIH USTANOVA I DRŽAVNIH ORGANA

4.1 CENTRI ZA SOCIJALNI RAD

Zakon o zaštiti od nasilja u porodici jasno definiše uloge i odgovornosti socijalnih službi i navodi ih kao ključne ustanove nadležne da se bave zaštitom žrtava porodičnog nasilja, koje su dužne da bez odlaganja pruže zaštitu i pomoć žrtvi i omoguće joj pristup svakom obliku pomoći i zaštite. Centri su dužni da obavezno prijave policiji učinjeno nasilje za koje saznaju u vršenju svoje djelatnosti, izrađuju i prate Plan pomoći žrtvi, formiraju multidisciplinarnе timove od predstavnika te ustanove, organa i službi lokalne uprave, policije, nevladinih organizacija i stručnjaka koji se bave pitanjima porodice, i po potrebi podnose zahtjev za određivanje zaštitne mjere. Ali kadrovska struktura centara često nije usklađena sa opisom poslova i zadataka, koji su im zakonom povjereni. Nešto manje od dvije trećine zaposlenih stručnih radnika pripada pomagačkim profesijama, četvrtinu zaposlenih čine pravnici a ostale profesije čine približno petinu zaposlenih među stručnim osobljem.

4.2 MULTIDISCIPLINARNI TIMOVI ZA PREVENCIJU I ZAŠTITU OD NASILJA U PORODICI

Ministarstvo rada i socijalnog staranja je iniciralo formiranje multidisciplinarnih timova u 10 centara za socijalni rad u Crnoj Gori, koji su tokom 2012/2013 god. formirani u Podgorici, Bijelom Polju, Beranama, Pljevljima, Plavu, Rožajama, Nikšiću, Baru, Kotoru i Herceg Novom. Nadležnost multidisciplinarnih timova proširena i na zaštitu djece od nasilja i izvan porodice, što zahtijeva ozbiljno preispitivanje uloga i odgovornosti članica/ova MT, same strukture tima, a posebno načina evidentiranja slučajeva razmatranih u radu tima. CSR Podgorica izradio je i usvojio Poslovnik o radu tima, dok je izrada sličnog pravilnika u ostalim centrima u toku.

Za procjenu rizika i individualni plan za odrasle žrtve još uvijek ne postoje precizne forme, već se članovi/ice tima oslanjaju na matrice uspostavljene u radu sa djecom žrtvama nasilja. Sastav tima, pored članova/ica iz Centara za socijalni rad čine i prestavnici policijskih i zdravstvenih službi, pravosudnih organa, obrazovnih institucija, nevladinih organizacija i lokalne uprave. Struktura timova nije u svakom centru odgovarajuća, što znači da u nekim centrima nedostaju predstavnici organa za prekršaje, službi hitne medicinske pomoći, lokalne uprave.

Posmatrajući profil profesionalne orijentacije članova/ica timova, može se zaključiti da još uvijek preovlađuje prisustvo stručnjaka koji se bave zaštitom djece, čije je prisustvo dragocjeno, ali iskustvo u radu sa djecom ne garantuje bezuslovno znanja i vještine potrebne u radu sa odraslima, što zahtijeva dodatno stručno osposobljavanje i edukacije.

4.3 UPRAVA POLICIJE

Zakonom o zaštiti od nasilja u porodici otvaraju se nove mogućnosti i ingerencije službenika policije u ovoj oblasti. Policijski službenik može radi otklanjanja opasnosti po fizički integritet žrtve narediti učiniocu nasilja udaljenje ili zabranu vraćanja u stan ili drugi stambeni prostor, koja ne može trajati duže od tri dana. Ministarstvo unutrašnjih poslova je donijelo **Pravilnik o bližem sadržaju i izgledu obrasca naređenja o udaljenju ili zabrani vraćanja u stan ili drugi prostor za stanovanje**, ali i pored toga je na nivou Crne Gore tokom 2013 godine izdato svega 40. naredbi, od čega je 32 izdato od strane ovašćenih policijskih službenika iz CB Nikšić, što pokazuje izuzetnu nespremnost policijskih službenika za korišćenje mjere koju je zakonodavac u cilju efikasnije zaštite, posebno u dijelu hitnosti, dao u nadležnost policijskim službenicima.

Posebnu ulogu službenici imaju u oblasti izvršenja zaštitnih mjera koje se izdaju/izriču radi sprečavanja i suzbijanja nasilja, otklanjanja posljedica učinjenog nasilja i otklanjanja okolnosti koje pogoduju ili podstiču vršenje novog nasilja. Donijet je *Pravilnik o bližem načinu izvršenja ove zaštitne mjere* koji nalaže procjenu ugroženosti žrtve, plan izvršenja i obavezu podnošenja izvještaja o sprovođenju zaštitne mjere. Iako su sudovi izdali 267 zaštitnih mjera, Uprava policije raspolaže podacima o 111, što stvara osnov za ozbiljnu sumnju u kvalitet praćenja izvršenja zaštitnih mjera.

Bez obzira na ingerencije policijskih službenika i zahtjevnost njihovih zadataka, trenutno samo u Podgorici postoje sistematizovana radna mjesta za oblast porodičnog nasilja u okviru Stanice kriminalističke policije za suzbijanje krvnih delikata i nasilja u porodici. Takođe, u samoj Upravi ne postoji sistematizovano radno mjesto za službenika koji bi imao ulogu „Glavnog inspektora za nasilje u porodici“. Uprava policije je trenutno u fazi izrade novog Pravilnika o unutrašnjoj organizaciji i sistematizaciji MUP CG, u okviru kojeg se planira uvođenje - sistematizacija radnog mjesta „inspektora za porodično nasilje“, što je veliki pomak u odnosu na trenutno stanje.

4.4 SUDOVI

Osnovni sud je ključna institucija za porodično nasilje u krivičnim predmetima. Zakonska regulativa kojom se uređuje rad sudova obezbjeđuje potrebne preduslove za adekvatan institucionalni odgovor na potrebe žrtava porodičnog nasilja. Zakon o sudovima i Sudski poslovnik (*“Sl. RCG”, br. 36/2004.*) pružaju mogućnost da u pojedinoj pravnoj oblasti bude raspoređen samo jedan ili dvojica sudija, što stvara uslove da se u crnogorskim sudovima formiraju organizacione jedinice i za oblast porodičnog nasilja. Poslovnik nalaže i da se predmeti svrstavaju prema hitnosti, prirodi i značaju. Kako ni Zakonom ni Poslovnikom ne postoji jasna kvalifikacija predmeta koji se u rad uzimaju po hitnom postupku, pretpostaviti je da je na sudijama da procijene, osim vremena prispjeća predmeta, prirodu i značaj samog predmeta. Sama priroda sporova iz porodičnih odnosa zahtijeva kraće rokove i hitnost u postupanju, ali u krivičnom zakonu je nasilje u porodici djelo kao i svako drugo i tu zakon ne obavezuje dodatno nikakvu hitnost.

Besplatna pravna pomoć

Službe za besplatnu pravnu pomoć u osnovnim sudovima, formirane su sredinom 2012. god. godinu dana nakon usvajanja Zakona o besplatnoj pravnoj pomoći. Međutim, besplatnu pravnu pomoć u skladu sa ovim zakonom, mogu koristiti samo žrtve **krivičnog** djela nasilja u porodici, što znači da peko 80% žrtava nasilja u djelima procesuiranim prema Zakonu o zaštiti od nasilja u porodici (koji

spada u domen prekršaja) nemaju šansu da ostvare ustavom zagaranтовani pristup pravdi. Bez obzira što je pravo koršćenja blagodeti ovog zakona ograničeno na ųrtve krivičnog djela nasilja u porodici, začudujuće je mali broj pružene pravne pomoći u ovoj oblasti (svega 12 na nivou CG), iako je već ina ųrtava nasilja u porodici slabog imovnog stanja, a često i korisnik materijalnog obezbjeđenja porodice ili nekog drugog prava iz socijalne zaštite.

U svim sudovima koji postupaju u krivičnim predmetima ustanovljena je **Sluųba za pružanje podrške oštećenima/svjedocima** u predmetima koji obuhvataju i nasilje u porodici ili porodičnoj zajednici. Zaposleni su u okviru podrške ųrtvi dužni dati informacije o krivičnom postupku, obezbjediti zaštitu tj. eliministi mogućnosti fizičkih nasrtaja ili vrijeđanja oštećenog/svjedoka prije i nakon suđenja u prostorijama suda. I ako je zadatak ove Sluųbe da obezbijedi sigurno i bezbjedno svjedočenje, predstavnici policijskih, zdravstvenih i socijalnih sluųbi uključenih u rješavanje problematike nasilja u porodici, nemaju saznanje o postojanju i ingerencijama ove sluųbe, a od strane sudova nijesu pokretane nikakve javne akcije informisanja šire javnosti.

4.5 TUųILAŠTVO

Tuųioci su obavezni poštovati rokove u toku postupka, uz dužno poštovanje pravila o prioritetima u rješavanju predmeta. Kodeks državno-tuųilacke etike, reguliše odnose sa sudom, policijom i drugim državnim organima koji učestvuju u predkrivičnom postupku, ali i odnos sa osumnjičenim i okrivljenim. U dijelu koji definiše odnos tuųioca i oštećenih stranaka jasno je naznačeno da tuųioci moraju posebnu pažnju obratiti na ųrtvu krivičnog djela i njene najbliže, te zaštititi njihove interese. Eticki kodeks nije skup nepromjenjivih pravila već se podvrgava periodičnom preispitivanju i svake dvije godine se ponovo razmatra, što ostavlja realnu mogućnost da se u njemu nađu preciznija uputstva o odnosu tuųioca prema ųrtvama porodičnog nasilja.

4.6 ORGANI ZA PREKRŠAJE

Organi za prekršaje su nosioci Zakona o zaštiti od nasilja u porodici s obzirom da se radi o zakonu koji nasilje procesuiru kroz prekršajni postupak. Ovim Zakonom se omogućava izdavanje hitnog naloga ili mjere/a za zaštitu, bilo od strane policije ili prekršajnog organa po prijavi ųrtve porodičnog nasilja. Zakon omogućava ųrtvi da i sama podnese zahtjev za izricanje zaštitne/ih mjere/a, ali mali broj ųrtava zna za ovu zakonsku pogodnost. Ali, stiče se utisak da se organi za prekršaje pretjerano oslanjaju na zakonske odredbe koje omogućavaju učešće drugih institucija u pribavljanju dokaza, te se zapostavlja izjava ųrtve koja bi trebalo da bude dovoljna da bi se izrekla zaštitna mjera.

4.7 KAPACITETI I SERVISI U NEVLADINIM ORGANIZACIJAMA

U 10 crnogorskih gradova funkcioniše 16 ženskih NVO koje obezbjeđuju servise podrške ženama i djeci žrtvama nasilja u porodici (Podgorica, Nikšić, Pljevlja, Bijelo Polje, Berane, Plav, Rožaje, Ulcinj, Bar, Kotor). Organizacije pružaju pravnu pomoć, psihosocijalnu podršku, posredovanje kroz institucije sistema, uslugu povjerljivog lica, programe samopodrške, siguran i bezbjedan smještaj. Organizacije ističu dobru međusektorsku saradnju prije svega sa policijom, zatim pravosudnim organima, zdravstvenim službama i centrima za socijalni rad.

Osnovni problem u njihovom radu je nedostatak finansijskih sredstava za održivost servisa, koji stvara ekonomsku nesigurnost angažovanih i često dovodi do osipanja kadra edukovanog za rad sa žrtvama nasilja. Bez obzira na tekući proces reforme sistema socijalne i dječije zaštite i tendenciju da se u skladu sa decentralizacijom finansiranje usluga podrške žrtvama nasilja velikim dijelom prebaci na lokalne samouprave, upitna je spremnost i praksa Vlade CG i Loklanih uprava da ulažu u vaninstitucionalne servise. Ovu tvrdnju potkrjepljuje podatak da iznos novčanih sredstava dobijen za rad ovih organizacija iz vladinih fondova za 2013. god. iznosi 2,4% ukupnog budžeta ovog fonda, dok je cjelokupni godišnji iznos dobijen iz fondova Lokalne uprave 2500 eura. Iako se u svom radu suočavaju sa teškoćama, najveći broj organizacija (94%) smatra da postojeći servisi treba da ostanu u „vlasništvu“ NVO-a, jer posjeduju potrebna znanja, iskustva, senzibilitet i edukovanost, klijetice im vjeruju više nego institucijama sistema, a servisi su specijalizovani, nezavisni i prilagođeni interesima žena.

5. SPROVOĐENJE PROTOKOLA O POSTUPANJU, PREVENCIJI I ZAŠTITI OD NASILJA U PORODICI U PRAKSI

5.1 POLICIJSKE SLUŽBE

Iskustva policijskih službenika u sprovođenju Protokola pokazuju da bez obzira na određeni napredak, još uvijek postoji niz problema u praktičkoj primjeni. Već prvi član Protokola koji definiše potrebu upućivanja na mjesto događaja i službenice ženskog pola je skoro nemoguće ispuniti jer u

policijskim stanicama ne postoji dovoljan broj zaposlenih žena. Lišenje slobode počinioca nasilja je takođe diskutabilno jer policajac na licu mjesta najčešće ne zna da li je počinjeno krivično djelo ili prekršaj. Zapisnik o uviđaju sačinjava se samo kod krivičnih djela nasilja u porodici a foto dokumentacija samo u „najtežim slučajevima“, u prekršajima nikada. Odredba o legalnom ili ilegalnom oružju, se primjenjuje često, ali procedure sa tužiocima i sudijom za istragu su komplikovane, što predstavlja problem, posebno kada se intervencije sprovode u večernjim časovima (22h-06h).

Razgovor sa žrtvom i učiniocem nasilja se uvijek vodi odvojeno, ali nasilnik i žrtva se veoma često sretaju u hodniku službenih prostorija. Službenici policije uglavnom upoznaju žrtvu nasilja s njenim pravima, obavještavaju je o mogućnostima odlaska u sklonište i vode u isto, ali se u praksi često dešava da se taj podatak odaje učiniocu nasilja ili drugim članovima porodice, što je suprotnosti sa odredbom 14. Protokola. Kada je u pitanju „analiza rizika“ i „siguronosni plan za žrtvu nasilja“ službenici policije nemaju jasnu predstavu šta oni predstavljaju, kako se izrađuju i sprovode, prije svega zato što još uvijek nemaju jasne instrukcije, kao ni forme/matrice za sprovođenje ovih zadataka.

Saradnja službenika policije se najviše ostvaruje sa centrima za socijalni rad i NVO koje se bave zaštitom žrtava nasilja. Ipak, bez obzira na poboljšanu saradnju sa CSR, prijave za nasilje koje se u vidu službenih zabilješki radnika Centra prosljeđuju policiji su često bez opisa događaja, datuma kad je djelo izvršeno, i sl. kao i podataka o preduzetim mjerama i radnjama iz nadležnosti te ustanove. Saradnje i komunikacije sa obrazovnim ustanovama skoro da nema. Od strane škola nema nijedna prijava nasilja u porodici nad djecom i mladima. Nakon nekoliko godina kvalitetnih izvještaja, ponovo se dešava da iz Službi hitne medicinske pomoći dolaze šturi izvještaji ljekara u vezi povreda, a ljekari iz UB KC CG ne daju kvalifikaciju težine povrede. Službenici policije tvrde da mnogi u lancu podrške nijesu upoznati sa sadržajem Protokola, a i kada jesu, često se stiče utisak da reaguju po principu „obavijestiti policiju i na taj način skinuti odgovornost sa sebe“.

Gljučni problemi unutar policijskih službi su nedovoljan broj policijskih službenika koji isključivo rade na zaštiti od nasilja u porodici, neobučenosť i nesenzibilisanost službenika JRM, neučenosť inspektora za izradu sigurnosnog plana za žrtvu nasilja i analize rizika učinioca nasilja, nekvalitetne zabilješke policijskih službenika koji prvi izlaze na mjesto događaja, nedostatak vozila za inspektore Jedinice za zaštitu od nasilja u porodici, nesenzibilisanost drugih službenika za rad, minimiziranje problematike nasilja u porodici i nepostojanje svih potrebnih podzakonskih akata.

Osnovni, optimalni kapaciteti neophodni za pružanje stručne podrške žrtvama porodičnog nasilja po mišljenju policijskih službenika su: uvođenje rada u paru (po mogućnosti muško-žensko), stalna obuka, zapošljavanje pravnika koji bi pred Područnim organom za prekršaje zastupao zahtjeve za pokretanje prekršajnog postupka koji se procesuiraju iz CB, bolja tehnička opremljenost, sistematizacija radnih mjesta, posebne prostorije u kojima bi se mogao obaviti neometan razgovor sa žrtvom, multisektorski sastanci, informativne brošura za žrtve nasilja; forme matrice rizika i plana podrške žrtvi.

5.2 SOCIJALNE SLUŽBE

Iskustva zaposlenih u centrima za socijalni rad u sprovođenju Protokola su uglavnom pozitivna, bez obzira na određene probleme na koje nailaze tokom postupanja. Službenici Centra odmah kontaktiraju žrtvu nasilja, nakon saznanja o nasilju, ali, ukoliko se radi o anonimnoj prijavi prvo se provjeravaju dobijene informacija, od čega zavisi dalji redosljed radnji. Uvijek se radi početna službena zabilješka, izvještaji i zapisnici se uredno rade i vode, ali nastavak preduzetih radnji i kontakata se ne bilježi uredno i vrlo se često izostavlja. Obaveza "žurnog formira spisa predmeta" se sprovodi na različite načine, nekada to rade stručni radnici a nekada članovi MT-a. Žrtva se upoznaje sa njenim pravima i načinima ostvarivanja prava, međutim kao problem se ističe da su žrtve često pod stresom i ponekad jednostavno zaborave šta im je rečeno, a u centrima ne postoje brošure sa jasnim upustvima za žrtvu koje bi olakšale proces. Ispitanici tvrde da sa „posebnom pažnjom“ omogućavaju žrtvi da ispriča sve činjenice vezane za porodičnu situaciju i nasilje, ali ostavljaju rezervu da se u nekim centrima dešavaju i drugačije situacije jer nijesu svi podjednako senzibilisani za ovu problematiku. U slučajevima porodičnog nasilja nad djecom, službenici centra se rukovode načelom najboljeg interesa djeteta, ipak kada je u nekom slučaju potrebno postaviti staratelja to se najčešće izbjegava uraditi. Sa službama zdravstvene zaštite i obrazovno-vaspitnim ustanovama jako je teško razviti Plan podrške za dijete - žrtvu nasilja. Procjena rizika se pravi uvijek kada su u pitanju maloljetna djeca, ali to nije slučaj sa odraslim osobama. Bez obzira na tvrdnje dijela ispitanika da se uvijek radi procjena rizika, mora se imati u vidu da za odrasle žrtve nasilja u porodici ne postoji jasna martrica koja bi olakšala rad službenicima centra. Dio ispitanika tvrdi da se uredno za svaku žrtvu nasilja u porodici pravi Sigurnosni individualni plan zaštite, dok drugi tvrde da se "plan u nekom obliku napravi ali on nikada nije u obaveznoj formi i nejasno je kako on treba da izgleda i šta sve treba da sadrži". CSR pravi kontakte sa ustanovama i organizacijama koje žrtvi mogu da pruže sklonište, ali većina nema tu mogućnost jer na nivou lokalnih zajednica takvi servisi ne postoje. Žrtva se priprema za sud uglavnom ukoliko postupak prate od samog početka i u toku su sa svim

preduzetim radnjama, ali se prati na sud samo ukoliko su pozvani u svojstvu svjedoka. Još uvijek u praksi ne postoji mogućnost određivanja jedne osobe za vođenje slučaja sa kojom će žrtva nasilja uvijek kontaktirati (voditelj/voditeljka slučaja).

Saradnja socijalnih službi sa drugim institucijama generalno se procjenjuje kao dobra, s tim što se navodi da se saradnja odvija uglavnom na inicijativu CSR. Procjena je da u ovoj komunikaciji najviše smeta neinformisanost predstavnika institucija o obavezama iz Protokola ali često i nedovoljna senzibilisanost stručnjaka koji rade u ovoj oblasti. Ipak, slučajevi se sada rješavaju mnogo brže i adekvatnije, posebno kada su u tu problematiku uključeni članovi MDT-a. Generalni je stav da su u procesu podrške najmanje uključene škole i zdravstvene službe. Škole izlaze u susret socijalnim radnicima kada ih kontaktiraju, ali se jako rijetko desi da im škola zvanično prijavi neki oblik nasilja nad djetetom. Takođe, ni zdravstvene ustanove socijalnim službama ne prijavljuju slučajeve nasilja, prijavljuju nasilje policiji, ali sa Centrima nemaju direktnu saradnju.

Ključni problemi unutar socijalnih službi su jako mali broj stručnih radnika koji rade na ovoj problematici, nedovoljno finansijskih sredstava za materijalne pomoći žrtvama nasilja u porodici, nepovjerenje žrtava u institucije sistema, suviše veliki obim posla stručnih timova u centrima, neupućenost žrtve nasilja o njenim pravima, nedovoljan broj socijalnih radnika i nerazvijeno urgentno hraniteljstvo neophodno za djecu žrtve nasilja. Problem pravi i to što se još uvijek nasilnik rijetko izdvaja iz porodice, "izdvaja" se žrtva što iziskuje obezbjeđivanje smještaja u skloništa kojih je u CG jako malo. Dio centara, posebno na sjeveru, nije tehnički obezbijeđen, nemaju prostoriju za razgovor sa žrtvama nasilja, ni poseban prostor za djecu. Takođe, ne posjeduju adekvatan prostor za sastanke multidisciplinarnih timova.

5.3 ZDRAVSTVENE SLUŽBE

Iskustva zdravstvenih radnika/ca u sprovođenju Protokola pokazuju da se nasilje u porodici, a posebno sumnja na nasilje, na nivou zdravstvenih službi rijetko prijavljuje, jer smatraju da im „ljekarska etika“ ne dozvoljava da to urade ukoliko to žrtva izričito ne zahtijeva. Ne postoji propisani formular o mogućim fizičkim povredama i o učiniocu nasilja, pa se stoga nasilje u porodici ne evidentira. Ljekari Hitne medicinske službe daju povrednu listu (ljekarski izvještaj) po službenoj dužnosti i bez naplate, ali još uvijek postoje slučajevi gdje se ove zdravstvene usluge naplaćuju, što je u suprotnosti i sa zakonom i sa Protokolom. O slučajima nasilja obavještavaju policiju a ne i socijalne službe, ali ni ostale službe zdravstvene zaštite, jer je odgovornost za dalji tretman na

samom pacijentu. Ljekari imaju ozbiljnu sumnju da je „obaveza da se nadležnim organima da na uvid dokumentacija i svi dostupni podaci od značaja za potrebu dokazivanja kažnjive stvari“, u suprotnosti sa Zakonom o zaštiti ličnih podataka i Zakonom o pravima pacijenata. Posebno je za njih problematično pitanje, da li te podatke dati socijalnim službama, te da li CSR pripadaju „nadležnim organima“. Ljekari nisu nadležni da donose odluke „obaveznog liječenja“ već sud, a u slučaju sumnje da je počinitelj osoba sa psihičkim smetnjama, opet na zahtjev suda, mogu predložiti mjeru upućivanja na psihijatrijsko posmatranje. U slučaju dolaska žrtve nasilja u službu hitne pomoći, još uvijek se nedovoljno obraća pažnja na povrede i cjelokupno stanje pacijenta koje bi moglo upućivati na nasilje u porodici. Izvještaji ljekara su šturi sa nedovoljno dobrim opisom povreda. Plan podrške za dijete - žrtvu nasilja se na nivou zdravstvenih službi ne radi. Izuzeci su samo onda kada ih socijalne službe uključe u proces podrške. Poseban problem je napuštanje zdravstvene ustanove o kojem se nadležne službe rijetko obavještavaju a žrtva nasilja nikada.

Saradnja sa drugim institucijama u sprovođenju Protokola morala bi se znatno poboljšati, posebno kada je CSR u pitanju. Pisma i zahtjevi od strane centra su često nejasni bez dobrog obrazloženja u koju svrhu se traže podaci o osobi, što imajući u vidu Zakon o zaštiti podataka i Zakon o zaštiti prava pacijenata može da bude ozbiljan problem. U MT ne postoji dovoljan broj pedijatar, ni predstavnika službi hitne pomoći. U Protokolu zbuñuje čl.2 koji kaže da zdravstveni radnik treba da ispuni propisani formular o mogućim povredama i o učiniocu nasilja, jer takav formular ne postoji. Većina zdravstvenih radnika/ca posebno u Hitnim službama, nema informaciju da u socijalnim službama postoje dežurni socijalni radnici dostupni 24h. Kada je u pitanju međusektorska saradnja u ovoj oblasti, ističu nevladin sektor, konkretno organizacije koje obezbjeđuju podršku žrtvama nasilja sa kojima se ljekari često konsultuju.

Ključni problemi unutar zdravstvenih službi su nepoznavanje sadržaja Protokola i potpuni izostanak edukacije koja bi im obezbijedila bliže sagledavanje i shvatanje problematike, bolje razumijevanje sopstvene uloge i uloge drugih sistema. Izabrani ljekari se ne uključuju dovoljno, ne prijavljuju sumnju na nasilje u porodici, a zbog nepostojanja propisanog formulara, niti šifre za evidentiranje, ne bilježe se ni prepoznati procesuirani slučajevi nasilja. Ljekari ističu kao problem težak način opisivanja povreda koje nijesu vidljive, kao na primjer šamar, čupanje za kosu i imaju dilemu kojem specijalisti uputiti takvog pacijenta.

Osnovni, optimalni kapaciteti neophodni za pružanje stručne podrške žrtvama porodičnog nasilja su bolja tehnička opremljenost službi Hitne pomoći, upustva za ljekare, kratka lako čitljiva, sa dobrim savjetima i brojevima telefona postojećih servisa podrške, jednostavna administrativna procedura evidentiranja nasilja koja nebi dodatno otežavala posao ljekarima. Neophodno je delegirati i dobro obučiti osobe na nivou zdravstvenih institucija koje će biti ključni kontakt zaposlenima u situacijama nasilja u porodici. Imajući u vidu da veliki broj zdravstvenih službi raspolaže sa svim neophodnim kapacitetima, kako ljudskim tako i prostornim, bolja organizacija rada i obuka stručnjaka bi dovela do kvalitetnije iskorišćenosti tih kapaciteta.

5.4 PRAVOSUDNI ORGANI

Iskustva zaposlenih u pravosudnim organima u sprovođenju Protokola pokazuju da se hitnost u postupanju i donošenju odluka obezbjeđuje kroz prekršajni postupak, ali načelo hitnosti ukoliko su krivična djela u pitanju se ne poštuje i predmeti uglavnom teku kroz redovni postupak. O pokretanju prekršajnog i krivičnog postupka, nadležnim centrima za socijalni rad se uvijek i obavezno dostavlja obavještenje, ali samo u slučajevima kada je žrtva nasilja dijete. U slučaju procjene da dolazak u sud žrtve nasilja može ugroziti bezbjednost žrtve od strane nasilnika, sud u koordinaciji sa policijskim službama obezbjeđuje njen nesmetan dolazak i boravak u prostorijama suda. Bez obzira što svi sudovi nemaju posebnu prostoriju za uzimanje iskaza žrtve, obezbjeđuje se fizičko izdvajanje žrtve od učinioca nasilja tokom davanja iskaza. Žrtva se uvijek obavještava o njenim pravima, ali u praksi te informacije su ograničene na prava u sudskom postupku, rijetko se informišu o ostalim mogućnostima, pa čak i o različitim postojećim servisima unutar Suda. U slučajevima potrebe u postupak se uvijek uključuju centri za socijalni rad, ali za sada uglavnom u svojstvu svjedoka, ali ne i u svojstvu voditelja/voditeljke slučaja

Saradnja tužilaštva, po prirodi poslova je najintenzivnija sa policijom, sa kojom ističu odličnu saradnju, ali i ne manje značajnu dobru komunikaciju sa drugim institucijama i nevladinim sektorom. Predstavnici Suda i Organa za prekršaje su suštinski zadovoljni komunikacijom ali smatraju da se informisanost različitih službi vezano za Protokol mora poboljšati kako bi se djela uspješnije otkrivala, a shodno tome i obezbjeđivali kvalitetniji materijalni dokazi. Istovremeno mišljenja su da sve službe, uključujući i one unutar pravosuđa moraju da iznađu model kvalitetnijeg informisanja klijenata o mogućnostima podrške, posebno u dijelu pravne pomoći.

Ključni problemi u pravosuđu su uglavnom trajanje sudskih postupaka kod krivičnih djela nasilja u porodici. Na izvještaje stručnih lica (vještaka) se u nekim slučajevima čeka mjesecima, a nalazi su nerijetko nejasni i zahtjevaju dodatna objašnjenja. Sudovi već izriču mjere obaveznog psihosocijalnog tretmana za koji postoji samo urađen Pravilnik ali ne i program po kojem bi se radilo sa nasilnikom. Takođe, kada je u pitanju zaštitna mjera obaveznog liječenja od alkoholizma ili narkomanije, zbog nedostatka kapaciteta u specijalnoj bolnici u Kotoru, na izvršenje se čeka u nekim slučajevima i više od godinu dana. Sve navedeno obesmišljava izrečene mjere, jer za svo to vrijeme, nasilnici i dalje zlostavljaju svoju porodicu i mnoga lica kojima su izrečene mjere zaštite se ponovo nađu u sudskim postupcima. Što se samog Protokola tiče, pravosudni organi uspijevaju da odgovore obavezama koje iz njega proističu. Ali, kada je u pitanju dio Protokola koji se tiče postupanja pravosuđa u slučajevima kada su u pitanju djeca žrtve nasilja, važno je napomenuti da postoje dvije tačke Protokola koji je jako teško realizovati i to: tačka 4 koja se odnosi na uzimanje iskaza od djeteta van službenih prostorija i tačka 17 koja nalaže zaštitu djece od medijske zloupotrebe, jer i ako pravosudni organi neće davati informacije medijima, nije isključeno da to neće učiniti prisutni advokati. Na nivou pravosuđa ne postoji lice formalno zaduženo za sprovođenje Protokola, ali postoje predstavnici različitih pravosudnih organa uključeni u rad Multidisciplinarnih timova, što je svakako od izuzetnog značaja.

Osnovni, optimalni kapaciteti neophodni za pružanje stručne podrške žrtvama porodičnog nasilja su obučeni i senzibilisani nosilaci pravosudnih funkcija, određivanje lica zaduženo za sprovođenje Protokola u svim pravosudnim organima, koje će se između ostalog baviti prikupljanjem i analizom podataka, kao i angažovanje službenika za praćenje i kontrolu tj. nadzor izvršenja zaštitnih mjera. Neophodno je poboljšati tehničku opremljenost sudova pomagalima za ispitivanje djece žrtava porodičnog nasilja. Odjeljenje sudske prakse Vrhovnog suda da prikuplja odluke važne za sudsku praksu u oblasti porodičnog nasilja a Centar za edukaciju sudija, u saradnji sa NVO da dizajnira i sprovodi program obuke za sudije i tužioce;

5.5 OBRAZOVNE INSTITUCIJE

Iskustva zaposlenih u obrazovnim institucijama ukazuju na ozbiljne probleme u implementaciji Protokola. U slučaju sumnje na nasilje u obrazovnim ustanovama tvrde da odmah preduzimaju profesionalne mjere i obavljaju razgovor sa djetetom saglasno etici i struci, o čemu se sačinjava izvještaj koji članovi stručne službe upisuju u svoj Dnevnik rada. Obaveza prijavljivanja sumnje na nasilje policiji, za stručnjake iz obrazovnih institucija je vrlo je diskutabilana. Vrlo često se desi

da dijete pomene u toku savjetodavnog razgovora da ima jednog roditelja, obično oca, koji ga/je maltretira i to obično bude psihičko nasilje, ili je otac alkoholočar, ali u tim slučajevima se obično ništa ne radi već se razgovara sa drugim (nenasilnim) roditeljem. U slučaju sumnje na nasilje uprava ustanove pismeno obavještava centar za socijalni rad samo ako je u pitanju fizičko nasilje. U svim ustanovama postavljena je kutija sa nazivom „Svi moji problemi“ koja je stavljena na mjesto dostupno djeci, ali sumnjaju da je ovaj model primjenjiv u srednjim školama. Kod člana koji nalaže da stručnjaci ustanove „drugim institucijama omoguće uvid u službene zabilješke“ ispitanici postavljaju pitanje kojim to institucijama? Pedagozi na primjer, svoj dnevnik rada pokazuju samo svom nadzorniku i to da pogleda da ga imaju i ništa više. Plan podrške u ustanovi obično sadrži psiho-socijalnu podršku kao i mjere poboljšanja obrazovno-vaspitnog postignuća (dopunska nastava, individualan rad i vannastavne aktivnosti) U dogovoru sa službama socijalne i zdravstvene zaštite rijetko se razvija Plan podrške za dijete žrtvu nasilja. Školskim profesionalcima nije jasno sa kim iz službe CSR - da li je to multidisciplinarni tim ili neki poseban specijalizovani tim na nivou centra?

Saradnja sa drugim institucijama po procjeni školskih profesionalaca nije na zadovoljavajućem nivou. Zaposleni u obrazovnom sistemu su izuzetno rijetko uključeni u programe obuka koje organizuju različite institucije i nevladine organizacije, a tiču se nasilja u porodici i principa međusektorske saradnje. Stručne službe najčešće kontaktiraju sa centrima za socijalni rad, od kojih se očekuje dalji angažman pa i prijavljivanje samog nasilja policiji. Stiče se utisak da se obrazovni sistem, bez obzira na svoj preventivni i vaspitni značaj, našao negdje po strani, izvan glavnog toka dešavanja i ostao na neki način „zatvoren“, na način da se tokom rješavanja problema više oslanja na sebe i svoje kapacitete nego na ostale institucije u lancu podrške. Sa ostalim akterima poput nevladinih organizacija postoji saradnja na različitim programima, ali ta saradnja nije strateška već se uglavnom zasniva na projektnim aktivnostima.

Ključni problemi unutar obrazovnih institucija su nepostojanje lica zaduženog za sprovođenje Protokola, neinformisanost stručnog osoblja a posebno nastavnog kadra. Brine ih sam način postupanja, posebno „kada i ko prijavljuje moguće nasilje posebno ako dijete ne želi da se za to zna“. Generalni utisak jeste da postupanje zavisi od modela samog direktora/ice, njegove zainteresovanosti, motivacije i stavova prema nasilju u porodici, kao i stepena autonomije koji ima stručna služba. Prepoznata je pojava da se ovoj problematici još uvijek prilazi kao tabuu, da nije postignut zahtijevajući nivo aktivnog, građanskog i profesionalanog odnosa prema ovoj pojavi. Još uvijek je uvriježen stil da se na druge prenosi odgovornost, prebacuju očekivanja, zauzima stav „neprijemčivanja“ problema, „nezamjeranja“.

Osnovni, optimalni kapaciteti neophodni za pružanje stručne podrške žrtvama porodičnog nasilja su prije svega osobe obučena za rješavanje problematike, ali i praćenje i evidentiranje pojave nasilja u školi u svim svojim oblicima. Većina ispitanika smatra da obrazovne institucije posjeduju sve potrebne kapacitete za pružanje stručne podrške žrtvama porodičnog nasilja, osim sa izuzetkom manjih škola koje po zakonu u odnosu na „mali“ broj učenika ne mogu imati psihologa. Smatraju da uz dodatne edukacije, jačanje saradnje sa drugim relevantnim sektorima i obezbjeđivanjem edukativno/informativnog materijala namijenjenog nastavnicima i djeci mogu dati svoj puni doprinos većoj sigurnosti i zaštiti i prevenciji nasilja u porodici.

6. ZAKLJUČCI

Analizom postojećih ratifikovanih dokumenata, zakona, strategija i pravilnika, može se sa sigurnošću ustvrditi postojanje snažnog utemeljenja za uvođenje politika i procedura u skladu sa međunarodnim standardima. Međutim, sva ova značajna međunarodna dokumenta, nacionalno zakonodavstvo, strategije i protokoli koji tretiraju problem nasilja u porodici, u praksi su još uvijek teško primjenjivi. Kako je Protokolom o postupanju, prevenciji i zaštiti od nasilja u porodici, uređen zajednički rad svih sistema u toku sprovođenja zakona i konvencija vezanih za nasilje u porodici, opšti je utisak da nadležne institucije nijesu ovom značajnom dokumentu posvetile neophodnu pažnju. Osim članova multidisciplinarnih timova, ostali službenici, posebno u zdravstvu i obrazovanju, nijesu upoznati sa sadržajem Protokola i obavezama koje iz njega proističu. Ni u jednoj instituciji Protokol se ne nalazi na vidljivom mjestu, niti je dostupan zaposlenima ni potencijalnim klijetima. Istovremeno ni u jednoj instituciji, osim centara za socijalni rad ne postoji lice zaduženo za njegovo sprovođenje.

Bez obzira što Protokol zahtijeva hitno uspostavljanje saradnje svih subjekata u zaštiti žrtava porodičnog nasilja, očigledno je da nadležne institucije smatraju da je formiranje multidisciplinarnih timova u 10 crnogorskih gradova dovoljno za efikasan odgovor na nasilje, pri čemu se ozbiljno zanemaruje činjenica da su multidisciplinarni timovi samo karika u lancu podrške, te da ne mogu biti efikasni ukoliko ostali službenici sa kojima žrtve prvo stupaju u kontakt (posebno u fazi akutnog nasilja), ne posjeduju potrebna znanja i vještine neophodne za rad u oblasti porodičnog nasilja.

Analiza je pokazala da bez obzira što Protokol naizgled daje jasne smjernice postupanja, među službenicima relevantnim za njegovo sprovođenje postoji niz nejasnoća u vezi sa pojedinim članovima. Ispitanici iz svih institucija navode dobru međusektorsku saradnju, ali se često previđa činjenica da to što institucije „dobro saraduju“ ne garantuje uvijek efikasnu intervenciju i zadovoljnog korisnika, posebno ako predstavnici tih institucija nijesu u dovoljnoj mjeri senzibilisani za problematiku. Stav velikog broja stručnjaka da „bez greške“, potpuno stručno i profesionalno obavljaju svoj posao može biti ozbiljna barijera za sticanje, tj. primanje novih znanja i vještina u skladu sa savremenim metodama rada.

U velikoj mjeri je primjetan nedostatak osnovnih alatki za efikasno postupanje kao što su jasna matrica za procjenu rizika i izradu individualnog plana za podršku odraslim žrtvama nasilja u porodici. Teškoće u sprovođenju Zakona, nejasni Pravilnici, Zakon o besplatnoj pravnoj pomoći koji žrtvama nasilja u porodici uskaraćuje ustavom zagarantovani pristup pravdi, nepostojanje programa za sprovođenje mjera psihosocijalnog tretmana, neiskorišćenost kapaciteta službe za zaštitu svjedoka/oštećenih u crnogorskim sudovima, neefikasnost pravosudnog sistema pri kršenju zaštitnih mjera, blaga kaznena politika, predstavljaju dodatne ključne otežavajuće okolnosti koje onemogućavaju efikasnu podršku žrtvama.

Ključne problemske oblasti koje usporavaju proces implementacije u praksi, prepoznate tokom istraživanja su: nemogućnost kvalitetnog praćenja pojave porodičnog nasilja u svim njegovim oblicima, neusklađenost zakona i institucionalnih mehanizama za sprovođenje Zakona i Protokola, nedostatak kapaciteta svih relevantnih službi za rad sa žrtvama nasilja u porodici u skladu sa Protokolom, visok stepen neinformisanosti kako zaposlenih u institucijama sistema tako i samih žrtava o postojećim mehanizmima pomoći i zaštite, nedovoljna koordinacija i umreženost subjekata relevantnih za primjenu legistative kao i nepostojanje odgovarajućih servisa podrške žrtvama na lokalnim nivoima i neadekvatna prateća infrastruktura postojećih.

7. PREPORUKE (PREDLOG MJERA)

Praćenje pojave nasilja u porodici

- ▶ Dizajnirati uniformne upitnike jedinstvene za sve CSR, centre bezbjednosti, pravosuđe, zdravstvene službe i nevladin sektor, koji će osim broja i vrste djela obuhvatiti i podatke o polu, starosnoj dobi, rodbinskom odnosu, dužini trajanja postupaka i sl. te izraditi jedinstvenu bazu podataka o nasilju u porodici.
- ▶ U skladu sa čl.12 Protokola najmanje dva puta godišnje nadležnim ministarstvima podnositi izvještaje

Zakoni i institucionalni mehanizami

- ▶ Hitno pripremiti predloge za izmjenu Zakona o besplatnoj pravnoj pomoći koji će se odnositi na uvođenje mogućnosti besplatne pravne pomoći za sve žrtve nasilja u porodici, definisanje pravne pomoći za koju će biti nadležne NVO, kao i uspostavljanje fonda na nivou države za finansiranje pravne pomoći na nivou NVO.
- ▶ Pokrenuti inicijativu za izmjenu Krivičnog zakonika u dijelu izricanja zaštitnih mjera kao što je to definisano u Zakonu o zaštiti od nasilja u porodici i u dijelu definisanja pojma „grubo nasilje“ iz čl.220,
- ▶ Izraditi „uniformni“ Poslovník/Pravilnik o radu MT, kako bi se obezbijedio istovjetni postupak u radu multidisciplinarnih timova na nivou svih centara za socijalni rad.
- ▶ Na nivou pravosuđa stvoriti uslove za sprovođenje tačke 4 Protokola, koja se odnosi na uzimanje iskaza od djeteta van službenih prostorija,
- ▶ Na osnovu Protokola izraditi individualne forme postupanja za sve institucije u sistemu zaštite;
- ▶ Dizajnirati program psihosocijalnog tretmana nasilnika u cilju efektivnog sprovođenja postojeće zaštitne mjere.
- ▶ Izvršiti pritisak na Odjeljenje sudske prakse Vrhovnog suda da prikuplja odluke važne za sudsku praksu u oblasti porodičnog nasilja;

Kapaciteti

- ▶ Obezbijediti odgovarajuću obuku za službenike svih institucija koje u svom svakodnevnom izvršenju zadataka dolaze u kontakt sa žrtvama nasilja u porodici.
- ▶ Uvesti sistematizovana radna mjesta na nivou centara bezbjednosti i organa bezbjednosti, kao i mjesto glavnog inspektora za nasilje u porodici na nivou Uprave policije.
- ▶ Obezbijediti obuku i mogućnost razmjene iskustva službenika policije o izdavanju „Naređenja o udaljenju ili zabrani vraćanja u stan ili drugi prostor za stanovanje“, kao i obuku o načinu izvršenja zaštitnih mjera udaljenje iz stana, zabrane približavanja i zabrane uznemiravanja i uhođenja žrtve i izvještavanju o sprovedenom nadzoru.
- ▶ Centri za socijalni rad da izvrše analizu strukture profesionalnog kadra u multidisciplinarnim timovima i uključe nedostajuće profesionalce sa iskustvom u oblasti porodičnog nasilja.
- ▶ Dizajnirati Matricu rizika i Plan pomoći za odrasle žrtve nasilja u porodici.
- ▶ Izvršiti pritisak na Ministarstvo zdravlja da obezbijedi kapacitete neophodne za sprovođenje zaštitnih mjera obaveznog tretmana zavisnika
- ▶ Sve institucije koje se bave zaštitom od nasilja u porodici da formiraju svoje interne timove koji će i preventivno djelovati;
- ▶ U okviru Centra za edukaciju sudija, u saradnji sa NVO dizajnirati program obuke za sudije i tužioce
- ▶ U svim crnogorskim gradovima formirati multidisciplinarne timove i ojačati njihove tehničke kapacitete
- ▶ Obezbijediti kontinuiranu finansijsku podršku NVO pružaocima usluga iz vladinih budžeta

Informisanost

- ▶ Obezbijediti potrebne informacije i edukaciju službenika svih institucija o načinu i mogućnostima korišćenja besplatne pravne pomoći i Službi za podršku oštećenima/svjedocima u crnogorskim sudovima.
- ▶ Štampati i distribuirati liflete/informatore u svim službama i postaviti ih na vidno mjesto kako bi bili dostupni korisnicima, sa adresarom ustanova, organizacija i drugih institucija kojima se žrtve nasilja mogu obratiti kako bi im bila pružena pomoć;
- ▶ Izraditi brošuru dobre prakse za ljekare, sa preciznim upustvima koje bi trebale sačinjavati i najčešći opis povreda žrtve, postupanje kada žrtva nema vidljivih povreda, a bila je psihički maltretirana ili izglednjivana, redosljed postupanja institucija kao i pitnja koja bi trebalo postaviti žrtvi kako bi ona što lakše potvrdila izvršeno nasilje nad njom.

- ▶ Obavezno na vidnim mjestima u ambulancama i dispečerima istaknuti broj telefona Centra za socijalni rad i NVO koje se bave zaštitom od nasilja u porodici
- ▶ Obezbijediti edukativne publikacije, brošure, postere namijenjene nastavnicima i djeci žrtvama i potencijalnim žrtvama nasilja;

Koordinacija i umrežavanje

- ▶ Na nivou svih institucija delegirati osobu za praćenje Protokola
- ▶ Svaka od institucija i organizacija u lancu zaštite od nasilja u porodici da prvenstveno dobro razradi procedure postupanja i precizno definiše djelokrug svog rada.
- ▶ CSR da daju povratne informacije policiji o preduzetim mjerama po obavještenjima koje dobijaju iz policije u vezi svakog konkretnog događaja po kome se postupa;
- ▶ Poboljšati saradnju obrazovnih i zdravstvenih ustanova sa CSR kao ustanovom koja koordiniše planom zaštite žrtava nasilja;
- ▶ Minimum jednom u 6 mjeseci obezbijediti sastanke međusekorskog karaktera kako bi se razmijenila znanja, iskustva i primjeri dobre i loše prakse;

LITERATURA

- » *Radulović, J., Ljaljević, A.: Rodna ravnopravnost i zdravlje žena u Crnoj Gori, Univerzitet Crne Gore, Filozofski fakultet - Nikšić, 2009.*
- » *Međunarodni standardi ljudskih prava i ustavne garancije u Crnoj Gori, Akcija za ljudska prava, 2008.*
- » *Deklaracija Ujedinjenih nacija o ukidanju svih oblika nasilja nad ženama (A/RES/48/104).*
- » *Konvencija o eliminaciji svih oblika diskriminacije žena, (CEDAW), 1997.*
- » *Opšta preporuka br.19 Komiteta za eliminaciji svih oblika diskriminacije nad ženama 1992.godine UN DocA/47/38(1992)*
- » *Pekinska deklaracija i Platforma za akciju (1995.)*
- » *Preporuka Rec (2002) 5 Odbora ministara državama članicama o zaštiti žena protiv nasilja*
- » *Konvenciju Savjeta Evrope o sprječavanju i suzbijanju porodičnog nasilja i nasilja nad ženama - Istambulska konvencija (2011. god.)*
- » *Zakon o potvrđivanju Konvencije Savjeta Evrope o sprječavanju i suzbijanju nasilja nad ženama i nasilja u porodici (2013. god. "Službeni list Crne Gore - Međunarodni ugovori, broj 4/2013".)*
- » *Ustav Republike Crne Gore 2007.*
- » *Krivični i prekršajni zakon CG ("Sl.list RCG" br.30/2002-2024-2013)*
- » *Porodični zakon RCG Službeni list Crne Gore "Službeni list Republike Crne Gore, broj 1/2007"*
- » *Zakon o zaštiti od nasilja u porodici („Službeni list CG“, br.46/10)*
- » *Zakon o besplatnoj pravnoj pomoći "Službeni list Crne Gore, broj 20/2011*
- » *Strategija zaštite od nasilja u porodici 2011. (2011-2015)*
- » *Protokol o postupanju, prevenciji i zaštiti od nasilja u porodici, decembar 2011.*
- » *Informator za svjedoke/oštećene - žrtve trgovine ljudima, trgovine djecom radi usvojenja i nasilja u porodici ili porodičnoj zajednici (Vrhovni sud, Podgorica, 2011.*
- » *Zakon o socijalnoj i dječijoj zaštiti "Službeni list Crne Gore, broj 27/2013"*
- » *Kodeks policijske etike („Sl. List RCG“, br. 01/06 od 10.01.2006.)*
- » *Zakon o sudovima ("Sl. list RCG", br. 05/02)*
- » *Sudski poslovnik ("Službeni list RCG", br. 36/2004.)*
- » *Zakon o edukaciji (027/06-20)*
- » *Zakon o zaštiti prava na suđenje u razumnom roku. (SU-SK Broj 01-511/10)*
- » *Zakon o državnom tužilaštvu ("Službeni list RCG", br. 69/2003 i 40/2008).*
- » *Kodeks sudijske etike ("Sl. list CG", br. 13/08),*
- » *Kodeks državno-tužilačke etike, 10. novembra 2006.*
- » *Izveštaj Vrhovnog državnog tužioca Crne Gore za 2013.*

TESTIMONIAL

This research provided data that will have a direct impact on public institutions that are crucial for the promotion and application of laws and procedures that define domestic violence. Policy paper provided the necessary tools of pressure on the government to fulfill obligations in accordance with national and international human rights standards and the creation of conditions for the access to justice without discrimination. Policy paper also provided key recommendations for improving the administrative capacity, which are a prerequisite for the implementation of laws and networking of entities responsible for the implementation of the legislation.

Immediately after the preparation of the Policy paper, the part covering the analysis of the work of Multidisciplinary teams has been taken by Ministry of Labour and Social Welfare and used for their Annual Report to the Government. One segment of the Policy paper covering the work of the police in accordance with the Protocol has been used for designing the training for police officers, which SOS Podgorica in cooperation with the Police and OSCE will implement in the second half of 2014. in 21 municipalities in Montenegro. Also, Police Directorate took complete analysis from Policy paper connected to the work of the police services for victims of violence to use it in their future work and planning of police operations related to domestic violence.

Part of the Policy paper focuses on the work of educational institutions, and will be used to produce a Guide for teachers, that will be an integral part of the Training program for teachers whose accreditation is expected by the end of the year. Carriers of these activities are SOS Podgorica, the Ministry for Human and Minority Rights, Department of Education and the Center for Vocational Education.

The results of the research made for this Policy paper are already included as an integral part of the *Report on the Implementation of Strategy on protection from violence for year 2013*, that Ministry of Labour and Social Welfare presented to the government in September 2014.

During the preparation of this research and Policy paper, the cooperation with government and institutional representatives has improved, which is very important having in mind that the findings and presentation of facts about current situation and the relation of the government towards the issue of domestic violence were not so positive. However, willingness of managers and employees in all relevant departments for cooperation was high, which resulted in the good quality of the collected data and information provided, as well as good proposals for practical policy improvement that has been given by the professionals - the key actors in the protection of domestic violence.

ABOUT THE AUTHORS

Biljana Zeković is the Executive director of SOS hotline for women and children victims of violence – Podgorica, 18 years of experience in working with victims of domestic violence, the experience of facilitating the conflict, years of experience in software development inter-professional cooperation through institutions of the system and NGOs. She is author of: Educative program (domestic violence) for the officials of Ministry of interior, Judiciary, Centers for social work, Health department, media and local government: Program of help and support for woman inmates; Program of help and support for the abused woman. Author of publications: Manual for facilitators of self-support groups; Manual on working with abused persons for health workers; Manual for trainers in the field of protection against family violence; Manual for the officers in working with victims of family violence; Guide to the protocol of dealing with cases victims of family violence

Contact: biljazekovic@gmail.com

Aleksandra Gligorovic is the Executive director actively involved in civil society work since 1998. when started in NGO Center for girls “Ksenija”. At the moment: Training manager in SOS telephone for women and children victims of violence – Podgorica; SALTO South East Europe accreditor for European Voluntary Service; Regional advisor in Fund for Active Citizenship; member of SEEYN training pool, UNDP Consultant for development of Local Social Inclusion Plans/Plans for Social Services Development for 15 municipalities in Montenegro (2011-2014) etc. Proud on being Coordinator of National voluntary service in ADP – Zid until 2011. when also member of Steering Committee for development of 1st National Action Plan for Youth in Montenegro and included in development of National Strategy on Voluntarism and Law on Voluntary work. Areas of expertise: policy development, capacity building, social inclusion, social services, gender.

Contact: aleksandragligorovic.mne@gmail.com

MISSING LINKS: HOW KOSOVO'S INSTITUTIONS AND SOCIETY ARE FAILING CIVILIAN WAR FAMILIES IN MITROVICA

Nora Ahmetaj
Hana Marku
Rudina Hasimja



Centre for Research,
Documentation and Publication



SUMMARY AND RECOMMENDATIONS

The Centre for Research, Documentation, and Publication's (CRDP) report titled *"Missing Links: How Kosovo's institutions and society are failing civilian war families in Mitrovica,"* contains the results of CRDP field research with civilian war widows in Mitrovica and their children, municipal officials, representatives of the local NGO sector, officials at the Ministry of Labour and Social Welfare, as well as experts in the fields of psychology and social work in Kosovo.

By focusing on civilian war widows as a demonstrably vulnerable group in Kosovo's society, CRDP concludes that their needs for adequate shelter, economic independence, and psychosocial support places them at risk to experience ongoing poverty and potential mental health problems. The report documents the problems that exist at the municipal level which make providing social services for civilian war widows difficult, such as the lack of funds for Mitrovica's Directorate of European Integration and Social Welfare, the lack of support for gender budgeting and gender mainstreaming within local government, and the decline of social services offered by the NGO sector in Mitrovica.

Although the policies and social welfare schemes of the Ministry of Labour and Social Welfare provide the main source of income for civilian war widows, there are no long-term strategies in place for the reduction of poverty on a national level, nor are there affirmative action policies at the central level that would contribute to the economic independence of female war victims as a whole.

The lack of institutional support for a sensitive group such as civilian war widows creates conditions in which their poverty and untreated psychological trauma could

potentially be “passed on” to their children. In CRDP interviews with civilian war widows, their concerns about their children’s education and future employment were documented. These concerns were echoed in CRDP interviews with the children of civilian war widows, as well as their need for communication on their family loss and the way they feel perceived by Kosovar society.

CRDP puts forth the following recommendations as a practical starting point for institutions to meet the needs of civilian war widows and their children:

▶ **Use NGO expertise in implementing and drafting policy**

The expertise of the NGO sector is not utilized as well as it could be by municipalities. CRDP believes there is room for greater cooperation and coordination of services. For example, in the municipality of Mitrovica this could take on the form of a formalized working group on poverty reduction, created in coordination with the directorate for social welfare and NGOs that deal with local welfare cases.

▶ **A coordinated, national policy on poverty reduction**

There is a lack of clear policy on social welfare and poverty reduction on a national level, which Kosovo sorely needs. Policy of this kind could be sponsored by the Ministry for Labor and Social Welfare, in coordination with the Ministry for Economic Development and with the support and input social welfare directorates of Kosovo’s municipalities and sympathetic parliamentary deputies.

▶ **Policies that generate loans for low-income women**

CRDP respondents’ lack of access to capital had a direct impact on their economic well being. Financial institutions, in cooperation with the Ministry for Economic Development and the Ministry of Labour and Social Welfare can create a legal framework to enable a system of loans that will allow them to start a small to medium-sized business.

► **An increased focus on psychotherapy treatment in the public health sector**

Municipalities need an increased municipal budget for mental health services, and the Ministry of Health needs to provide a policy focus on psychotherapy treatment in the public sector which can provide ongoing support to all Kosovar citizens who need it - and particularly those touched by war.

► **The inclusion of Article 8 of UN Resolution 1325 into Kosovo's National Action Plan for the Implementation of UN Resolution 1325**

Although Kosovo's National Action Plan for the Implementation of UNSCR 1325 provides comprehensive support for women in Kosovo's police and security sector, as well as survivors of wartime rape. The National Action Plan should also cover the requirements of Article 8 of UNSCR 1325, which would provide a space for Kosovo's civilian women, and particularly women who were directly exposed to war, to have a say in Kosovo's reconstruction process and how Kosovo's institutions should address their needs.

► **More research on the mental, physical and economic wellbeing of the children of war victims**

This paper attempts to not only address the wellbeing and institutional treatment of civilian war widows, but also to analyze the potential consequences of war on their children. Comprehensive research on the health and education prospective of the children of war survivors in Kosovo must be conducted in order to draft and implement policies that are greater suited to meeting their needs. Psychosocial support and greater access to education are a must.

1. INTRODUCTION

Kosovo's war victims¹ make up a sizeable amount of the population. Nearly half of the population has been affected² in one way or another by the conflict of 1999, and adequate measures to provide for their psychosocial needs have yet to be met by Kosovo's institutions. According to the Humanitarian Law Center, approximately 13,526 deaths and/or disappearances occurred during the conflict, spanning January 1, 1998 and the beginning of 2000³.

The number of disappearances has decreased to approximately 1,700, but the number of surviving family members who continue to live with the trauma of being war survivors has not. In CRDP's 2013 monitoring report on the implementation of Law Nr.4/L-054⁴, CRDP estimated that approximately 78,000 Kosovars have been exposed to violence during the conflict and can be classified as war victims in Kosovo's social welfare schemes. Our research has established that while the needs of Kosovars overall are great, war victims, both civilian and otherwise, are a sensitive portion of the population that needs not only financial support, but a special system of social support that includes preference for employment and psychosocial services.

Institutional support for war victims is comprehensively covered by Law Nr.4/L-054, and is also covered by the Law on Missing Persons, and the Law on the Kosovo Liberation Army Veterans. Law Nr.4/L-054 was adopted in 2012, and introduced a variety of additional services and benefits not provided by previous UNMIK legislation. This law was recently amended in March 2014 to include persons who suffered sexual violence during the war as a distinct beneficiary group.

1 Law No.4/L-054 classifies several groups of victims as victims of war, including: the KLA deceased and their surviving family members, the civilian deceased and their surviving family members, KLA and civilian invalids, survivors of wartime rape, as well as KLA and civilian missing persons and their surviving family members.

2 Pg 58. "Monitoring of Law No.4/L-054 'On the Status and Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and their Families.'" December, 2013. Centre for Research, Documentation, and Publication. Retrieved from: <http://crdp-ks.org/wp-content/uploads/2014/03/2014-raporti-mbi-ligjin-WEBFINAL.pdf>

3 "Kosovo Memory Book." Humanitarian Law Center. May 27, 2011. Retrieved from <http://www.hlcrdc.org/?cat=218&lang=de>

4 Pg. 58, "Monitoring on Law No.4/L-054 On the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and their Families." The Centre for Research, Documentation, and Publication. December, 2014. Retrieved from: <http://crdp-ks.org/wp-content/uploads/2014/03/2014-raporti-mbi-ligjin-WEBFINAL.pdf>

The number of families that have sought monthly pensions from the government's social welfare scheme for war victims has slowly risen over the past 7 years, from 11,508 in 2008⁵ to 13,196 in 2013⁶. More than half of these individuals⁷ are categorized as civilian victims, defined as the family members of civilian missing persons, civilian invalids and their caretakers, and the families of civilian victims.

War victims are entitled to preferential treatment at health and educational institutions, certain forms of tax relief, and discounted utility costs, as well as a monthly pension. Civilian victims are entitled to smaller pensions than KLA veterans and their family members (135 euros per month as opposed to 358-534 euros per month). Their associations tend to be poorly funded, and lack a clear advocacy agenda on a national or municipal level. As such, institutions are not pressured to adequately address their needs and their needs are not collectively addressed.

CRDP's 2013 monitoring report on the implementation of Law Nr.4/L-054 noted the lack of coordinated institutional support for Kosovo's war victims. The report noted several obstacles to the law's full implementation. A few of the more pressing obstacles include:

- 1) The lack of coordination between the central and local levels of government for providing services to war victims,
- 2) A lack of easily available information for beneficiaries on the full extent of their rights and benefits,
- 3) A lack of adoption of all the sublegal acts necessary for the law's implementation on the part of ministries, thereby delaying the access of beneficiaries to all of their rights and services,
- 4) A lack of professionals at the municipal level to provide much needed social welfare and psychological support.

Until the points raised above are addressed by Kosovo's institutions, war victims' access to the full range of their rights and benefits will continue to be limited.

5 Pg.12, "Statistikat e mireqenies sociale ne Kosove, 2008." Kosovo Statistics Agency. June, 2009. Retrieved from: http://ask.rks-gov.net/publikimet/doc_details/624-statistikat-e-miraeumlqenies-sociale-2008

6 Pg. 9, "Statistikat e mireqenies sociale ne Kosove, 2013." Kosovo Statistics Agency. March, 2014. Retrieved from: http://ask.rks-gov.net/publikimet/doc_details/1092-statistikat-e-miraeumlqenjes-sociale-2013

7 CRDP found that in 2013, 13,196 individuals received governmental pensions as beneficiaries of Law No.4/L-054. 5710 beneficiaries were family members of KLA veterans, while 7486 were civilian victims. Pg. 20, "Statistikat e mireqenies sociale ne Kosove, 2013." Kosovo Statistics Agency. March, 2014. Retrieved from: http://ask.rks-gov.net/publikimet/doc_details/1092-statistikat-e-miraeumlqenjes-sociale-2013

Additionally, CRDP's 2012 War Victims Needs Assessment concluded that the primary needs of Kosovo's war victims are: economic security, better health services, justice for their missing/killed loved ones, recognition of their suffering, and greater institutional support (i.e. access to better health care and mental health services, greater opportunities in employment and education, clearer communication on the scope of their rights and benefits)⁸.

CRDP is of the opinion that Law Nr.4/L-054 unfairly covers civilian war victims, as evidenced by the discrepancy between the monthly pensions received by surviving family members of KLA soldiers and family members of the civilian dead/missing. The majority of the beneficiaries interviewed by CRDP for the purposes of this paper stated that their primary source of income is the 135 euro pension they receive for being the surviving family members of civilian killed/missing persons. Their monthly pension is the only regular form of institutional support that they and their children receive.

CRDP observed an additional layer of discrimination when war victims were women, particularly when women became the heads of households as a result of the death or disappearance of their closest male family member. It was difficult for them to take on the role of provider, due to high rates of overall poverty, their low skill sets, and a lack of opportunities for professional training. The perception of women's inferior role in the Kosovar family structure and social prejudices against the employment of women also hindered their attempts to rebuild their lives. This leaves women victims of war and their children particularly vulnerable to poverty and abuse.

Thanks to the efforts of Kosovo's Agency for Gender Equality, Kosovo's government recently adopted a National Action Plan for the implementation of UN Resolution 1325 on Women, Peace, and Security, which provides for the inclusion of women in post-conflict, decision-making processes. Kosovo's National Action Plan, while comprehensive with regards to women in security forces and the protection and rehabilitation of survivors of wartime rape, does little to forward the requirements of Article 8 of Resolution 1325, which requires the inclusion of women in peace processes. "Peace processes" in this sense implies a wide range of issues, spanning economic reconstruction, reforms in legislation and the security sector, and empowering women and girls affected by war.

8 Pg. 71, "Needs Assessment of Kosovo Victims." CRDP, December 2012. Retrieved from: <http://crdp-ks.org/wp-content/uploads/2013/01/20131210-web-crdp-publikimi.pdf>

The empowerment of women is also a requirement of the UN Millennium Development Goals (MDG), which Kosovo has committed to fulfilling. UNDP's 2006⁹ report on the implementation of the MDG stated that while a legislative framework exists with regards to gender equality, "no satisfactory progress" was yet achieved in the implementation of gender equality policies.

Kosovo has also integrated the Convention on the Elimination of all Forms of Discrimination Against Women within its constitutional framework, and adopted a comprehensive Law on Gender Equality in 2004.

This policy paper attempts to examine the implementation of such legislation and international agreements, insofar as they apply to war victims. To do so, CRDP has decided to focus on the needs of one category of war victim in one municipality. As such, the focus of this study is on the needs of civilian war widows (defined as women who have missing/dead civilian husbands¹⁰ as a result of the 1999 conflict) in the municipality of Mitrovica (the municipality with the second highest number of Law Nr.4/L-054 beneficiaries in Kosovo).

The context of Mitrovica is particularly problematic in many respects. Once the most industrialized city in Kosovo, Mitrovica's economy has stagnated over the past few decades, in great part due to the lack of investment in the Trepca mine. The mine, which used to employ the majority of the municipality's inhabitants, now only employs a fraction of its former workforce¹¹. Poverty is an ongoing problem, and approximately 60 percent of the population is registered as unemployed. According to the Ministry of Labor and Social Welfare, approximately 55,000 residents of Mitrovica are registered as unemployed¹².

9 Pg. 37, "Second Millennium Development Goals Report for Kosovo." UNDP & Riinvest Institute, 2006. Retrieved from: <http://www.undp.org/content/dam/undp/library/MDG/english/MDG%20Country%20Reports/Kosovo/English%202nd%20report%202006.pdf>

10 The death/disappearance of sons during war also had a significant negative effect on the quality of life of women and their children – in the traditional structure of Kosovar Albanian households, the eldest son becomes the primary breadwinner when the father is no longer of working age.

11 The historical economic importance of the Trepca mine in the municipality of Mitrovica, as well as difficulties in its revitalization, are described in this ESI report titled "Trepca: Kosovo's industrial giant." Retrieved from: http://www.esiweb.org/pdf/esi_document_id_62.pdf

12 "Informatat e Tregut te Punes ne Kosove, Shtator 2013." Department of Work and Employment, Ministry of Labour and Social Welfare. Number of unemployed as of September, 2013. Retrieved from: <https://mpms.rks-gov.net/Portals/0/Librat/0913%20Informatat%20ne%20tregun%20e%20Punes.pdf>

According to Kosovo's Statistics Agency, the overall population of Mitrovica is approximately 84,000¹³. The number of economically active women is woeful, at 29%¹⁴. In this context, the war widows interviewed by CRDP supported themselves and their families through their monthly pensions, charity offered by NGOs or religious institutions, and family assistance.

2. METHODOLOGY

Given that access to this group of women is rather difficult, CRDP's interviews with war widows were facilitated by an association called "The Parents' Voice" (Zëri i Prindërve). CRDP first held a preparatory meeting with a sample of fifteen civilian war widows, during which the scope and structure of the research was explained to them in detail. A focus group discussion followed, which covered each woman's personal history as well as their experiences with Kosovo's institutions. Individual follow-up interviews were also held with three women, in order to gain greater insight on their daily struggles. All of the women interviewed were contacted beforehand by "The Parents' Voice" (Zëri i Prindërve). The majority of the women interviewed were middle aged, with at least high school education. All women were confronted with the responsibility of generating income and raising their children without their husbands. They also had to deal with various forms of community pressure such as being constantly observed by neighbors and in-laws, as well as struggles with their property rights and freedom of movement. In conversations with them, CRDP noted that their primary needs were better economic conditions, access to information and institutions, as well as greater family and community support.

CRDP approached the focus group and interviews with our standard guidelines for ethical research, meaning participants were informed ahead of time about the aim and structure of the research. CRDP took all reasonable measures to ensure that consent was given to record both the focus group and individual interviews, and also ensured that participants' input and personal information was kept confidential. Our intention was to interview the sample of civilian war widows in private settings, one-on-one with CRDP researchers. However, due to the short period of time available for research, and the fact that more time was needed to build trust between CRDP researchers and participants, we were not

13 Pg. 10, "Atlasi i Regjistrimit të Popullsisë/Kosovo Census Atlas, 2011." Kosovo Statistics Agency. December, 2013. Retrieved from: http://ask.rks-gov.net/popullsia/publikimet-e-statistikave-te-popullsise/doc_details/1076-atlasi-i-regjistrimit-te-popullsise

14 Pg. 54, "Grate dhe Burrat në Kosovë, 2011." Kosovo Statistics Agency. June, 2013. Retrieved from: http://ask.rks-gov.net/popullsia/publikimet-e-statistikave-te-popullsise/doc_details/1019-grate-dhe-burrat-ne-kosove-2011

able to obtain much information on the dynamics within families of missing persons/civilian victims, particularly the dynamics between war widows and their children.

CRDP researchers also conducted interviews with six children of missing persons and war victims. It was difficult to obtain detailed information about their family lives, due to the social labeling that comes with being the child of a war victim. We recognize the labeling attached to such victims in our society, which often results in their feelings of isolation, exclusion and embarrassment. Unofficially, our respondents (the widows), revealed that their grown up sons are not comfortable speaking in public about the poverty they face, claiming that being poor reduces their chances of meeting potential spouses and feeling “established” in society.

The input received from our interviews could not be fully verified, and as such, limits the scope of this paper. It was difficult for CRDP researchers to gain access to the homes of the women interviewed, due to difficulties in collaborating with victims’ association “The Voice of Parents,” and also due to the social stigma associated with inviting a stranger into one’s house (CRDP was told that this signaled to neighbors that the woman in question was probably a victim of wartime rape). CRDP was informally told of cases of domestic violence in the households of civilian war widows¹⁵, inflicted by the widows’ sons and husband’s relatives. In recorded interviews, CRDP respondents stated that their families were able to resolve conflicts easily.¹⁶

15 Research on domestic violence in Kosovo shows that women are predominantly the victims of violence, while their male family members tend to be the perpetrators. Kosova Women’s Network publications on domestic violence describe cases of violence perpetrated by sons toward their mothers (pg. 20, “*Exploratory Research on the Extent of Gender Based Violence in Kosova and its Impact on Women’s Reproductive Health*”), of widowed women being denied custody of their children and access to marital property (pg. 60, “*More than words on paper*”), as well as statistics which show that 1 percent of perpetrators of violence are children, and 13 percent are in-laws (pg. 20, *Exploratory Research on the Extent of Gender Based Violence in Kosova...*, data collected from the Centre for the Protection of Women and Children).

Pg. 20, “*Exploratory Research on the Extent of Gender Based Violence in Kosova and its Impact on Women’s Reproductive Health.*” Kosova Women’s Network, 2008. Retrieved from: <http://www.womensnetwork.org/documents/20130120165614663.pdf>

Pg. 60, “*More than Words on Paper? The Response of Justice Providers to Domestic Violence in Kosovo.*” Kosova Women’s Network, October 2009. Retrieved from: <http://www.womensnetwork.org/documents/20130120165443203.pdf>

16 CRDP initially held consultations in order to assess the grounds for conducting research with members of the families of victims of war and missing persons. On December 8, 2011, CRDP staff travelled to Mitrovica to meet with women from the Mitrovica region who had lost close family members as a result of the violent conflict. Over an informal lunch, more than thirty women had the opportunity to discuss their struggles and hopes for the future. Many of the participants spoke candidly about their economic hardship, family pressures and

In order to gain a comprehensive picture of the range of public services available to these women and their children, CRDP also conducted stakeholder interviews with officials at the municipality of Mitrovica, the Ministry of Labor and Social Welfare, local NGOs, trauma therapists/psychologists, and high school principals.

3. FINDINGS ON ECONOMIC NEEDS

3.1 FINANCIAL INDEPENDENCE

Poverty is a big issue in the families of victims and missing persons. This issue was brought up regularly in CRDP's focus group with civilian widows, with women voicing their children's and their own distress with their lack of money. One of the respondents told us that her son forbade her from appearing on TV to complain about their poverty. He found it degrading and embarrassing when his mother publicly complained about the lack of certain services the government is supposed to provide.

Now [after 15 years] the biggest crisis has come. My son is saying, 'There is no life for me. I would be better off if I dealt drugs, or engage in illicit businesses.'

The primary need identified by CRDP respondents is greater financial independence. The majority of women interviewed by CRDP had at least high school education, but for the most part was not trained to practice any profession.

For all women interviewed, their monthly pension is their primary source of income for their children and themselves. Housing and employment are two sensitive areas where civilian war widows and their children need institutional support. Their main sources of assistance are the Municipal Directorate for European Integration and Social Welfare in Mitrovica, the Ministry of Labor and Social Welfare (which distributes their monthly pensions), international and local NGOs, mosques, or the Kosovo Islamic Community (in Alb. Bashkesia Islame e Kosoves).

the challenges of raising children without their husbands. They stated their needs for trauma therapy, better employment opportunities, as well as more family and community support. There were voices among the women who claimed they faced a lack of access to property rights, as well as physical and sexual violence committed against them by their male in-laws. By gaining a better understanding of these women's needs, CRDP was able to develop further inquiry and prepare recommendations for relevant national and international institutions to address some of the problems that continue to plague victims of war.

During the focus group, some women felt a general sense of failure to provide their children with support that would give them a better future. These women expressed their efforts in terms of a necessity to do everything to ensure that their children would not grow up to blame them for their unmet needs in education, shelter, or their overall wellbeing. The small amount of social assistance that these women receive makes it impossible for them to cater to their children's needs.

The lack of employment of civilian war widows and their children is a complex problem. The overall rate of unemployment in Mitrovica is quite high, and the existing labor market in the municipality is primarily driven by micro, family-owned enterprises. Mitrovica has among the highest unemployment rates in the country at approximately 60%,¹⁷ and currently does not have an economy driven by production or development. Strategies for Mitrovica's economic revival exist on paper, but there aren't clear measures to mark the progress of the plan's development, and it is not clear if Mitrovica's relatively new administration is committed to its fulfillment.

The head of Mitrovica's municipal directorate for European Integration and Social Welfare explained that the directorate is overwhelmed and underfunded - two problems that stand in the way of meeting the needs of the public. The municipal directorate provides a range of services, including payment of renovation/construction costs, food, assistance paying rent, and providing collective housing.

Requests for assistance are typically made in person at Mitrovica's town hall, and are then processed through the directorate's two divisions: one for invalids and family of martyrs, and the other for social welfare. The claimants' needs are verified by a field visit, and then approved or rejected. The directorate typically receives approximately 100 requests per month, and more than four hundred claims were registered between January-March, 2014.

The economic independence of war widows had a direct influence on the quality of life of their children. Many of the women CRDP interviewed expressed their dissatisfaction with their inability to provide adequate shelter and resources for their children, and worried about their future prospects

17 The 60 percent figure is calculated based on number of registered unemployed persons within the total population of the municipality. According to this table of unemployment figures in Kosovo in September 2013, published by the Ministry of Labor and Social Welfare, Mitrovica has the second highest number of unemployed citizens, after Prishtina. "Informatat e Tregut te Punes ne Kosove, Shtator 2013." Ministry for Labour and Social Welfare, June 2014. Retrieved from: <https://mpms.rks-gov.net/Portals/0/Librat/0913%20Informatat%20ne%20tregun%20e%20Punes.pdf>

in education and employment. All of the women interviewed were the heads of their households – a rarity in Kosovo, where women lead only 8 percent of all households¹⁸.

3.2 INHERITANCE, AND PROPERTY RIGHTS

Some of the women interviewed by CRDP had barely managed to secure shelter for their families. One of them had moved in an office space available in a building built for social assistance beneficiaries. She explained that they had no heating in that improvised living space, and that the windows were broken. Sometimes, when there is snow and she and her 14-year-old son cannot stand the cold, she sleeps at her sisters' house, the respondent told CRDP.

The issue of shelter came up also in cases of cohabitation with the family members of the deceased or missing husband. One of the respondents explained that she was relieved that she had managed to improvise a separate door for her entryway within her in-laws' house. Before that, she indicated that her deceased husband's family was not nice to her sons. Instead of providing emotional support, one of her brothers-in-law had beaten up her son, his nephew.

Inheritance rights are a key missing part of women's economic independence in Kosovo, and are particularly sensitive in the case of poorer, rural women. Although laws on inheritance and gender equality guarantee equal inheritance rights before the law, many women waive their rights to inheritance due to pressure from their in-laws or families. Customary law in Kosovo demands that property and other forms of inheritance go only to male members of the family. This is done via informal agreements, which are then presented to the courts and made official before the law.

According to a study completed by NORMA¹⁹, a lawyers' association that monitors women's civil rights, in many cases municipal authorities do not properly attribute property acquired during marriage as joint property, which leaves married women vulnerable to contesting claims after the husband's death. Deaths and inheritors in many cases are also not properly documented at the municipal level, with some cases of only male family members being listed as surviving family members after an individual's death. The same research documented²⁰ that in the municipality of Mitrovica, 233 women

18 Pg. 9, "Grate dhe Burrat ne Kosove, 2011." Kosovo Statistics Agency. June, 2013. Retrieved from: http://ask.rks-gov.net/popullsia/publikimet-e-statistikave-te-popullise/doc_details/1019-grate-dhe-burrat-ne-kosove-2011

19 Pg.22, "Research and monitoring the implementation of the law on gender equality." NORMA, 2012. Retrieved from: [http://www.norma-ks.org/repository/docs/norma_eng_\(2\)_1\).pdf](http://www.norma-ks.org/repository/docs/norma_eng_(2)_1).pdf)

20 Pg. 28, "Research and monitoring the implementation of the law on gender equality." NORMA, 2012. Retrieved from: [http://www.norma-ks.org/repository/docs/norma_eng_\(2\)_1\).pdf](http://www.norma-ks.org/repository/docs/norma_eng_(2)_1).pdf)

and 441 men were potential inheritors in 2008 - however only 91 women and 307 men claimed their inheritance. In 2009, 347 women and 719 men were potential inheritors – however only 134 women and 510 men claimed their inheritance.

There are various social reasons for this discrepancy in claiming inheritance rights. According to research²¹ published by the Kosovar Gender Studies Center, women are hesitant to claim their inheritance for several reasons: fear of being shunned and ignored by their families or in-laws, of being obstructed by their families, or of being threatened. Although 75 percent of the women surveyed by KCGS²² agreed that property should be divided equally, their dependence on the goodwill of their families for survival made them very wary of staking their claims.

Kosovo's judicial system fails to adequately ensure that female inheritors are accounted for and considered during inheritance proceedings²³, while cadastral offices do not tend to register property acquired during marriage as joint property, despite a legal obligation to do so²⁴.

Difficulty in claiming inheritance rights has a direct, negative effect on the economic independence of women such as the wives and mothers of the civilian dead and missing. Not only does the loss of a father or son place them in the position of the head of the household, but dependency on their families, in-laws, charity, and Kosovo's flimsy social welfare system places them in a constant struggle for survival. Their lack of property hinders access to loans, making it difficult to invest in ventures such as a small business²⁵.

21 Pg. 33, "Women's Property Inheritance Rights in Kosovo." Kosovar Gender Studies Center. March, 2011. Retrieved from: <http://kgscenter.net/images/stories/pdf/trashegimia-ang-web.pdf>

22 Pg. 35, "Women's Property Inheritance Rights in Kosovo." Kosovar Gender Studies Center. March, 2011. Retrieved from: <http://kgscenter.net/images/stories/pdf/trashegimia-ang-web.pdf>

23 Pg.23, "Research and monitoring the implementation of the law on gender equality." NORMA, 2012. Retrieved from: [http://www.norma-ks.org/repository/docs/norma_eng_\(2\)_1.pdf](http://www.norma-ks.org/repository/docs/norma_eng_(2)_1.pdf)

24 Pg.21, "Research and monitoring the implementation of the law on gender equality." NORMA, 2012. Retrieved from: [http://www.norma-ks.org/repository/docs/norma_eng_\(2\)_1.pdf](http://www.norma-ks.org/repository/docs/norma_eng_(2)_1.pdf)

25 Only a small portion of businesses in Kosovo is owned by women (as per the Kosovo Statistical Agency's reports, "Men and Women in Kosovo", pg.128, and "Rezultatet e Ankeses se Buxhetit te Ekonomive Familjare" pg.18), in part due to their lack of access to readily available capital or credit. Despite microbusiness and start-up development projects (such as the Kosovo Women's Fund and the Women in Innovation network) and short-term awareness raising initiatives spearheaded by the NGO sector (i.e. the USAID-funded Women's Economic Empowerment Program, and the Swiss Agency for Development and Cooperation's Women Business Development Project - concluded in 2008), Kosovo still lacks sustained entrepreneurship training for women, gender sensitive credit schemes, and increased gender awareness among financial institutions (as per recommendation 10 of SHE-ERA's report "An overview of businesses owned by women in 2006").

3.3 LACK OF STRATEGY PERPETUATING POVERTY

Without employment perspectives and a low chance of receiving their share of familial wealth, civilian war widows' ability to ensure their own well-being and that of their children's is jeopardized. This carries the risk of simply continuing the cycle of poverty from the mother to her children.

One of the respondents said that she could not support her son's undergraduate studies in Prishtina, so he had to return to Mitrovica. Her son had been accepted at the University of Prishtina, on his own efforts, and had met the required criteria in the entrance exam to enter the Faculty of Law. However, his mother could not afford his living costs, or his expenses for textbooks, so he had to come back home during the second semester of his freshman year. She said that the fact that he had gotten accepted based on his own efforts made her sad, because it reminded her of her son's potential and of her failure to provide him the opportunity to realize that potential.

"It would be so much easier for me if he didn't score that many points in the entrance exam. I would tell him [my son] that you didn't make it on your own; and the fault would not be my own. I know that he does not blame me for stopping his undergraduate studies, but my heart knows how difficult it is to say no to my son's education."

The NGO sector formerly provided the bulk of social welfare services for Mitrovica's vulnerable groups, including but not limited to: charitable donations, support groups for women, psychological counseling, microbusiness support, and advocacy work. International donations for charitable NGOs in Mitrovica have declined since the immediate aftermath of the war, and local NGO practitioners have difficulty delivering the same quantity (and quality) of services they offered immediately after the 1999 conflict. Social welfare beneficiaries must increasingly rely upon Kosovo's institutions to meet their needs²⁶.

Pg. 128, "Grate dhe Burrat ne Kosove, 2011." Kosovo Statistics Agency, June, 2013. Retrieved from: http://ask.rks-gov.net/popullsia/publikimet-e-statistikave-te-popullise/doc_details/1019-grate-dhe-burra-ne-kosove-2011

Pg. 18, "Rezultati i Anketes se Buxhetit te Ekonomive Familjare, 2013." Kosovo Statistics Agency, June 2013. Retrieved from: http://ask.rks-gov.net/konsumi-i-ekonomive-familjare/publikimet/doc_details/1117-rezultatet-e-anketaeuml-saeuml-buxhetit-taeuml-ekonomive-familjare-2013

Pg. 42, "Women Entrepreneurs in Kosovo: An overview of businesses owned by women in 2006." SHE-ERA, 2006. Retrieved from: <http://she-era.org/~sheera/eng/wp-content/uploads/2013/08/WOMEN-ENTERPRENURS-IN-KOSOVO-ANALYSES.pdf>

26 Despite the wide range of services provided by women's NGOs (including domestic violence shelters for women and children, counseling for women war victims, economic empowerment initiatives, among others) research

The Ministry of Labor and Social Welfare does not have a national strategy or vision for the elimination of poverty on a national level, and no long-term strategy for poverty reduction is in place at the municipal level in Mitrovica. Limited budgets and institutional inefficiency²⁷ at the level of Kosovo's ministries means that beneficiaries do not have access to the full range of services and benefits guaranteed to them by social welfare laws. As such, Kosovo's social welfare schemes primarily provide monthly welfare payments, limited health coverage, inadequate housing, and ad-hoc, donor driven acts of charity.

The World Bank's Poverty Assessment for Kosovo states that the country's current welfare system has a low impact on beneficiaries' overall wellbeing²⁸ - understandable, considering the low percent of the GDP dedicated to social welfare schemes. Apart from expanding social protection schemes, the same assessment encouraged the formation of policies which:

- a) link economic growth with high levels of employment,
- b) positively affect access to education for social welfare cases,
- b) provides opportunities for economic development to struggling municipalities,
- c) lower the number of dependents per household.

completed by the Kosova Women's Network has also noted the gradual decline of direct donations to women's NGOs. International donations fell from 8.02 million euros in 2000 to 3.88 million euros in 2013. NGOs that specifically deal with the economic empowerment, health, and education of women have received approximately 1.9 - 2.9 million euros in international donations from 2000-2013. This decline is attributed changes in donor trends. Since the declaration of Kosovo's independence in 2008, an increasing amount of donor funding earmarked for gender equality has gone directly to governmental institutions. Cooperation between women's NGOs and governmental institutions currently remains limited, except in cases where NGOs are engaged as service-providers contracted by the government (i.e. domestic violence shelters are provided with subsidies by the Ministry of Labor and Social Welfare.

Pgs. 26, 37, 62, 63, "Where's the money for women's rights? A Kosovo Case Study." Farnsworth, Nicole & Gashi, Eli. Kosova Women's Network, Alter Habitus, November 2013. Retrieved from: <http://www.womensnetwork.org/documents/20140109133636572.pdf>

27 Pg. 72, "Monitoring on Law No.4/L-054 On the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and their Families." The Centre for Research, Documentation, and Publication. December, 2014. Retrieved from: <http://crdp-ks.org/wp-content/uploads/2014/03/2014-raporti-mbi-ligjin-WEBFINAL.pdf>

28 Pg. 30, "Kosovo Poverty Assessment, Volume I: Accelerating Inclusive Growth to Reduce Widespread Poverty." Poverty Reduction and Economic Management Unit, Europe and Central Asia Region, World Bank. October, 2007. Retrieved from: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/11/01/000020439_20071101092530/Rendered/PDF/397370XK.pdf

Without the adoption and implementation of such policies, Kosovo's welfare scheme will only prevent already vulnerable families from falling into a state of abject poverty. CRDP has observed that all the civilian war widows interviewed received state and/or nongovernmental assistance of some kind after 1999, two sources which provided a kind of supplemental income to their regular pensions. With the decline of support from NGO donors, Kosovo's institutions must increasingly take on the full weight of the economic and employment needs of the country's poor.

4. GENDER EQUALITY POLICIES AT THE MUNICIPAL LEVEL

The gender dimension of Mitrovica's civilian war widows cannot be ignored, as statistics prove that overall, Kosovar women are less likely to be employed²⁹, are less educated³⁰, and are more prone to experience violence³¹ compared to their male counterparts. Without their husbands as breadwinners, civilian war widows are even more vulnerable to dependence on Kosovo's limited institutional resources and/or remittances from family members abroad. According to a report³² sponsored by the Kosovar Agency for Gender Equality, households led by women tend to have higher rates of poverty (39.8% as opposed to 29%).

Kosovo's Law on Gender Equality lays the groundwork for providing equality and institutional support for women. The law spans a wide range of issues such as political representation, labor practices, inheritance rights, access to education, hate speech, and the work of Kosovo's Agency for Gender Equality (AGE). AGE's mandate involves monitoring the implementation of the Law on Gender Equality, mainstreaming gender in governmental policy and doing public advocacy work at the governmental and local level. Gender Equality officers are present in every governmental ministry and municipality in Kosovo, and must report to the Agency for Gender Equality on a regular basis.

29 Pg. 126, "Grate dhe Burrat ne Kosove, 2011." Kosovo Statistics Agency. June, 2013. Retrieved from: http://ask.rks-gov.net/popullsia/publikimet-e-statistikave-te-popullise/doc_details/1019-grate-dhe-burrat-ne-kosove-2011

30 Pg. 105, "Grate dhe Burrat ne Kosove, 2011." Kosovo Statistics Agency. June, 2013. Retrieved from: http://ask.rks-gov.net/popullsia/publikimet-e-statistikave-te-popullise/doc_details/1019-grate-dhe-burrat-ne-kosove-2011

31 Pg. 19, "Exploratory Research on the Extent of Gender Based Violence in Kosova and its Impact on Women's Reproductive Health." Kosova Women's Network, 2008. Retrieved from: <http://www.womensnetwork.org/documents/20130120165614663.pdf>

32 Pg.18, "Kosovo Country Gender Profile" ORGUT Consulting. Farnsveden, Ulf; Qosaj-Mustafa, Ariana; & Farnsworth, Nicole. April, 2014. Retrieved from: <http://www.womensnetwork.org/documents/20140513160130237.pdf>

The Agency for Gender Equality has achieved some important successes in pushing forth new legislation at the national level, but has yet to achieve the same level of effectiveness across Kosovo's municipalities. Municipal Gender Equality Officers are managed and paid for by the municipality, and often have other tasks and responsibilities in their portfolios. Many municipalities do not set aside a sufficient budget line for gender equality policies³³, and the ones that do offer sums that greatly constrain the ability to undertake ambitious projects or serious advocacy work.

When CRDP researchers visited Mitrovica's Gender Equality Officer, we learned that the officer spent a large amount of time lobbying for an annual budget on the part of the municipality (the current municipal budget set aside for municipal gender issues is 10,000 euros). Projects were small-scale, mostly public outreach initiatives on symbolic days like International Women's Day.

Mitrovica's Gender Equality Officer stated that despite a collegial work environment, a perception persists at the municipal level that gender equality is an issue that only pertains to women. Despite the obligation of municipal institutions to include gender equality officers in the drafting of policies and budgets, the officer states that she has yet to be invited during budgetary planning sessions or discussions on public policy.

Without internal support for proactively integrating gender equality in municipal policies and practices, the officer plans on utilizing the support of the Group of Women Deputies, an association of women representatives in Mitrovica's municipal assembly, to push for greater political and institutional engagement with gender equality practices.

Mitrovica's municipal assembly only has 12 women deputies out of 35. The lack of representation of women in political parties is a national problem, corrected in part by Kosovo's required 30% gender quota for national and local assemblies. Kosovo-based think-tank KIPRED's 2010 report on women in Kosovo's security sector and the municipal decentralization process³⁴ noted that the lack of women in decision-making structures of political parties negatively impacts equal gender representation nationally and in municipal governments.

33 Pg.6, "Kosovo Country Gender Profile" ORGUT Consulting. Farnsveden, Ulf; Qosaj-Mustafa, Ariana; & Farnsworth, Nicole. April, 2014. Retrieved from: <http://www.womensnetwork.org/documents/20140513160130237.pdf>

34 Pg.10, "Strengthening Women's Citizenship in the Context of State-Building: Kosovo Security Sector and Decentralization." Qosaj-Mustafa, Ariana. KIPRED. July, 2010. Retrieved from: http://www.fride.org/download/IP_Women_Citizenship_Kosovo_ENG_ag10.pdf

Gender mainstreaming in municipal budgets and projects also remains limited due to the lack of data and research on gender-specific needs. USAID initiatives have ensured that municipal officials are more informed and aware of the need for gender mainstreaming, although limited funds and human resources make implementation difficult. The Gender Equality Officer interviewed by CRDP stated that she was determined to provide her input in the upcoming municipal budget of Mitrovica.

5. MENTAL HEALTH CONCERNS

Nearly every participant in CRDP's focus group complained about their health issues and how this affected them and their families. They reported that the lack of psychosocial support only worsened their physical and mental health. CRDP is not equipped to conduct an assessment or diagnosis of participants' psychological needs – therefore in this section we present the findings of psychologists, trauma experts, and academics that have worked directly with the psychological needs of war victims. The need for greater access to psychosocial support was expressed in our 2012 Needs Assessment of Kosovo Victims.³⁵

Research completed by Nexhmedin Morina and Paul M.G. Emmelkamp in 2012³⁶ studied the mental health needs of 206 women who had firsthand experience of the 1999 conflict. The results showed that 96% of widows who lost their husbands as a result of the conflict had experienced a “major depressive episode, an anxiety disorder or a substance use disorder as compared with 54.9% and 60% in married groups.” Widowed, single women also displayed a higher risk for committing suicide than married women, as well as higher rates of post-traumatic stress and depression.

35 Excerpt from CRDP's Needs Assessment of Kosovo Victims, pg. 60: “A small number of participants mentioned that greater access to traditional psychoanalysis and psychotropic medications would help individuals suffering from severe, clinical depression and other psychological disorders. According to victims, these services were not covered by their current medical insurance plans. While facilitators that could clinically evaluate the mental state of the participants did not run the focus groups, their own assessments suggested that depression and isolation were common themes in their daily lives. For one woman in Mitrovica, the emotional trauma left over from the war had prohibited her from connecting to the outside world: “I have remained isolated. Be it in my own house, with my own friends. In my own sister's wedding!”

“Needs Assessment of Kosovo Victims.” CRDP, December 2012. Retrieved from: <http://crdp-ks.org/wp-content/uploads/2013/01/20131210-web-crdp-publikimi.pdf>

36 “Mental Health Outcomes of Widowed and Married Mothers after War.” Morina, Nexhmedin & Emmelkamp, M.G. *British Journal of Psychiatry*, 012 Feb;200(2):158-9.

The same research also hypothesized that Kosovar society does not provide coping mechanisms for widows, who are expected not to remarry and thus live a kind of “forced” widowhood. Three CRDP respondents stated that they leave the house almost exclusively in the company of their children, due to fear of surveillance and gossip by their community. Inadequate health and social services were also presented as potential negative factors hindering economic independence and psychological health.

A coordinator with the Kosovar Rehabilitation Centre for Torture Victims (KRCT), stated that although the legal infrastructure is in place to provide material support for civilian war victims, their psychological needs remain great. When asked what kind of psychological support the widows of missing persons/civilian victims need, the coordinator explained each individual case requires a needs assessment.

Although progress has been made in rebuilding Kosovo’s mental health infrastructure since the end of the war, the burden of caring for the post-traumatic stress needs of Kosovo’s war victims has fallen primarily on the NGO sector. Kosovo’s existing mental health system primarily provides services for more severe mental health problems that require psychiatric treatment or institutionalization, at the expense of psychotherapy treatment. Local family health centers are in a position to reach a high number of people for counseling and other forms of psychological support, but often don’t have time to dedicate to individual cases over a long period of time. In many cases, individuals suffering from PTSD, depression, anxiety, and other mental health problems, are not aware that their symptoms are a direct result of the conflict.

Not adequately treating Kosovo’s war victims carries the risk of passing on trauma to the next generation - in the case of Mitrovica, the war widows identified by CRDP do not have an outlet for properly processing their feelings of loss and trauma. This puts them and their children at a greater risk for continued mental health problems.

Lynne Jones et al.’s research³⁷ on the needs of Kosovar children who lost a parent during war also echo Morina and Emmelkamp’s findings of greater prevalence of depression, PTSD, and anxiety - which negatively affects their overall quality of life.

Research on the long-term psychological effects of war-induced trauma in Kosovo is an ongoing need. CRDP interviews with six adolescent children of missing persons/civilian victims were unable to glean

37 “Mental Health Services for War-Affected Children: Report of a survey in Kosovo.” Jones, Lynne; Rustemi, Alban; Shahini, Mimoza; & Uka, Aferdita. *British Journal of Psychiatry*, 01/2004; 183:540-6.

information about their family dynamics and psychological health, but did establish their need for both economic and psychosocial support. CRDP interviewees discussed their difficulties in talking about the past with their family members, the lack of sensitivity they felt they experienced from society as a whole, and the effect their family's insecurity had on their ability to fund their education. In certain cases, CRDP was told that children of missing persons/civilian victims had found support in religious organizations and mosques.

6. CONCLUSION AND RECOMMENDATIONS

“Every war has its consequences, and we are one of them.”

The quote above is taken from a CRDP interview with the adolescent grandchild of two civilian victims, his grandmother and grandfather. The results of our research make it clear that the treatment of civilian war widows is a complicated issue, which requires a coordinated national action plan involving poverty reduction, employment schemes, proactive inheritance rights, access to comprehensive psychosocial support, and the full implementation of existing laws and international commitments, such as UN Resolution 1325, the UN Millennium Development Goals, and Law Nr.4/L-054.

Donor relationships with Kosovo's civil society sector are on the decline, and Kosovo's institutions are increasingly called upon to carry the burden of supporting the victims of the 1999 conflict. Faced with inadequate opportunities for employment, the civilian war widows interviewed by CRDP were forced to depend upon their monthly governmental pensions, family members, remittances from abroad and charity - sourced from both the NGO sector and religious institutions.

The psychological burden of providing for their families is compounded by the lack of access CRDP interviewees had to ongoing, long-term psychological support. Kosovo's existing mental health infrastructure emphasizes the treatment of acute mental health problems, and does not provide adequate access to counseling and other forms of psychotherapy. As a result, CRDP interviewees stand at a greater risk of suffering from PTSD, depression, general anxiety, and other forms of mental health problems - which can also potentially have a negative impact on the mental wellbeing of their children.³⁸

³⁸ CRDP is not equipped with the expertise to diagnose the psychological health needs of war victims. Our comments are based on extensive research and interviews with psychologists, trauma experts, and peer-reviewed, academic work.

The women interviewed by CRDP face an additional set of obstacles because of their gender. Employment discrimination, restrictive societal norms, and their lack of higher education/trade training made them all the more prone to dependency on family members, governmental institutions, as well as non-governmental and religious organizations. Without fully integrating women war victims in the post-conflict economic recovery process, the cycle of dependency is perpetuated across generations.

Taking into account the time and investment which a multilayered, national response requires, CRDP puts forth the following recommendations, as a practical starting point in the absence of a wider institutional focus on providing support for war victims:

▶ **Use NGO expertise in implementing and drafting policy**

The expertise of the NGO sector is not utilized as well as it could be by municipalities. CRDP believes there is room for greater cooperation and coordination of services. For example, in the municipality of Mitrovica this could take on the form of a formalized working group on poverty reduction, created in coordination with the directorate for social welfare and NGOs that deal with local welfare cases.

▶ **A coordinated, national policy on poverty reduction**

There is a lack of clear policy on social welfare and poverty reduction on a national level, which Kosovo sorely needs. Policy of this kind could be sponsored by the Ministry for Labor and Social Welfare, in coordination with the Ministry for Economic Development and with the support and input social welfare directorates of Kosovo's municipalities and sympathetic parliamentary deputies.

▶ **Policies that generate loans for low-income women**

CRDP respondents' lack of access to capital had a direct impact on their economic well being. Financial institutions, in cooperation with the Ministry for Economic Development and the Ministry of Labour and Social Welfare can create a legal framework to enable a system of loans that will allow them to start a small to medium-sized business.

▶ **An increased focus on psychotherapy treatment in the public sector**

Municipalities need an increased municipal budget for mental health services, and the Ministry of Health needs to provide a policy focus on psychotherapy treatment in the public sector which can provide ongoing support to all Kosovar citizens who need it - and particularly those touched by war.

▶ **The inclusion of Article 8 of UN Resolution 1325 into Kosovo’s National Action Plan for the Implementation of UN Resolution 1325**

Although Kosovo’s National Action Plan for the Implementation of UNSCR 1325 provides comprehensive support for women in Kosovo’s police and security sector, as well as survivors of wartime rape. The National Action Plan should also cover the requirements of Article 8 of UNSCR 1325, which would provide a space for Kosovo’s civilian women, and particularly women who were directly exposed to war, to have a say in Kosovo’s reconstruction process and how Kosovo’s institutions should address their needs.

▶ **More research on the mental, physical and economic wellbeing of the children of war victims**

This paper attempted to not only address the wellbeing and institutional treatment of civilian war widows, but also to analyze the potential consequences of war on their children. Comprehensive research on the health and education prospective of the children of war survivors in Kosovo must be conducted in order to draft and implement policies that are greater suited to meeting their needs. Psychosocial support and greater access to education are a must.

The core value of transitional justice lies in ensuring that conflict never occurs again. The findings of this report suggest to CRDP that ongoing poverty, despair, and a lack of institutional support carries the risk of causing the children of war victims to become frustrated, angry, and burdened with feelings of deep abandonment well into adulthood. This affects all of Kosovo’s society, and creates conditions for potential conflict in the future. With simple and effective policy measures, institutional willpower, NGO expertise, and community support, CRDP believes that this can, and must, be avoided.

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BIBLIOGRAPHY

Centre for Research, Documentation and Publication. (2014, March). *Monitoring on Law No.4/L-054 On the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and their Families*. Retrieved April 1, 2014, from the Centre for Research, Documentation and Publication: <http://crdp-ks.org/wp-content/uploads/2014/03/2014-raporti-mbi-ligjin-WEBFINAL.pdf>

Centre for Research, Documentation and Publication. (2012, December). *Needs Assessment of Kosovo Victims*. Retrieved April 1, 2014, from the Centre for Research, Documentation and Publication: <http://crdp-ks.org/wp-content/uploads/2013/01/20131210-web-crdp-publikimi.pdf>

Farnsveden, U., Qosaj-Mustafa, A., & Farnsworth, N. (2014, April). *Country Gender Profile: An analysis of gender differences at all levels in Kosovo*. Retrieved May 12, 2014, from Kosova Women's Network: <http://www.womensnetwork.org/documents/20140513160130237.pdf>

Jones, L., Rustemi, A., Shahini, M., & Uka, A. (2003). Mental health services for war-affected children: Report of a survey in Kosovo. *The British Journal of Psychiatry*, 183:540-546.

Law on Amending and Supplementing the Law No.04/L-054 on the Status and Rights of the Martyrs, Invalids, Veterans, Members of the Kosovo Liberation Army, Sexual Violence Victims of War, Civilian Victims and their Families, Law No. 04/L-172 (Assembly - republic of Kosovo, March 20, 2014). Retrieved April 15, 2014, from the Assembly of Kosovo: <http://www.kuvendikosoves.org/common/docs/ligjet/04-L-172%20a.pdf>

Law on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and their Families, Law No. 04/L-054 (Assembly - Republic of Kosovo, December 8, 2011). Retrieved April 15, 2014, from the Assembly of Kosovo: <http://www.assembly-kosova.org/common/docs/ligjet/Law%20on%20the%20status%20of%20the%20martyrs.pdf>

Law on Gender Equality, Law No.2004/2 (Assembly - UNMIK Administration, February 19, 2004). Retrieved April 15, 2014, from the Assembly of Kosovo: http://www.assembly-kosova.org/common/docs/ligjet/2004_2_en.pdf

KIPRED. Qosaj-Mustafa, Ariana. (2010, July). Strengthening Women's Citizenship in the Context of

State-Building: Kosovo Security Sector and Decentralization. Retrieved March 30, 2014 from KIPRED: http://www.fride.org/download/IP_Women_Citizenship_Kosovo_ENG_ag10.pdf

Kosova Women's Network. (2008). *Exploratory Research on the Extent of Gender Based Violence in Kosova and its Impact on Women's Reproductive Health*. Retrieved March 1, 2014, from the Kosova Women's Network: <http://www.womensnetwork.org/documents/20130120165614663.pdf>

Kosova Women's Network. (2009, October). *More than Words on Paper? The Response of Justice Providers to Domestic Violence in Kosovo*. Retrieved April 15, 2014, from the Kosova Women's Network: <http://www.womensnetwork.org/documents/20130120165443203.pdf>

Kosova Women's Network & Alter Habitus. Farnsworth, Nicole & Gashi, Eli. (2013, November). *Where's the Money for Women's Rights? A Kosovo Case Study*. Retrieved April 15, 2014, from the Kosova Women's Network: <http://www.womensnetwork.org/documents/20140109133636572.pdf>

Kosovar Gender Studies Center. (2011, March). *Women's Property Inheritance Rights in Kosovo*. Retrieved March 1, 2014, from the Kosovar Gender Studies Center: <http://kgscenter.net/images/stories/pdf/trashegimia-ang-web.pdf>

Kosovar Gender Studies Center. (2003, June). *Monitoring of the Implementation of CEDAW in Kosovo*. Retrieved March 1, 2014, from the Kosovar Gender Studies Center: http://kgscenter.net/images/stories/pdf/anglisht/anglisht_printCEDAW.pdf

Kosovo Agency of Statistics. (2011). *Grate dhe Burrat ne Kosove (Eng. trans: Women and Men in Kosovo)*. Retrieved April 30, 2014, from the Kosovo Agency of Statistics: http://ask.rks-gov.net/popullsia/publikimet-e-statistikave-te-popullise/doc_details/1019-grate-dhe-burrat-ne-kosove-2011

Kosovo Agency of Statistics. (2009, June). *Statistikat e mireqenies sociale ne Kosove, 2008 (Eng. trans: Statistics on Social Welfare in Kosovo, 2008)*. Retrieved April 30, 2014, from the Kosovo Agency of Statistics: http://ask.rks-gov.net/publikimet/doc_details/624-statistikat-e-miraeumlqenies-sociale-2008

Kosovo Agency of Statistics. (2014, March). *Statistikat e Mireqenies Sociale ne Kosove, 2013 (Eng trans: Statistics on Social Welfare in Kosovo, 2013)*. Retrieved April 30, 2014 from the Kosovo Agency of Statistics: http://ask.rks-gov.net/publikimet/doc_details/1092-statistikat-e-miraeumlqenjes-sociale-2013

Kosovo Agency of Statistics. (2013, June). Rezultati i Anketes se Buxhetit te Ekonomive Familjare, 2013 (Eng. trans: Results of Survey on Budgets of Household Economies, 2013). Retrieved April 30, 2014, from the Kosovo Agency of Statistics: http://ask.rks-gov.net/konsumi-i-ekonomive-familjare/publikimet/doc_details/1117-rezultatet-e-anketaeumls-saeuml-buxhetit-taeuml-ekonomive-familjare-2013

Kosovo Agency of Statistics. (2013, December). *Atllasi i Regjistrimit te Popullise, 2011/Kosovo Census Atlas, 2011*. Kosovo Statistics Agency. Retrieved April 30, 2014, from the Kosovo Agency of Statistics: http://ask.rks-gov.net/popullsia/publikimet-e-statistikave-te-popullise/doc_details/1076-atllasi-i-regjistrimit-te-popullise

"Kosovo Memory Book." Humanitarian Law Center. May 27, 2011. Retrieved April 30, 2014 from the Humanitarian Law Center: <http://www.hlc-rdc.org/?cat=218&lang=de>

Ministry of Labor and Social Welfare, Republic of Kosova. (September, 2013). *Informatat e Tregut te Punes ne Kosove*. Retrieved March 1, 2014, from the Department of Labor and Employment: <https://mpms.rks-gov.net/Portals/0/Librat/0913%20Informatat%20ne%20tregun%20e%20Punes.pdf>

Morina, Nexhmedin; Emmelkamp PM. (2012). Mental Health Outcomes of Widowed and Married Mothers after War. *The British Journal of Psychiatry*, 200(2):158-9.

NORMA Lawyers Association. (2012). *Research and Monitoring the Implementation of the Law on Gender Equality*. Retrieved March 1, 2014, from NORMA: [http://www.norma-ks.org/repository/docs/norma_eng_\(2\)_1.pdf](http://www.norma-ks.org/repository/docs/norma_eng_(2)_1.pdf)

SHE-ERA. (2006). *Women Entrepreneurs in Kosovo: An overview of businesses owned by women in 2006*. Retrieved March 5, 2014, from SHE-ERA: <http://she-era.org/~sheera/eng/wp-content/uploads/2013/08/WOMEN-ENTERPRENURS-IN-KOSOVO-ANALYSES.pdf>

UNDP & Riinvest Institute. (2006). *Second Millennium Development Goals Report for Kosovo*. Retrieved March 1, 2014, from UNDP: <http://www.undp.org/content/dam/undp/library/MDG/english/MDG%20Country%20Reports/Kosovo/English%20nd%20report%202006.pdf>

World Bank. (2007, October). *Kosovo Poverty Assessment, Volume I: Accelerating Inclusive Growth to Reduce Widespread Poverty*. Retrieved May 3, 2014, from Poverty Reduction and Economic Management Unit, Europe and Central Asia Region: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/11/01/000020439_20071101092530/Rendered/PDF/397370XK.pdf

TESTIMONIAL

This report documents the lack of institutional long-term planning in providing efficient and effective social welfare services for civilian war widows and their children in the impoverished municipality of Mitrovica in Kosovo. *“Missing Links: How Kosovo’s institutions and society are failing civilian war families in Mitrovica”* reveals an overall lack of initiative at the level of Kosovo’s municipalities and ministries to create policies that would directly benefit women of vulnerable groups, particularly those who became the head of their households as a result of the death or disappearance of their husbands during the 1999 conflict.

This is troubling, as overall, women who lead households in Kosovo tend to be statistically poorer with less access to employment, putting them at risk to be continually dependent on governmental welfare and/or family support. Furthermore, civilian victims of the 1999 conflict receive considerably less social welfare assistance than their non-civilian counterparts – hence the report’s focus on the widows of civilian victims.

CRDP fieldwork revealed that due to their lack of economic independence and difficulty in accessing adequate governmental services, it is very difficult for civilian war widows to ensure that their children complete their education and become economically independent adults. The government’s current policy focus on monthly welfare payments does not address the larger issue of cyclical poverty experienced by families of civilian war widows and the additional burden placed on them by the gender inequality present in Kosovo’s society. As such, CRDP believes that this paper has scratched the surface of the multi-generational consequences of such shortsighted policy-making.

“Missing Links” provides an initial needs assessment of civilian war widows and their children, a vulnerable and overlooked group in Kosovo’s society, and CRDP believes it can be used by governmental bodies as a starting point on simple policy changes that can be implemented to better meet their needs.

ABOUT THE AUTHORS

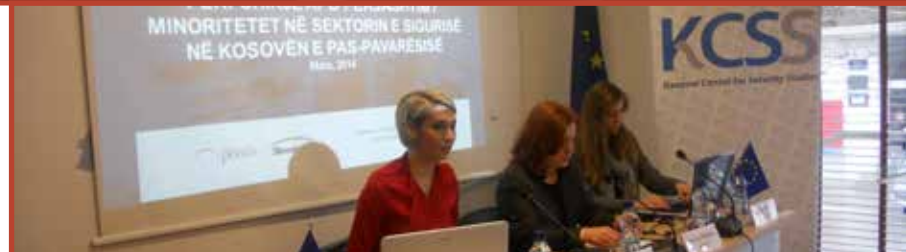
Nora Ahmetaj is a cofounder of the Centre for Research, Documentation and Publication (CRDP). From 2010-2012 Ahmetaj was a member of the Regional Coordination Council of the Coalition for setting up the Regional Truth Commission (RECOM) for war crimes committed during 1991-2001 in the Former Yugoslavia. She specializes in human rights, peace and conflict transformation, and transitional justice. Ahmetaj previously worked as a consultant for the European Commission and also managed the production of the Human Development Reports for UNDP in Kosovo. During the Kosovo conflict, she worked for the Humanitarian Law Centre, and supported the staff of Human Rights Watch, the ICTY and the ICG in Kosovo and the Former Yugoslavia. Ahmetaj was trained to apply first-class research and leadership skills towards solving human rights problems at Harvard Kennedy School, at the Carr Center for Human Rights Policy in 2000. She earned a Master's degree in Philosophy in Peace and Conflict Transformation Studies from the University of Tromsø in Norway in 2005 and was trained at the Tufts University Fletcher Summer Institute for the Advanced Study of Non-violent Conflict in 2008. In 2010, Ahmetaj was trained in an Advance Learning Course for Professionals on Dealing with the Past in Switzerland. Ahmetaj often gives talks at universities in Kosovo and internationally.

Hana Marku is a researcher at CRDP. With a background in journalism, Marku has written extensively about Kosovar society and culture as former managing online editor at Kosovo 2.0 and a contributor to the Balkan Investigative Reporting Network (BIRN). Marku previously worked for the provincial government of Ontario in Canada, and as a researcher and writer for York University in Toronto. Marku holds a Masters degree in Culture & Communication (Politics & Policy stream) from York University and Ryerson University.

Rudina Hasimja was a researcher at CRDP from 2011 until July 2014. With a background in public policy, her work focuses on the needs assessment of war victims' families. Rudina received her BSc. from the American University in Kosovo with a double concentration in Public Policy and Media and Graphic Communication, and a minor in Economics. Her experience includes her work at the Organization for Security and Cooperation in Europe (OSCE) as a national project officer in higher education, and as a political advisor at the Ministry of European Integration. She was previously involved with the IPKO Foundation Scholarship scheme as a project manager, and worked at design company Trembelat.

INCLUSION OR EXCLUSION? MINORITIES IN THE SECURITY SECTOR IN POST-INDEPENDENT KOSOVO

Donika Emini



Prishtina
March 2014

SUMMARY

The inclusion of ethnic minorities in the security sector in Kosovo started immediately after the conflict. As security institutions began developing in Kosovo, the introduction of legal framework in 1999 created institutional conditions for proportional representation of ethnic groups. Such conditions were further embedded in the Comprehensive Proposal for Settlement of the Kosovo Final Status (the Ahtisaari Plan) which served as the basis for the declaration of the Kosovo's independence. All of the provisions of the Ahtisaari Plan, including those dealing with ethnic minorities' inclusion in public sector, became indispensable part of the Constitution of the Republic of Kosovo (2008). Few years after the declaration of independence (in 2008), participation of ethnic minorities in Kosovo has reached a satisfactory level; however it requires more time and effort to guarantee consistency, especially within the Kosovo Security Force (KSF). Nonetheless, despite the progress achieved to date, the inclusion of ethnic minorities in the security sector in Kosovo still seems to be a challenge. While immense attention has been paid to the integration and inclusion of the Serb minority in Kosovo's security sector, the integration and inclusion of the (non) Serb minorities in Kosovo, especially Roma, Ashkali and Egyptian (RAE) and their access to security institutions is concerning. This situation, in most part, is attributed to the low level of education, the extreme poverty and life conditions in which these communities are living.

RECOMMENDATIONS

- ▶ The Kosovo Police should create mobile teams to inform and reach to ethnic minorities, especially Roma, Ashkali and Egyptians.
- ▶ The Kosovo Police shall create mechanisms to ensure consistency. The current data show satisfactory result, however with the integration of the former MUP members the KP should be careful and not allow extremist elements within the force. Otherwise the position of the Serbian community would be seriously affected.
- ▶ The Kosovo Security Force should introduce basic language courses (Albanian and Serbian) serving the communication of the Albanians and Serbs for the purpose of complex operations.
- ▶ Serbian Elites shall encourage the Serbian community to participate in the KSF. The latest agreements set a turning point in term of integration of the Serbian community, thus the Serbian elite should give their contribution and lobby for better inclusion in the KSF.
- ▶ The international community should make all the necessary efforts to convince Serbia not to negatively influence the Serbs in Kosovo, nor antagonize them with security institutions in Kosovo, especially the KSF.

INTRODUCTION

Security in all its dimensions is fundamental to protecting Human Rights, especially for minority ethnic groups in Kosovo. Kosovo's aspiration for Euro-Atlantic integrations has led to overall institutional reforms; hence, the introduction of the Security Sector Reform (SSR), among other issues, had a special focus on the ethnic minorities in the security sector (KCSS, 2012:77-78).

This policy brief aims to advocate to the Kosovo's security institutions and policy makers. Subsequently, this paper aims to contribute to the current general institutional reforms of the security sector in Kosovo, by tackling the inclusion of ethnic minorities. The audience and the stakeholders of this paper are the security institutions in Kosovo, the Government of Kosovo, and the international community involved in this process. Also, this paper seeks to provide an analytical framework on the existing state of affairs with respect to representation and inclusion of ethnic minorities in Kosovo's security sector.

METHODOLOGY

A wide variety of data collection methods, both qualitative and quantitative, have been used for the purposes of this paper. Qualitative methods predominantly relied on face-to-face interviews and three focus groups organized with key stakeholders. Other qualitative methods were applied as well such as the second hand sources (or desk research), mainly to support the legal framework analysis. This paper also relied on the quantitative data of the Kosovo Security Baromete, the KCSS led quantitative program aiming to measure public opinion perceptions on security policies and institutions in Kosovo.

The paper begins with a short description on the establishment of security institutions in Kosovo. It also maps the main actors in the security sector in Kosovo. The second part of the paper continues by offering a brief critical assessment to the current legal framework dealing with the inclusion of ethnic minorities in the security sector, as well as mechanisms and institutional responsibility for the inclusion of ethnic minorities. The last part of the paper offers an assessment to the current situation of ethnic minorities' inclusion and participation in the Kosovo Police (KP), the Kosovo Security Force (KSF) and the Kosovo Security Council (KSC) along with the challenges these institutions face in fulfilling the requirements provided by the legal framework. The Kosovo Intelligence Agency (KIA) is left out of this analysis due to the hermetic nature of the institution and various legal limitations which makes it impossible to collect the information about the institution.

LEGAL FRAMEWORK FOR MINORITY INCLUSION IN KOSOVO'S SECURITY SECTOR

LEGAL FRAMEWORK ON PROTECTION OF ETHNIC MINORITIES: GENERAL

The Kosovo security legislation strikes a balance between all ethnic groups living in Kosovo as well as promotes individual human rights of uniformed and civilian personnel. The Constitution of the Republic of Kosovo defines Kosovo as a multiethnic state while the primary legislation on security institutions defines further the ethnic composition (Constitution of the Republic of Kosovo 2008: Art 125). This is particularly important for the security sector as it would ensure national unity and cohesion.

In theory, Kosovo's legal framework tends to comply with the best international practices in terms of the establishment and operation of the security institutions as such (OSCE, 2012: 8-9). The Constitution of the Republic of Kosovo encompasses all the necessary human guarantees for ethnic minorities; subsequently all the laws and regulations in the post-independence Kosovo, especially those covering the security sector, take into account best practices and models with respect to human rights protection. Kosovo's legal framework, for example, has adopted articles from the **United Nations Universal Declaration of Human Rights** (UDHR, 1948: Art. 2); **International Covenant on Civil and Political Rights** (ICCPR, 1966: Art 26, 27); and **European Convention on Human Rights and Fundamental Freedoms** (ECHR, 1966: Art 1, 24). This has created a sound legal basis for the inclusion of ethnic minority groups in Kosovo's institutions (See Annex A).

Several laws directly deal with the protection of the rights of ethnic minorities in Kosovo. For example, **The law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo** (LPPRCM No. 03/L-047),¹ ratified on the 13th of March 2008, explicitly sets up the general provisions on minority rights in order to ensure full and effective equality for all communities living in Kosovo. This law ensures and guarantees the protection of ethnic minorities' identity, culture, religion, access to education, health care, and full political and public participation. This Law also ensures ethnic minority groups' political participation in both local and national level. Consequently,

1 Approved on the basis Article 65(1) of the Constitution of the Republic of Kosovo

it sets the ground for establishing the **Community Consultative Council** with the purpose of coordination and consultation for all communities in Kosovo. Despite the abovementioned rights, the law **on the Use of Languages** ratified on the 26th of July 2007 sets Albanian and Serbian as two official languages, and other languages, such as Turkish, Bosnian and Roma as the languages applied only in the municipal (or national level) in compliance with the **Law on the Use of Languages** (Law No. 02/L-37: Art. 1). On the other hand, the **Anti-Discrimination Law**, ratified on the 19th of February 2004, (Law No.2004/3) is another law guaranteeing the protection of ethnic minorities from any type of discrimination with respect to career development and access to jobs (ADL 2004/ 3, Art 2).

Moreover, the **Law on the Local Self- Government** (Law No. 03/L-049) was passed on the 20th of February 2008 to increase the position of the local communities, specifically Serbian community living in Kosovo. This law provided more competencies for the municipalities in which Serbian community represents a local majority (LLSG, 2008: Art. 23). Despite the fact that Kosovo has shown a very detailed legal framework protecting minorities, the need to improve the existent framework was identified immediately after the Declaration of the Independence of Kosovo as well as the adoption of its Constitution (Qehaja F. 2013: 4).

LEGAL FRAMEWORK ON THE PROTECTION OF ETHNIC MINORITIES: POLICE

After the declaration of independence in 2008, the mandate of the Ministry of Internal Affairs (MIA) and the KP was defined by the Constitution of the Republic of Kosovo. Article 128 of the Constitution of Kosovo clearly defines the structure of the Kosovo Police and states that: *“the Police shall be professional and reflect the ethnic diversity of the population of the Republic of Kosovo”* (Constitution of the Republic of Kosovo, 2008, Art 128/2). Additionally, **the Law on Police** ratified on the 2nd of March 2012 (Law no. 04/L-076) includes provisions that guarantee participation and equal representation of ethnic minorities in the structures of the Kosovo Police.

Article 35 of this Law states that *“the ethnic composition of the Police Officers assigned within a municipality shall, to the extent possible; reflect the ethnic composition of the population within the municipality”* (LKP 03/L-076 Art. 35) Also, Article 41 of the same Law (which deals with Station Commanders) states that in *“municipalities where the largest ethnic community is Serbian, Station Commanders of Police Stations and commanders of substations shall be selected by the General Director with the participation of Municipal Assemblies”* (LKP 03/L-076 Art 41).

Moreover, there are additional guarantees as a result of the First Brussels Agreement between Kosovo and Serbia reached on the 19th of April 2013. The agreement deals with the Police matter in the northern part of Kosovo. Points 7, 8 and 9 of the agreement define elements of the police structures in the northern part of Kosovo. The agreement explicitly points out that all police members in the northern part of Kosovo should be integrated into the Kosovo Police and the latter should be the only police force in Kosovo. The eighth point of the agreement set the ground for integrating other Serbian security structures in equivalent Kosovo structures. To ensure full integration of the Serbian community in the northern part of Kosovo, a specific point has been reserved for the Police Regional Commander in the four northern Serb majority municipalities². Similarly to other municipalities, the composition of the KP in the north shall reflect the ethnic composition of the population, and the commander shall be a Kosovo Serb nominated by the MIA and provided by the four mayors on behalf of the Community/Association (Kosovo – Serbia Agreement, 2013: Point 7,8 and 9). This topic will be further expanded in the next sessions elaborating the real situation in regard to minority inclusion in the KP.

LEGAL FRAMEWORK ON PROTECTION OF ETHNIC MINORITIES: KSF

After the declaration of independence, Kosovo established the Kosovo Security Force along with the Ministry for the Kosovo Security Force (MKSF). The initial basis for the establishment of FSK and MFSK was clearly set in the Ahtisaari Plan³. In this regard, it is important to emphasize the adoption of the Law on the Ministry of KSF, an institution governed and controlled by a civilian body.

Furthermore, the Constitution of Kosovo, section on the KSF points out that the force *“shall protect the people and Communities of the Republic of Kosovo based on the competencies provided by law”*, and *“that the KSF should reflect ethnic diversity of the Republic of Kosovo”* (Constitution of the Republic of Kosovo, 2008: Art 126/2-4)

The law on the KSF adopted on the 13th of June 2008 (Law No. 03/L-046) explicitly points out that the force is an all-volunteer force drawn by all strata of society no matter the ethnic and religious background (Law on Kosovo Security Force 03/L-046, 2008: Art 9). Minority inclusion in the KSF has also been regulated by **the Law on Service in KSF** which was also adopted on the 13th of June 2008 (Law No. 03/L-082). It defines that each member of this force should be treated fairly without any

2 Northern Mitrovica, Zvecan, Zubin Potok and Leposavic.

3 Also adapted in the constitution of the Republic of Kosovo in June 2008

discrimination on the ethnic or gender basis (Law on Service in KSF 2008: Art 3). According to this law and the human resources strategy and recruitment policies, the quota of 10% has been set to be fulfilled by ethnic minorities living in Kosovo.⁴ Having in mind a law clearly defining ethnic inclusion within the force, the law also foresees that the official languages of the force shall be Albanian and Serbian. The English language could be applied in communication with international organizations (03/L-046, 2008: Art. 9).

To ensure more political responsibilities on the ethnic communities, Ahtisaari Plan foresaw the creation of the Kosovo Security Council (KSC). Unquestionably, KSC is one of the main pillars of security sector in Kosovo. KSC was created based on the Law No. 03/L-050⁵. **The law on KSC** (adopted on the 13th of March) provides an advisory and deliberative mandate to this institution with the exception of the state of emergency when this body assumes executive role (03/L-050, 2008, Article 1.1, 1.2 and 1.3).

The next session will analyze and elaborate the actual situation and the challenges of implementing the above mentioned laws, strategies and regulations. As stated in the beginning of the document, the main focus will be on the KP, KSF and KSC.

MINORITY INCLUSION IN KOSOVO'S SECURITY SECTOR: IMPLEMENTATION OF THE LEGAL FRAMEWORK

KOSOVO POLICE

It is evident that the current general legal framework as well as those pertaining to the Kosovo Police provide for adequate protection and equal inclusion of all communities residing on the municipal territory. Some municipalities⁶ developed a good strategy to achieve these goals, while some still fail to ensure fair representation (OSCE, 2009: 3).

4 Interview with MKSF representatives

5 Also based on Chapter IX article 127 of the Constitution of the Republic of Kosovo

6 The inclusion should be in proportion to the municipal ethnic composition hence it remains the responsibility of local (municipal) authorities.

The Kosovo Police operates under the authority of the Ministry of Internal Affairs (MIA) and is composed of approximately 7,527 police officers and 1143 civilian staff (Interview with KP officials, 2014). Accordingly, the ratio between the number of police officers and the total population in Kosovo is approximately 1 to 245.21 which is considered to be similar to other European countries⁷. In the meantime, the Kosovo Police is constantly working on accomplishing the legally indicated ethnic composition. Despite some challenges to integrate ethnic minorities within the institution, the KP is considered to be the “frontrunner” in this regard, compared to other security institutions in Kosovo. Since its establishment, the KP has achieved a satisfactory level of ethnic minorities’ participation, especially, the inclusion and integration of the Serb minority in Kosovo (see table 1 below).

According to the KP statistics, the KP has an overall good performance when it comes to implementing laws that deal with the inclusion of the ethnic minorities within the institution. By the end of 2013, around 84.22% of the KP staff were Albanian, 11.49% were Serbs while around 5% were members of other ethnic groups (Interview with KP officials, 2014).

ETHNICITY STATISTICS (KP- SO - CIV)	TOTAL	TOTAL %
Albanian	7,302	84.22%
Serbian	996	11.49%
Bosnian	205	2.36%
Turkish	73	0.84%
Roma	15	0.17%
Egyptian	7	0.08%
Ashkalia	20	0.23%
Goran	40	0.46%
Others	12	0.15%
TOTAL	8,670	99.87%

**Table 1 Ethnic Compositions within Kosovo Police
(Uniformed and Civilian Staff)**

⁷ Statistically speaking, Kosovo stands similar to Turkey, Albania, Moldavia, Austria, Serbia, Montenegro, Macedonia, Slovenia and Greece.

KOSOVO POLICE STATISTICS ON ETHNICITY (UNIFORMED)	TOTAL	TOTAL %
Albanian	6,280	83.43%
Serbian	904	12.01%
Bosnian	191	2.53%
Turkish	67	0.89%
Roma	14	0.18%
Egyptian	7	0.09%
Ashkaelia	19	0.25%
Goran	36	0.47%
Others	9	0.11%
TOTAL	7,527	100%

Table 2 Ethnic Compositions within Kosovo Police (Uniformed Staff)

ETHNICITY STATISTICS (CIVILIANS)	TOTAL	TOTAL %
Albanian	1022	89.41%
Serbian	92	8.04%
Bosnian	14	1.60%
Turkish	6	0.52%
Roma	1	0.08%
Egyptian	0	0.00%
Ashkaelia	1	0.08%
Goran	4	0.34%
Others	3	0.26%
TOTAL	1143	100%

Table 3 Ethnic Compositions within Kosovo Police (Civilian Staff)

The KP has been widely admired by the international community for its strong commitment for minority representation, in particular towards the Serbian minority, making the KP, thus, as a model

institution not only in Kosovo, but in the region and Europe as well (ICG, European Report 2009: p. 13). Nonetheless, achieving the current satisfactory results did not pass without challenges and difficulties. Speaking from a political point of view, the KP was constantly challenged by members of Serb ethnic minority, threatening for example, to leave the institution after the declaration of independence in 2008. This was a result of constant political pressure coming from the Government of Serbia. A number of them left the institution, to which the Government of Kosovo, in coordination with EULEX, had set June 2009 as the deadline by when those who left can return to their previous positions. This strategy had a positive outcome, since most of the Serb officers returned after realizing that they would lose their jobs and that Serbia could not financially support them (ICG, European Report, 2009: 14).

In 2013, the KP was considered to be a relatively bright spot for ethnic minority groups, the most diverse institution in the country, with strong Serb and other minority representation at all levels and enjoying a reputation for honesty among all communities (ICG, 2012: 6-7). The large number of members from minority groups has been accepted thus the KP was applauded widely by the citizens as well. As a result, many agree that this brought sustainability, consistency and respect within the force, specifically in the areas largely inhabited by these communities. Many argue that being a multi-ethnic institution and having the local police members of all communities helped facilitating the interaction and cooperation among the officers and local population.

As for the cooperation between police officers and other members of the KP, it is worth mentioning that the mandatory courses in both languages (Albanian and Serbian) has led to good cooperation at all levels within the force (Focus Group, 2014).

Comparing to the situation in the southern part of Kosovo, the inclusion of the Serb ethnic minority of the northern part of Kosovo remained a challenge especially after the declaration of independence in 2008. During this period, the Kosovo Police officers were more accountable to Belgrade than to Prishtina. They would report to Prishtina only through the mediation of EULEX, which too, had a limited access during this period (ICG, 2011: 2-3). Belgrade maintained its Ministry of Internal Affairs (MUP), Intelligence Agency (BIA), and other security structures throughout this period. However, after the First Brussels Agreement was cut, the gradual integration of the Kosovo Police officers and the former Serbia's MUP structures working in the north has begun. Police stations operating in northern part of Kosovo have been closed while salaries from Serbia have been ceased; Serbian courts have stopped working; and municipal assemblies in the four northern municipalities have been dissolved

(EC, 2013: 1). In accordance with the First Brussels Agreement, around 300 former MUP members are expected to become part of the KP, while the application of recruitment criteria that is currently being applied for the former MUP members remains questionable among both Serbian and Albanian communities living in Kosovo (Kosova Press, 2013). The “accelerated” steps of the recruitment process and signing of the employment contracts between the Kosovo Police and the former MUP members was not seen as a fair and open process (Focus Group, 2013).

According to some sources, as of end of February 2014, around 80 former Serbian police officers had completed their induction and transition to the KP, later on this number has now grown to a total of 142 officers, who have already been deployed for active duty in the northern regional command. It is expected that some 100 additional officers would complete their induction and assume duties in the North shortly (SRSG, 2014: 1). The recruitment process of the former MUP members is still ongoing. Their process of integration has been seen in positive light by both governments (Kosovo and Serbia) and by the international community, implying that this shall ensure full establishment of the rule of law in the northern part of Kosovo (KFOR, 2014). The recruitment and integration of the former MUP members into the KP is being received with enthusiasm especially in Prishtina and the international community present in Kosovo, because this would ensure Prishtina’s control over the northern part of Kosovo, perhaps for the first time after the declaration of independence in 2008.

While immense attention has been paid to the integration and inclusion of Kosovo Serbs in KP, the integration and inclusion of other communities in Kosovo, especially Roma, Egyptian and Ashkaelia and their access to security institutions is concerning. Access to education is a crucial factor in order to proceed with other steps of recruitment in security institutions; therefore, as it will be shown in the next section, these groups are poorly represented in security institutions in general.

As briefly argued, there is no quota system in place within KP in place to enhance the representation of other ethnic groups. Therefore, many police generations have graduated with a very low number of cadets from other ethnic groups and very often recruiting and graduation process ended up with zero members from these three communities. Despite the fact that these groups are left aside due to their poor educational background, the lack of information sources has been considered one of the other factors to their low level of integration in the KP. While most of the demands in the KP recruitment is related to knowledge about the social, legislation and security situation in Kosovo, members of these groups have limited information on security and safety due to lack of local newspapers and electronic media coverage or other sources in their mother language.

Kosovo has a number of neighborhoods with a significant population from these communities. In order to build trust and improve inter-ethnic relations among these communities with the Kosovo Police, an adequate number of police officers from these communities have to be employed within the KP for Community Policing. In this regard, a specific preparatory training for other communities with the focus on Roma, Ashkali and Egyptian applicants for the KP is planned in order to prepare them for the entry test to the KP. Also, OSCE, in co-operation with KP, will undertake an awareness raising campaign targeting other non-Albanian communities. It is expected to be focused also on Roma, Egyptian and Ashkali communities in Kosovo to enhance their knowledge about security and safety related issues within their neighborhoods (Muharremi, 2014).

KOSOVO SECURITY FORCE

Ethnic minorities' representation in the KSF is lower compared to their representation in the KP. However, the recently, participation of ethnic minorities in Kosovo is generally increasing and that is being reflected within the KSF as well. Inclusion of the Serb minority within the KSF has been very limited, and their lack of motivation to join the institutions has to do with political factors.

Despite the fact that equal access to the KSF for all ethnicities in Kosovo is guaranteed by the legal framework in Kosovo (Constitution and other laws), participation of the Serb minority in particular, has been challenging and one of the most difficult processes within the KSF (KCSS & FCI, 2011: 13). Nevertheless, both the MKSF and the KSF are making efforts on continuous basis to encourage participation of all ethnicities in Kosovo. In order to ensure full participation of all ethnic minorities, the MKSF and the KSF also cooperate with the Office for Community Affairs (OCA)⁸ - a governmental body created to serve as a focal point within the Government of Kosovo for community issues. The task of the OCA is to contribute to the implementation of laws and regulations of the KSF, in promoting a higher standard in respecting the rights of all members from all ethnic minorities (KSF, 2010:21).

The number of active members in the KSF has reached 2,294 (Syla, 2014) and according to the KSF data, during 2013, the percentage of ethnic minorities within the KSF has reached up to 8.85% (KSF, 2012:15). Compared to the KP, the representation of ethnic minorities within the KSF is lower, having in mind low representation of the Serb minority, which stands at around 1.83% of the total staff hired.

8 The Office for Community Affairs (OCA), created by Cabinet Decision Nr. 06/34 on the Creation of the Office, on 3 September 2008

KSF STATISTICS ON ETHNICITY	TOTAL	TOTAL %
Albanian	2,091	91.15%
Serbian	42	1.83%
Turks	55	2.40 %
Bosnian	49	2.14%
Ashkaelia	29	1.26%
Egyptian	19	0.83%
Roma	3	0.13%
Gorani	2	0.09%
TOTAL	2,290	99.83%

Table 4 Ethnic Composition in the Kosovo Security Force

GENERAL NUMBER OF PERSONNEL IN THE MKSF/KSF		STRUCTURE	VACANCIES	COMPLETED	TOTAL MINORITIES
MKSF	CIV	134	2	132	8
	MIL	68	7	61	0
LFC	CIV	100	6	94	1
	MIL	245	16	229	8
OSB		808	45	763	49
RRB		1,122	105	1,017	132
TRADOC		194	6	188	15
Non-systematized Officers		63	0	5	
TOTAL PERSONNEL		2,500	179	2,263	204
Uniformed (%)		100%	7.16%	90.52%	9.01%
Civilian in MKSF		234	8	226	9
Civilian (%)		100%	3%	97%	4%
RESERVE		800	322	478	10
(%)		100%	40%	60%	2%
Cadet in CUS				39	1
TOTAL OF MIL/C		3534	509	3005	224
TOTAL IN %		100%	9%	91%	7.45%

Table 5: Composition of the KSF in 2013

Since the establishment of the KSF, the Serbian minority has had a negative attitude towards the force. Seemingly, the force has been strongly linked to the status of Kosovo; therefore, the Serbian minority has barely shown interest to become part of the force. The political pressures from Belgrade (along with the radical groups within Kosovo) have continuously pressured the local Serbs consequently harming the process of inclusion. The KSF does not appear to be popular among the ethnic Serb minority, as it is seen to be representing a crucial element of statehood (Focus Group, 2014). Ethnic Serb minorities in Kosovo also view the KSF as a derivative of the Kosovo Liberation Army (KLA) that fought against the Serb forces in the end of 90's. This because when the KLA was disbanded after the war, most of its members were recruited to the Kosovo Protection Corps (KPC), which performed as a civil protection institution in the post-war period. As a result of the declaration of independence, the KPC was transformed into the KSF which, for the ethnic Serb minority, still represents a link between the KLA and the KSF of today.

Along political factor challenging the inclusion of ethnic minorities in the KSF, there are other factors that contribute to their exclusion. For instance, unlike KP, the use of both, Albanian and Serbian, languages is not strongly triggered within the ranks of the institution. While both languages are used for distant daily communication, the same did not take place during operations and other levels of communications. Courses for both Albanian and Serbian languages are introduced to the members of this force; however, these courses are only optional and not mandatory as in the case of the KP (Focus Group, 2014). This project, has been recently introduced within KSF and only small groups of 30 people have been interested to take the language courses offered.

Nevertheless, the KSF efforts and constant campaigns in the Serb inhabited regions have brought a positive result. There has been an increase of interest by ethnic minorities, especially by the Serbs living in Kosovo; however, as argued above, the political factors still remain a challenge. The enormous influence of the radical circles among the Kosovo Serbs and officials from Belgrade on their kin in Kosovo continues to be an impediment to their integration in the FSK.

KOSOVO SECURITY COUNCIL

As for the composition of Kosovo Security Council (KSC), according to the Constitution of the Republic of Kosovo (Article 127) this organ should have at least one member from ethnic minorities in Kosovo. The KSC members include: the Prime Minister (who chairs the KSC), the Deputy Prime Minister, the Minister of the MKSF, the Minister of Foreign Affairs, the Minister of Justice, the Minister of Finance

and Economy, the Minister of Internal Affairs, and the Minister for Returns and Communities, in accordance with the Law on the KSC (No. 03/L-050) (KCSS, 2008:5). The KSC is supported by the Secretariat, the Situation Center, and the Intelligence Committee. The secretariat staff is proposed by the Secretary and approved by the KSC. **Regulation No. 01/2009 on the Organization and the Work of the Kosovo Security Council Secretariat** approved on the 28th of January 2009 does not explicitly include minority members; however, it is expected that at least a member from an ethnic minority in Kosovo to be included, especially in cases when issues tackling their rights and inclusion in the security sector is concerned (Regulation No. 01/2009: Art 4).

ETHNIC MINORITY GROUPS PERCEPTION ON KOSOVO'S SECURITY INSTITUTIONS

PERCEPTIONS: KOSOVO POLICE

Participation of ethnic minorities in institutions has the tendency to automatically translate into more trust and satisfaction with those respective institutions. The latest results of the Kosovo Security Barometer (KSB) show that around 50.33% of Serbs in Kosovo interact with the KP on daily basis and 40.10% of other ethnic minorities declared that they have interacted with the police. Actually cooperation between the KP and ethnic minorities appears to be better comparing to the cooperation with the Albanian majority, as indicated in the figure below. The fact that the KP has a proper representation of ethnic minorities, especially in areas and municipalities where ethnic minorities constitute a majority, clearly boosted cooperation between citizens and police officers.

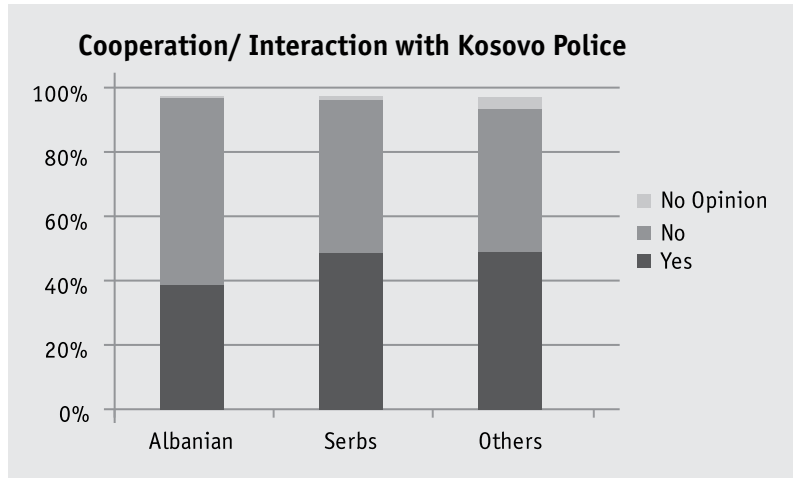


Figure 1 Cooperation/Interaction with Kosovo Police by Ethnicity

Nevertheless, the almost reverse trend appears when analyzing the satisfaction and trust towards the KP. Members of the ethnic Serb minority have a neutral perception when asked if they trust the KP (27.90%) responded positively, while 51.61% from other minority groups' trust in the KP. The level of distrust towards the KP is quite high among Kosovo Serbs, almost 47% of the respondents do not trust the KP, while other minority groups responded negatively by 19.35%. When asked about the level of satisfaction towards the KP, more than 29% of the Serbian population in Kosovo appears to have negative perception towards the KP, while around 26% of the respondents from other minority groups in Kosovo seem to be not-satisfied with the KP.

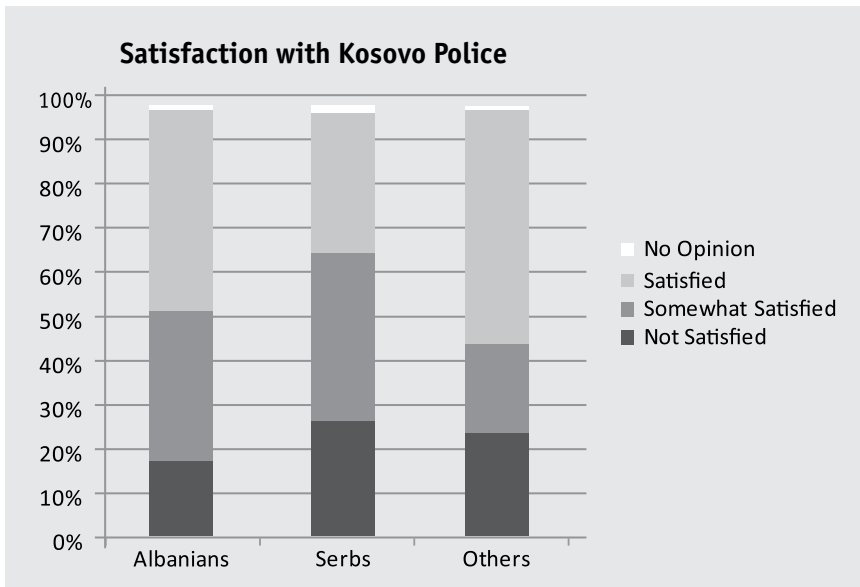


Figure 2 Satisfaction with Kosovo Police by Ethnicity

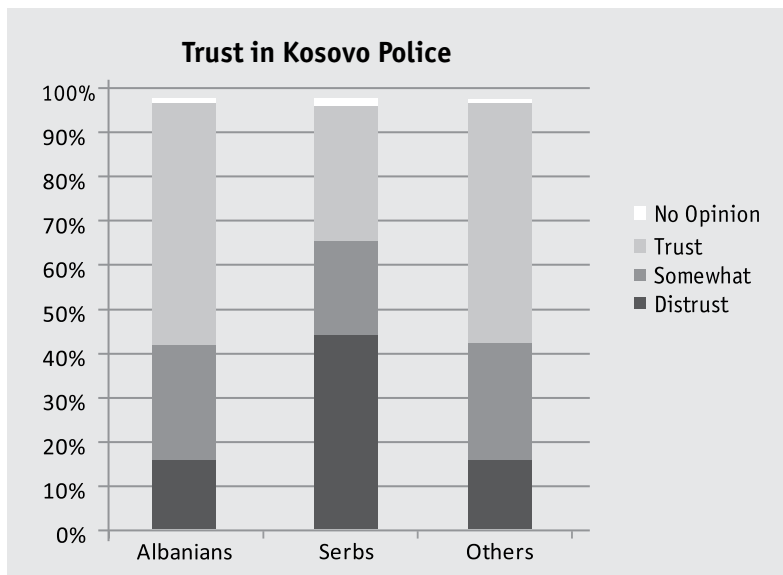


Figure 3 Trust in Kosovo Police by Ethnicity

PERCEPTIONS: KOSOVO SECURITY FORCE

The latest results of the Kosovo Security Barometer (KSB) show that around 80%-90% of the Kosovo population in general (Albanians, Serbs and other minorities) have a predominately low interaction with the KSF. Unlike the KP, KSF represents a different nature of security institution, thus daily interaction with the KSF members is quite low in general.

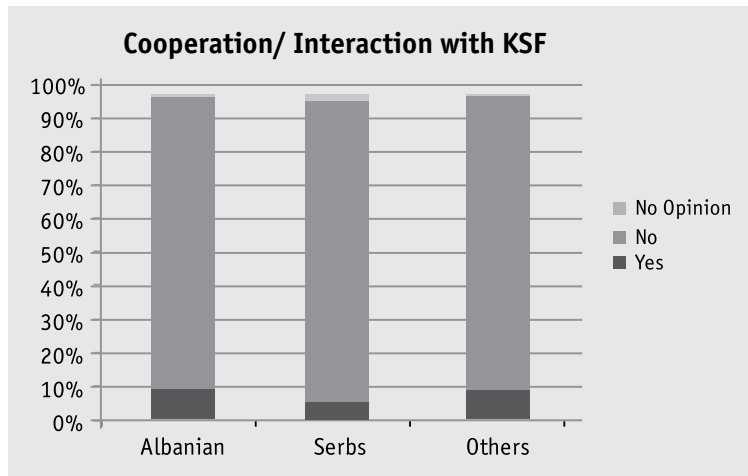


Figure 4 Cooperation with Kosovo Security Force

Unlike the KP, the KSF does not seem to have a good reputation among the ethnic Serb minority in Kosovo. As shown in the figure below, most of the ethnic Serbs in Kosovo are either not satisfied (25%) with KSF's work or have no opinion at all (61.60%), while 64.60% of other ethnic minorities in Kosovo are satisfied with the KSF. Clearly, the ethnic Serbs in Kosovo have been influenced by current political situation, and the constant external (from Belgrade officials) and internal (from the domestic elites) pressures. When asked about the trust towards the KSF, most of ethnic minorities decided not to answer, (77.48% of Serbs and 58.60% of the other ethnic minorities).

The Kosovo Security Barometer findings show that only around 20% of Kosovo Serbs are satisfied with the work that KSF is actually performing in Kosovo (KCSS, 2013:3). The low satisfaction with the KSF can also be explained by the KLA – KSF dichotomy as mentioned in the previous sections.

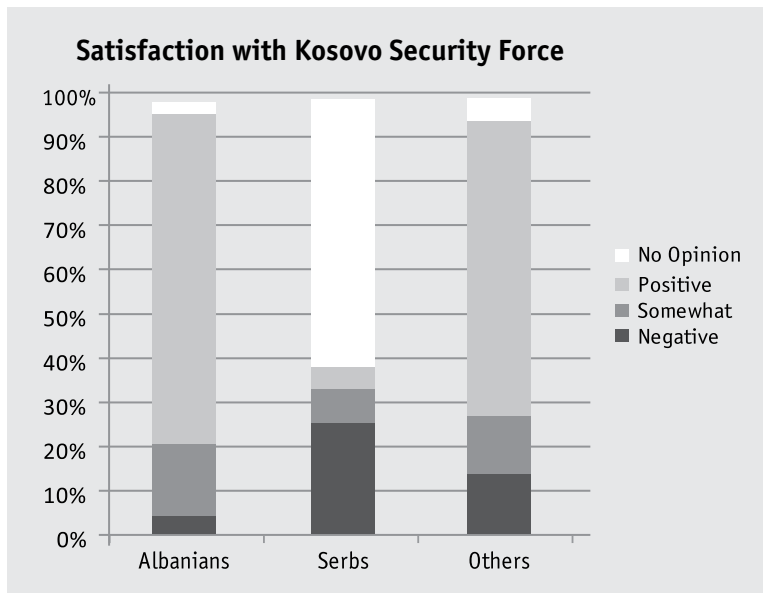


Figure 5 Satisfaction with Kosovo Security Force by Ethnicity



Figure 6 Trust with Kosovo Security Force by Ethnicity

CONCLUSIONS

The security sector in Kosovo, despite being new, it immediately initiated the SSR process with the aim to fulfill country's aspirations for Euro-Atlantic integration. In this regard, full inclusion of ethnic minorities in the security sector in Kosovo has been a challenge not only for national institutions, but for international community as well. It is evident, however, that each security institution has made some progress.

Full integration of ethnic minorities is one of the prerequisites for establishing a sustainable security sector in Kosovo, meaning that all ethnicities in Kosovo should be fully and equally integrated in security structures. (Qehaja & Vrajolli, 2012: 76-77). The legal framework in Kosovo which ensures and guarantees equal and proportional representation of ethnic minorities in all public institutions, including the security sector is already present; however there should be a higher and better implementation of the respective laws.

Besides efforts by the international community, above all the UN and the EU, to promote and affirm the multi-ethnic character of Kosovo security sector, there is still left a lot of work to be done by local institutions. The current administrative capacities and infrastructure for ethnic minorities in Kosovo in the security sector are consolidated and strengthened as a result of constant attention and support in this regard. While the KP is strongly supported by large donors in promoting minority rights, the KSF has been constantly supported by the NATO led organizations in enhancing the expertise and technical facilities, and encouraging minorities to join the force.

Nevertheless, minority inclusion in the security sector is not an internal process only, it is more often a process highly influenced by other external factors. This element is remarkably noticed when it comes to the full integration of the ethnic Serb minority within Kosovo security sector. The constant political and other external pressures made the ethnic Serbs in Kosovo grow more hesitant to join Kosovo security institutions. The Prishtina-Belgrade dialogue promises that its outcomes will contribute to the Serbian minority inclusion in the security sector - especially the KSF. However, more attention should be paid towards other ethnic minorities in Kosovo as well which more often are being left aside.

Moreover, the First Brussels Agreement of April 2013 between Kosovo and Serbia marks a new step towards the integration of the ethnic Serb minority of the northern part of Kosovo - especially their

integration in the security structures. The beginning of the integration of the former MUP members in the northern part of Kosovo marks the initial steps of tackling the security issues in the north institutionally. As for the KSF, the force is constantly cooperating with other governmental bodies to ensure minority inclusion and fulfill the criteria for NATO membership. However, the high level talks between Kosovo and Serbia did not produce yet an agreement that will influence the Kosovo Serbs to integrate into the KSF in the future.

RECOMMENDATIONS

- ▶ The Kosovo Police should create mobile teams to inform and reach to ethnic minorities, especially Roma, Ashkali and Egyptians.
- ▶ The Kosovo Police shall create mechanisms to ensure consistency. The current data show satisfactory result, however with the integration of the former MUP members the KP should be careful and not allow extremist elements within the force. Otherwise the position of the Serbian community would be seriously affected.
- ▶ The Kosovo Security Force should introduce basic language courses (Albanian and Serbian) serving the communication of the Albanians and Serbs for the purpose of complex operations.
- ▶ Serbian Elites shall encourage the Serbian community to participate in the KSF. The latest agreements set a turning point in term of integration of the Serbian community, thus the Serbian elite should give their contribution and lobby for better inclusion in the KSF.
- ▶ The international community should make all the necessary efforts to convince Serbia not to negatively influence the Serbs in Kosovo, nor antagonize them with security institutions in Kosovo, especially the KSF.

BIBLIOGRAPHY

Legal Framework

- » Ahtisaari, M. (2008). *Comprehensive Proposal of the UN Special Representative for Kosovo*, New York: UN.
- » *Constitution of the Republic of Kosovo* (2008). Prishtina: Government of the Republic of Kosovo.
- » Law on Service in KSF 03/L-08 (2008). Prishtina: Assembly of the Republic of Kosovo.
- » *Law on the Kosovo Police 03/L-035*. (2008). Prishtina: Assembly of the Republic of Kosovo.
- » *Law on the Kosovo Security Council 03/L-050* (2008). Prishtina: Kosovo Assembly.
- » *Law on the Kosovo Security Force 03/L-046* (2008). Prishtina: Assembly of the Republic of Kosovo.
- » Law on the Local Self- Government 03/L-049 (2008). Prishtina: Assembly of the Republic of Kosovo.
- » Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo 03/L-047 (2008). Prishtina: Assembly of the Republic of Kosovo.
- » Law on the Use of Languages 02/L-37 (2007). Prishtina: Assembly of the Republic of Kosovo.
- » Regulation No. 01/2009 *Organization and the Work of the Kosovo Security Council Secretariat*(2009).. Prishtina: Kosovo Government.
- » The Anti-Discrimination Law 2004/3 (2004). Prishtina: Assembly of the Republic of Kosovo.
- » The law on Kosovo Security Council 03/L-050 (2008). Prishtina: Assembly of the Republic of Kosovo.

Reports and Publications

- » Bassuener, K. and Weber, B. (2013). *DPC Policy Paper: Not Yet a Done Deal. Kosovo and the Prishtina-Belgrade Agreement*. Berlin: DPC.
- » EC, E. C. (2013). *Kosovo Progress Report 2013*. European Union.
- » ECHR. (1966). *European Covenant on Civil and Political Rights*. Council of Europe.

- » *EULEX Program Report (2009).*
- » KCSS and FCI. (2011). *Kosovo Security Force, between current challenges and vision for the future.* Prishtina: KCSS & FCI.
- » Greene, M., Friedman, J., & Bennet, R. (2012). *Building the Police Service in a Security Vacuum: International Efforts in Kosovo, 1999 - 2011* . USA: Princetown University.
- » ICCPR. (1966). *International Covenant on Civil and Political Rights.* New York: United Nations.
- » ICG. (2009). *European Report.*
- » ICG. (2011). *North Kosovo: Dual Sovereignty in Practice.* International Crisis Group.
- » ICG, I. C. (2012). *Setting Kosovo Free: Remaining Challenges.* ICG.
- » ISSR. (2006). *Kosovo Internal Security Review.* Kosovo: ISSR.
- » Qehaja, F. & Vrajolli, M. (2012). *Monitoring and Evaluating the Good Governance in the Kosovo Security Sector.* Prishtine: Kosovar Center for Security Studies.
- » Qehaja, F. (2008). *Assessment of the Kosovo Security Concil in the Security Sector* . Prishtina: KCSS.
- » KCSS. (2013). *Kosovo Security Barometer - Third Edition.* Prishtine: KCSS.
- » KFOR. (2014). *KFOR Chronicle.*
- » KSF. (2012). *Annual Report 2012.* Prishtina : KSF.
- » KSF. (2010). *Stand Up - Challenges and Success.* Prishtina: KSF.
- » Lichnofsky, C. (2013). Ashkali and Egyptians in Kosovo: New Ethnic Identifications as a Result of Exclusion during Nationalist Violence from 1990 till 2010. *Academic journal article from Romani Studies, Vol. 23, No. 1* .
- » OSCE. (2009). *Protection and Promotion of the Rights of Communities in Kosovo: Local Level Participation Mechanisms.*
- » OSCE. (2012). *The State of Independent Institutions in Kosovo.* Prishtina: OSCE.
- » OSCE/ODIHR. (2008). *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel.* Warsaw: Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

- » Qehaja, F. (2013). *The Development Context of the Strategic Security Sector Review – Civil Society Perspective*. Prishtina: Kosovar Center for Security Studies.
- » Qehaja, F. and Vrajolli, M. (2012). *Almanac on Security Sector Oversight in the Western Balkans*. Belgrade: Norwegian Royal Ministry of Foreign Affairs .
- » Qehaja, F. and Vrajolli, M. (2012). *Monitoring and Evaluating the Good Governance in the Kosovo Security Sector*. Prishtina: Kosovar Centerfor Security Studies.
- » Qehaja, R., Ferati, H., Kosumi, K., and Qehaja, F. (2008). *The establishment, operability and democratic functionality of the Kosovo Security Force*. Prishtina: Kosovar Center for Security Studies.
- » Stevens, G. (2008). *Filling the Vacuum: Ensuring Protection and Legal Remedies for Minorities in Kosovo*. Prishtina: Minority Rights Group International.
- » UDHR. (1948). *Universal Declaration for Human Rights*. Uniten Nation.
- » Blease, D., and Qehaja, F. (2013, November 14). The conundrum of local ownership in developing a security sector: the case of Kosovo. *New Balkan Politics* , pp. 1-21.
- » Press, K. (2013, December 13). *Former MUP members integration into KP underway*. Retrieved January 30, 2014, from Kosovo Press : <http://www.kosovapress.com/en/security/former-mup-members-integration-into-kp-underway-7398/>

TESTIMONIAL

The project tackled a very important and crucial topic related to the current situation in Kosovo, specifically the inclusion of minority groups in Kosovo security sector.

The project on “Minority inclusion in Kosovo Security Sector” is one of the first projects which specifically aimed to tackle the issue of minority inclusion in the security sector institutions in Kosovo. The project through research conducted and analysis has identified the various challenges of implementing the legal framework on minority rights. And promoting research findings resulted in a very successful advocacy for the upcoming events planned by the KCSS.


The three roundtables organized by the KCSS as part of this project have managed to gather all representatives of security institutions, independent agencies, Assembly and civil society organizations. Also, the final event, the conference was covered by a large number of media, by transforming this topic in one of the top stories of the week.

The final event - the conference served as a very good opportunity for discussions to identify challenges facing security institutions in Kosovo and identify best practices to improve institutional capacity for better minority inclusion. In the near future, KCSS intends to continue organizing similar activities.

Besides, the project was widely accepted by the broad public and the media in Kosovo. Presentation of the main report findings got a wide media coverage, such as the national media (KTV, RTK 2, Rrokum) also the daily newspapers and electronic portals.

KCSS Researcher, Donika Emini participated in a morning show “SOT” (Today) to discuss and present the main findings of the analysis. The show was live and the broad public was able to participate and give their contribution by phone. The available link for the show is [here](#). And radio BlueSky – the morning show to present the preliminary findings of the report.

KCSS is planning to extend advocacy for a period of time to advocate for better inclusion of ethnic minorities in security sector institutions and full implementation of the



European Convention on Minority Rights and legal European practices on minority rights in the security sector.

The paper entitled: “Inclusion or Exclusion? Minorities in the Security Sector in Post-Independent Kosovo had a double impact that in one hand it is expected to increase accountability and commitment of Kosovo institutions to increase the minority inclusion and also in the other hand it will increase awareness to the minorities of Kosovo for active participation in security sector and their rights to such actions. This research paper was presented and provided to the decision makers and Kosovo public in order to enhance Kosovo citizen participation and awareness of security sector institutions.

Also, the paper will offer a basis for further research and advocacy, us the partnership with organizations and institutions to continue asses the SSR process and the implementation of the Kosovo- Serbia agreement. Despite the abovementioned activities, KCSS will continue to implement the Kosovo Security Barometer program to measure the public perception in regard to security institutions in Kosovo, including here the perceptions of each ethnic group residing in Kosovo.

The Kosovar Center for Security and the partners continue to address the minority inclusion issues by seeking more funds and enlarging the project in the near future, both in assessing the progress in this field and advocating for better inclusion.

Undoubtedly, this project set the basis for advocacy and capacity building for both, security institutions and civil society organizations in promoting minority rights and their inclusion in the security sector. Therefore, KCSS is determined to continue with the implementation of similar projects related to human rights and minority rights in general.

ABOUT THE AUTHOR

Donika Emini is a fellow of Konrad Adenauer Stiftung (KAS Foundation). From November 2013 Ms. Emini is working as a researcher at the Kosovar Center for Security Studies as part of the Think Tank Young Professional Development Program. She previously worked as a Researcher/Project Manager at the Balkan Policy Institute in Pristina, Transparency International - Berlin and The General Consulate of the Republic of Kosovo in New York. Her fields of expertise include international peace and security; local government reform, human rights and diversity management in Kosovo; public procurement and consumer protection; and anti-corruption reform in Kosovo. She holds a Master's degree in Public Policy from the Willy Brandt School of Public Policy at the University of Erfurt. Emini also graduated from the University of Pristina with a degree in Political Science.

LOCAL LANGUAGE POLICIES FOR NON-MAJORITY COMMUNITIES

POSSIBILITIES FOR MORE EFFECTIVE IMPLEMENTATION

Jovan Bliznakovski



April 2014

SUMMARY

Adequate linguistic competence is an important factor for effective citizen participation in democratic processes and in public life. This represents a rationale for states to adopt concessions which permit and support use of non-majority languages, most notably in official communication and education. From 2001 onward the Republic of Macedonia liberalized the sphere of official use on non-majority languages in regard to both the central and local levels of governance. This process was launched with the incorporation of the Ohrid Framework Agreement (OFA) in the legal system. However, the issue of effectiveness of language policies directed at non-majority communities and stipulated through Amendment V to Article 7 of the Constitution has been a much neglected problem in the Macedonian public sphere.

The Institute for Democracy “Societas Civilis” Skopje (IDSCS) prepared and published the public policy study *“Local language policies for non-majority communities: possibilities for more effective implementation”* (April 2014), with the aim to contribute to more successful implementation of the OFA language provisions. The study focused on only one aspect of the implementation of language policies directed at non-majority communities – the issue of official communication with the basic units of the Macedonian system of local governance, the local self-government units (LSGUs).

The public policy study has been prepared in the framework of the policy research project *“Local language policies for non-majority communities: tools for more effective implementation”* supported by the Slovak and Balkan Public Policy Fund. The goal of the project was to inform the decision-making and policy-making bodies of Macedonia’s local self-government units (LSGUs), as well as the decision makers in the national state

institutions, on the problems, challenges and success stories regarding the implementation of multilingual official language policies at the local level in Macedonia. As a **second objective**, the project aimed to articulate and publicly promote available policy choices for the LSGUs' policy-makers which would make the process of implementation of the right to use one's mother tongue in official communication more effective for the members of non-majority communities.

The policy research project "Local language policies for non-majority communities: tools for more effective implementation" was divided in two phases. The first involved research (November 2013 – March 2014), while the second involved advocacy activities (April 2014). The research phase involved an extensive two-step methodology to gather data. As a first step, IDSCS surveyed 17 municipalities which use more than two languages in official communication (the Macedonian language and one non-majority language). The survey was done through the use of standardized questionnaire. Questionnaires were distributed to all 30 municipalities which use more than one language, however only 17 responses were received. The City of Skopje as an LSGU with special status in the Macedonian system of local governance was not surveyed, however it was covered in the second phase of research.

The standardized questionnaire used in the survey was divided in five groups of questions: I) Official languages in the LSGU; II) Spheres of use of languages; III) Staff engaged to provide official use of languages; IV) Finances; and V) Timeliness and consistency of communication, as well as possibilities for more effective implementation. A total of 18 close-ended questions were included. The goal of the whole process of surveying was to gather data that would show the general "state of play" and situation with the implementation of local language policies directed at the non-majority communities.

As a part of the second phase of research, the IDSCS team selected six LSGUs in which semi-structured interviews were conducted with official LSGU representatives (politicians, civil servants in the LSGU administration and translators/interpreters). A total of 15 semi-structured interviews were conducted with LSGU officials in this phase. The topics of the interviews resembled to the topics of the survey questionnaire. However given that in

most of the six LSGUs, several persons were interviewed had different positions, this gave the researchers insights into various perspectives on the main challenges related to local language policies. The researchers were able to acquire an in-depth understanding of the situation in each of the six case-studies.

The six LSGUs covered in the second research phase were the following: the City of Skopje, Kumanovo, Gostivar, Chair, Studenichani and Dolneni. These LSGUs were selected considering several LSGU characteristics: first, more advanced implementation of local language policies was required in the sample (the City of Skopje and Gostivar were considered as most advanced); second, use of more than two languages as official (all considered LSGUs except the City of Skopje); third, inclusion of both urban and rural LSGUs was intended (Studenichani and Dolneni are rural); fourth, variations in the model of language policy that can be shown (Kumanovo is a primary example here); and fifth, recent introduction of “new” languages in official communication was also considered (this is the case with Chair and Studenichani which introduced the Turkish language in official use during 2013).

On the basis of the gathered data through the surveys and the semi-structured interviews, as well as official documents and other secondary sources, the public policy study portrays the situation in the six selected case-studies in one of its parts with an in-depth analysis.

Additionally, in the second research phase, meetings were held not just with LSGU representatives, but also with representatives of other relevant stakeholders: representatives of the Secretariat for Implementation of the Ohrid Framework Agreement (SIOFA), the Association of the Units of Local Self-Government in the Republic of Macedonia (ZELS) and the OSCE Mission to Skopje. Through these meetings even more

insights were gained on the “state of play” regarding the implementation of local language policies.

The main conclusions and recommendations derived from the research project are presented in five separate thematic areas. In general, this study advocates for:

- ▶ More inclusive and thoughtful decision making at the local level (this can be somewhat influenced by a more systematic legal framework);
- ▶ More and better information for the users of local language policies (the citizens) on the possibilities of use of their mother tongue in official communication;
- ▶ Certain reorganization of translation/interpretation activities for the more advanced LSGUs and better tracking of implementation;
- ▶ More support and assistance by the central government towards the small and resource-limited LSGUs; as well as
- ▶ Better monitoring and strategic planning of the process at the central level.

INTRODUCTION

This public policy study has been prepared in the framework of the policy research project “*Local language policies for non-majority communities: tools for more effective implementation*”, implemented by the Institute for Democracy “Societas Civilis” – Skopje (IDSCS), and supported by the Slovak and Balkan Public Policy Fund. The goal of the project is to inform the decision-making and policy-making bodies of Macedonia’s local self-government units (LSGUs), as well as the decision makers in the national state institutions, on the problems, challenges and success stories regarding the implementation of multilingual official language policies at the local level in Macedonia. As a second objective, the project aims to articulate and publically promote available policy choices for the LSGUs’ policy-makers which would make the process of implementation of the right the use one’s mother tongue in official communication more effective for the members of non-majority communities. Finally, on the basis of this document, IDSCS will continue to advocate improvement of the implementation of Article 7 of the Constitution of the Republic of Macedonia, which provides the basis for the use of non-majority languages as official languages at the local level and will continue to promote the registered problems in implementation, as well as possible policy scenarios that could prospectively contribute to a more effective implementation.

The policy research project “*Local language policies for non-majority communities: tools for more effective implementation*” can be divided in two specific phases. The first involves research, while the second advocacy activities. The research phase was conducted in the period November 2013 – March 2014. It involved an extensive two-step methodology to gather data. As a first step, IDSCS surveyed 17 municipalities which have more than one language in official use. Questionnaires were distributed to all 30 municipalities which use more than one language, however only 17 responses were received. The City of Skopje as an LSGU with special status in the Macedonian system of local governance was not surveyed, however it was covered in the second phase of research.

The following LSGUs responded to the survey: Bogovinje, Brvenica, Centar Zhupa, Chair, Chashka, Chucher Sandevo, Dolneni, Gostivar, Jegunovce, Kichevo, Lipkovo, Saraj, Sopshte, Struga, Studenichani, Tearce and Tetovo.

The LSGUs which did not respond in the assigned time-frame of 30 days were: Arachinovo, Butel, Debar, Krushevo, Kumanovo, Mavrovo i Rostushe, Petrovec, Plasnica, Shuto Orizari, Staro Nagorichane, Zhelino, Zajas and Zelenikovo.

The distribution of questionnaires for the LSGUs was done through e-mail and fax. IDSCS's team contacted the official persons responsible for public relations in all LSGUs prior to the distribution of the questionnaire. Additional efforts were made through more intensive telephone contacts to assure that an official LSGU person will respond to the survey, however some of those efforts have been in vain. Some LSGUs which finally did not respond were contacted on specific issues through telephone (example are Kumanovo and Shuto Orizari), however those inquiries were quite limited in comparison to the questionnaire. For some LSGUs which did not respond even the issue of which languages are in official use remained an unknown area. The IDSCS team submitted freedom of information requests in order to access precise data and it must be said that this process was successful. The following LSGUs replied to the formal requests: Vrapchiste, Krushevo, Petrovec and Staro Nagorichane. In essence, this means that during the first phase of the research (the survey and its follow-up), IDSCS managed to receive data from 23 out of a total of 30 municipalities that were initially envisaged.

The standardized questionnaire was divided in five groups of questions: I) Official languages in the LSGU; II) Spheres of use of languages; III) Staff engaged to provide official use of languages; IV) Finances; and V) Timeliness and consistency of communication and possibilities for more effective implementation. A total of 18 close-ended questions were included. The goal of the whole process of surveying was to gather data that would show the general "state of play" and situation with the implementation of local language policies directed at the non-majority communities.

As a part of the second phase of research, the IDSCS team selected six LSGUs in which semi-structured interviews were conducted with official LSGU representatives (politicians, civil servants in the LSGU administration and translators/interpreters). A total of 15 semi-structured interviews were conducted with LSGU officials in this phase. The topics of the interviews resembled to the topics of the survey questionnaire. However given that in most of the six LSGUs, several persons were interviewed had different positions, this gave the researchers insights into various perspectives on the main challenges related to local language policies. The researchers were able to acquire an in-depth understanding of the situation in each of the considered six case-studies.

The following LSGUs were covered in the second research phase: the City of Skopje, Kumanovo, Gostivar, Chair, Studenichani and Dolneni. These LSGUs were selected with the consideration of several LSGU characteristics: first, more advanced implementation of local language policies was required in the sample (the City of Skopje and Gostivar were considered as most advanced); second, use of more than two languages as official (all considered LSGUs except the City of Skopje); third, inclusion of both urban

and rural LSGUs was intended (Studenichani and Dolneni are rural); fourth, variations in the model of language policy that can be shown (Kumanovo is a primary example here); and fifth, recent introduction of “new” languages in official communication was also considered (this is the case with Chair and Studenichani which introduced the Turkish language in official use during 2013).

On the basis of the gathered data through the surveys and the semi-structured interviews, as well as official documents and other secondary sources, this document in one of its parts portrays the situation in the six selected case-studies, to present an in-depth analysis.

Additionally, in the second research phase, meetings were held not just with LSGU representatives, but also with representatives of other relevant stakeholders: representatives of the Secretariat for Implementation of the Ohrid Framework Agreement (SIOFA), the Association of the Units of Local Self-Government in the Republic of Macedonia (ZELS) and the OSCE Mission to Skopje. Through these meetings even more insights were gained on the “state of play” regarding the implementation of local language policies. A list of all persons which were interviewed or met for the purposes of the research project is available at the end of this public policy study.

A PLAN OF THE STUDY

This study is divided in five sections:

The section titled “*Local Language Policy beyond the OFA*” introduces the reader with the concept of language policy, as well as with the specifics of the Macedonian case. It is intended to serve as a starting point of this study, as well as to portray the available information on the current progress and future challenges. The second section “*Legal Framework for Local Language Policy*” analyzes the legal framework relevant for language policy at the local level. An overview of all relevant provisions is given and spheres of language use are identified. Section three “*State of Play*” gives an overview of all LSGUs that employ more than one language in official use, as well as their demographic specifics. Since such a list is not publically available, this part of the study is of great importance. The fourth section “*Case Studies*” provides an analysis of the six case-studies which were analyzed in-depth by the IDSCS researchers. Some of the trends found in the six LSGUs in question are repeatedly found in other LSGUs not included in the case studies sample. Section five “*Conclusions and Recommendations*” gives an overview of the findings and proposes recommendations that are derived from the conclusions and directed at various stakeholders. The goal is to provide meaningful insights on how

the implementation of local language policies can be improved and made more efficient towards the end-users: the individuals from non-majority ethnic background.

I. LOCAL LANGUAGE POLICY BEYOND THE OFA

INTRODUCTION TO LANGUAGE POLICY

Every state in the world employs at least one language on which official state “business” is conducted, i.e. a *language in official communication*. Some states employ more than one language for official use, while others may employ several. Some states give possibilities for use of languages that are not official at national level in specific geographical areas or territories or in specific spheres. These variations in so-called *language policy* of the state are dependent on several factors: the degree of linguistic diversity in the states’ borders, the territorial concentration of linguistic groups, the overall relations between the so-called “titular”, majority group and the minority groups, the ability of state institutions to function on more than one language etc.

Since 2001 the Republic of Macedonia has somewhat altered its language policy towards the non-majority ethnic communities as a result of the incorporation of the Ohrid Framework Agreement (OFA) in the legal system. A second language in official use was brought-in at the national level and state-sponsored higher education on a non-majority language was introduced. Moreover, within the local self-government units (LSGUs), several languages of the non-majority communities were employed as official. This public policy study is dedicated to this last aspect of Macedonian language policy, namely the implementation of the local language policy in the post-OFA period.

Here, language policy is understood as “a systematic, rational, theory-based-effort at the societal level to modify the linguistic environment with a view to increasing aggregate welfare... typically conducted by official bodies or their surrogates and aimed at part or all of the population living under their jurisdiction” (Grin 2003, 30).

In relation to Grin’s definition three points need to be emphasized:

First, in this policy study we are interested in policy implemented by the state bodies and organs, more specifically we are interested in the policy implemented by bodies of local governance in the Republic of Macedonia, i.e. the LSGUs. This means that we are excluding language policies implemented

by the national institutions, but also those implemented by private entities, such as companies, non-governmental organizations etc. which also may implement actions that target the linguistic environment for their own purposes. Second, we understand language policy as a systematic and rational effort rooted in theory, which basically means that we are looking at a coherent and planned structure of a strain of public policy, not a spontaneous act of the state bodies. Policies are planned, designed and executed, rather than unsystematically conducted. Third, language policies target the population, or one part of it and their basic goal is to modify the linguistic environment for the sake of increasing aggregate welfare. Language may be an important barrier for the individual when communicating in the public sphere, especially in relatively “stressful” situations, such as the court procedure or in the educational system. Thus, modifying the linguistic environment by assigning more than one languages in official communication may be beneficial for the members of linguistic communities which are not native speakers of the “first” official language.¹ Thus, aggregate welfare is increased if the welfare of a particular linguistic group is increased by assigning the language of the group in official communication.

At this point we arrive at the main focus of this policy study in relation to language policy. It needs to be emphasized that we are interested in situations of coexistence of languages and linguistic groups as a part of public policy and the availability of those languages to be used in official communication. Linguistic environment may be altered towards codification of a specific language, previously colloquial, to be used in official state “business” (this falls under the rubric of language planning and each state goes through that process, see Kaplan and Baldauf, 1997). However, we are interested in the processes that address the relations of several languages, rather than activities which aim to alter the use and function of one single language. Moreover, we are interested in a specific context – the languages on the territory of the Republic of Macedonia, the groups related to those languages and the policy of local self-government units aimed to answer to extensive linguistic diversity in the Macedonian state.

INTRODUCTION TO MACEDONIAN LANGUAGE POLICY

As it is very well known, following 2001 the incorporation of the Ohrid Framework Agreement (OFA) in the Macedonian legal and political system, the public policy of language use has been greatly liberalized. Two general spheres of language use were treated: official communication and education. In the sphere of education, since 2001 higher education in mother tongue is available for the members of the largest

1 The idea that unequal linguistic “equipment” has consequences towards individuals in their acts in the public sphere has been elaborated by authors which discuss language policy from the perspective of normative political theory. See: Pool (1991), Patten (2001) and Van Parijs (2002).

non-majority community, the Albanian. At the same time, the area of official communication has been greatly liberalized in two senses: first, the Albanian language was introduced in official use (with some specific conditions) at the national level; and second, the rules for assigning a language as official at the local level were amended to give status of official use to those communities which consist at least 20% of the population in a specific LSGU. Previously, the legal framework made a requirement that a 50% of the population should belong to one ethnic non-majority community so that their language can be used as official within the LSGU. This study will focus only on the issue of official communication, and only on the aspect related to official communication at the *local level*, thereby excluding the national level, including use of language in the court procedure, in the electoral procedure, in the communication with and within national bodies and organs etc.

Since 2001, beside liberalization of the policy sphere of use of non-majority languages (i.e. introducing a second official language at the national level, and more than one at local), Macedonia also had a challenge to define the spheres of use of the languages of the non-majority communities. This became a necessity since the amendments of the Constitution in 2001, agreed through the OFA, did not place effective equality between the use of the Macedonian and the Albanian language, and in third degree – the other languages used by the “smaller” communities. This situation opened the question of the policy spheres in which the Macedonian language is exclusively used (only the sphere of use in international relations was, however, stipulated as exclusive for the use of Macedonian). This inconsistency was somewhat treated with the adoption of a specific law in 2008. However, this law was at times criticized by political representatives of the non-majority communities, firstly, on the grounds of its quality and vagueness, and second, because of implementation deficits caused by the bodies and organs responsible.

The latest European Commission Progress Report on Macedonia (2013) assessed that “with regard to inter-community relations, [...] progress is still needed on systemic issues relating to [...] use of languages [...] (and that) monitoring of issues such as the use of languages [...] is lacking [...]”². In a 2012 report on the implementation of the OFA, published by the national Secretariat for Implementation of the Ohrid Framework Agreement (SIOFA), the following points were made regarding the problems with the use of the non-majority languages at the local level:

First, it was assessed that there is need for employment of additional number of translators/interpreters in the state institutions (including bodies and organs of the LSGUs), as well as continuous training for

2 The Former Yugoslav Republic of Macedonia 2013 Progress Report. SWD (2013) 413 final. Brussels, 16.10.2013, pp. 12.

already employed translators/interpreters. Second, the citizens need to be better informed on the rights of use of mother tongue in both general policy spheres of official use and education. Third, In the LSGUs where there are costs related to the right of use of mother tongue, it is concluded that those LSGUs should provide a specific budget line in their budgets that addresses these costs. This is not a practice in multilingual LSGUs. Fourth, there is need for comprehensive information on the implementation of the right to use mother tongue in the LSGUs, and the Association of Units of Local Self-Government of the Republic of Macedonia (ZELS) has been charged to prepare this type of information.³

In the period 2007-2008, ZELS implemented a project which goal was to support the LSGUs through procurement of equipment for simultaneous translation for the Municipality Councils. The financial means for that were obtained through a donation of the Swiss Agency for Development and Cooperation (SDC). 29 LSGUs were supported with booths for interpreters, earphones, microphones and other necessary equipment for simultaneous translation. In some LSGUs which use two non-majority languages, two interpretation booths were acquired. With this, nearly all Macedonian LSGUs which used non-majority languages in official use at the time were completely equipped to implement multilingualism at the plenary sessions of the Municipality Councils.⁴

In 2010, through a joint effort of SIOFA and the OSCE Mission to Skopje, a process was started to develop an Action Plan for implementation of the 2008 *Law on Use of Languages Spoken by at Least 20 percent of the Citizens of the Republic of Macedonia and in the Local Self-Government Units*. A Working Group consisted of representatives of several relevant ministries was created to draft the Action Plan. The whole process was concluded in 2012, however the Plan is still not adopted by the Government, thereby the process has halted.⁵

Also, in 2012, a special *Unit for monitoring of the processes of education, culture and use of languages* was established in the framework of SIOFA, as a body which could support the process of language use for the non-majority communities through giving input to national and local policy makers. However, since then, the Unit is still not equipped with personnel and thus not function with all its potential in accordance with its role.

3 Izveshtaj po odnos na sostojbata za implementacijata na site politiki shto proizleguvaat od Ohridskiot ramkoven dogovor (Report on the status of the implementation of all policies arising from the Ohrid Framework Agreement). Government of the Republic of Macedonia, Secretariat for Implementation of the Ohrid Framework Agreement, Skopje 2012, pp. 85.

4 This information was communicated during the interview with the ZELS official.

5 This was communicated to the researchers during the interviews with the officials from SIOFA and the OSCE Mission to Skopje.

Effective delivery of the right of the individuals from non-majority ethnic background to use their mother tongue in official use is an obligation derived from the Constitutional Amendment V to Article 7 (2001) which sets the basis of Macedonian language policy. Even though the official use of non-majority languages is not an international norm, there are many international documents which encourage and support official use of minority languages, especially in areas and territories which are considerably inhabited by members of minority groups.⁶ In the “spirit” of Amendment V, as well as most advanced international recommendations, this study will derive recommendations for policy stakeholders, based on evidence and gathered data in order to support more effective implementation of local language policies.

KEY POINTS:

1. Since 2001 Macedonia has greatly liberalized its public policy of language use in two general spheres: education and official communication (national and local levels).
2. This study is focused on a single aspect of Macedonian language policy: the policies pursued by the local self-government units (LSGUs), i.e. at the local level. As such, the study disregards from its analytical focus the use of non-majority languages in education, or official use at the national level.
3. Implementation of local language policies has been fraught with difficulties: lack of staff for implementation and budget means, as well as lack of information for citizens on the rights of language use.
4. However, in the past few years, the LSGUs have been equipped with equipment for simultaneous translations for Council meetings and an Action Plan for implementation for the “Law on Languages” has been drafted, though still not adopted. Also, a special Unit was set up in the framework of SIOFA for monitoring of the use of languages, but it still has not functioned in its full potential.

6 Some of the most advanced international documents that contain provisions related to minority languages are the recommendations of the OSCE High Commissioner for National Minorities. Namely, the Hague Recommendations Regarding the Educational Rights of National Minorities (1996), the Oslo Recommendations Regarding the Linguistic Rights of National Minorities (1998), the Lund Recommendations on the Effective Participation of National Minorities in the Public Life (1999) and the Ljubljana Recommendations on Integration of Diverse Societies (2012) cover different aspects of the issue of use of minority languages. All these documents accompanied by explanatory notes are referred in the References section of this study. Additionally, provision on linguistic rights of minorities are an integral part of documents adopted in the framework of the United Nations (UN), and, at the European level, in the framework of the Council of Europe.

II. LEGAL FRAMEWORK FOR LOCAL LANGUAGE POLICY

CONSTITUTIONAL PROVISIONS

Language policy at the level of local self-government units (LSGUs) i.e. the local level, is legally regulated through the Constitution and relevant laws. Amendment V to Article 7 of the Macedonian Constitution, introduced through the Ohrid Framework Agreement (OFA)⁷, stipulates that:

“In the units of local self-government where at least 20 percent of the population speaks a particular language, that language and its alphabet shall be used as an official language in addition to the Macedonian language and the Cyrillic alphabet. With respect to languages spoken by less than 20 percent of the population of a unit of local self-government, the local authorities shall decide on their use in public bodies.”

(Amendment V to Article 7, Constitution of the Republic of Macedonia, 2001)

This means that the LSGUs have constitutional obligations to provide official use of languages for those communities that consist at least 20 percent of the population within the unit. Moreover, a possibility is left open – if a community consists less than 20 percent, the introduction of the language of that community is subject to a positive decision by the LSGU bodies. In all of these cases the use of a non-majority language comes next to the use of the Macedonian language, as stipulated in the Constitution. It is worth noting that prior to 2001 a similar provision was in place in Article 7 of the Macedonian Constitution. However, before 2001, 50 percent were required as a part of the population for a language of a particular community, different than Macedonian, to be introduced as official. In the same manner, a decision by the LSGU authorities was required to introduce a language of a community consisting less than 50 percent of the population as official at the local level.

Thus, there are two basic rules through which an LSGU can “shape” its multilingual local language policy. First, LSGUs are obliged to guarantee official use for those languages used by the non-majority community which represents 20% of the population within a specific LSGUs. Second, relevant decision-making bodies of the LSGUs are responsible to grant a status of official use to a particular language, if the community that uses the language represents less than 20% as a part of the population in a specific LSGU. In this manner, *we can differentiate between guaranteed and conditioned use of the*

⁷ The Full text of the Ohrid Framework Agreement can be accessed at: <http://www.ucd.ie/ibis/filestore/Ohrid%20Framework%20Agreement.pdf> (last visit: 17 april 2014).

languages of non-majority communities. For an overview of which languages receive guaranteed use or have received conditioned use and in which particular LSGUs, the reader can turn to Section III of this study.

LAW ON LOCAL SELF-GOVERNMENT AND THE LAW ON THE CITY OF SKOPJE

Amendment V to Article 7 of the Constitution, containing the provisions relevant for establishing local multilingual language policies, however does not fully define the policy sphere and additional laws were needed and adopted post-2001. The Law on Local Self-Government from 2002⁸ and the Law on the City of Skopje from 2004⁹ contain specific parts relevant for local language policies (*Part IV. Official languages in the municipality* from the Law on Local Self-Government and *Part VI. Use of languages of the communities in the City of Skopje and in the municipalities in the City of Skopje* from the Law on the City of Skopje). The provisions relevant for the municipalities are identical to those from the Law on the City of Skopje. Here, the provisions from the Law on Local Self-Government are presented, while the reader should have in mind that identical provisions are inserted in the Law on the City of Skopje.¹⁰

Articles 89 and 90 of the Law on Local Self-Government establish rules for language policy at the local level. It is stipulated that the Macedonian language and its Cyrillic alphabet are official in the LSGUs, but also that the languages and alphabets of the communities which consist at least 20 percent of the population are also official. Moreover, this law introduces a role of the Municipality Council – the collective representative body of LSGUs – who is identified as responsible for creation of local language policy – for those communities that consist less than 20 percent of the population in the LSGUs. Article 90, paragraph 2 stipulates that:

“The Municipality Council shall decide on the use of languages spoken by less than 20 percent of the population in the municipality.”

(Article 90, paragraph 2, Law on Local Self-Government, 2002)

This provision is important because it introduces a role for the Municipality Council, the collective representative body of the LSGU, as a central decision making body regarding issues of language

8 Law on Local Self-Government, Official Gazette of the Republic of Macedonia, no. 5/02, 29 January 2002.

9 Law on the City of Skopje, Official Gazette of the Republic of Macedonia, no. 55/04, 16 August 2004.

10 The City of Skopje represents an LSGU with special status, derived from its character as a capital city of Macedonia. This is stipulated in Article 4 of the Law on Local Self-Government, while the Law on the City of Skopje closely regulates the status of the City of Skopje.

policy for the “smaller” communities, i.e. those communities that represent less than 20% of the population in a particular LSGU.¹¹ Decisions on issues related to the use of languages are also subject to a specific decision making procedure. The Law on Local Self-Government stipulates that:

“Regulations that affect [...] use of languages spoken by less than 20 percent [...] are adopted by majority of votes from the present council members, while there must be obtained majority of votes from the present council members which belong to the communities not in majority in the municipality.”

(Article 41, paragraph 3, Law on Local Self-Government, 2002)

This type of decision making became increasingly known in the Macedonian public sphere as the “double-majority voting” mechanism or the “Badinter majority”¹² mechanism. The goal of the mechanism is to assure protection for the communities not in majority from outvoting by the ethnic group in majority. This procedure was firstly introduced in the Macedonian Parliament with the incorporation of the OFA in 2001. Limited to specific issues, i.e. those that affect education, culture, use of languages and symbols, it was firstly intended to serve as a protective mechanism for the non-majority communities at the national level. However, the same rules were later employed for decision-making at the local level, i.e. in the work of the Municipality Councils.

Additional body of relevance for local language policy within the LSGU is the Committee for Inter-community Relations (CICR) which is established in LSGUs where a particular non-majority community consists at least 20% of the population, as stipulated with Article 55 of the Law on Local Self-Government. These committees, consisted of representatives of all communities within the LSGU, have a consultative function towards issues relevant to inter-community relations. The official use of the languages of the communities is also an issue under consideration of the CICRs.

11 Article 32, paragraph 1 of the Law on Local Self-Government defines the Municipality Council as ‘a representative body of the citizens which decides upon issues under municipality jurisdiction’. The members of the municipality councils (the councilors) are elected on general, direct and free elections (Article 33, paragraph 1) with a four year mandate (Article 35, paragraph 1). The numerical composition of the council is determined by the population of the municipality, i.e. the smallest municipalities (up to 5000 inhabitants) are composed by 9 councilors, while the biggest (over 100000 inhabitants) are composed by 33 councilors (Article 34). Depending on the number of inhabitants a municipality council can thus be composed of 9, 11, 15, 19, 23, 27, 31 or 33 councilors.

12 The name of the mechanism derives from the surname of French law professor Robert Badinter (1928).

“THE LAW ON LANGUAGES”

The central law which regulates the policy sphere of language use in the Republic of Macedonia is the 2008 *Law on Use of Languages Spoken by at Least 20 percent of the Citizens of the Republic of Macedonia and in the Local Self-Government Units*.¹³ Colloquially known as the ‘Law on Languages’, it contains a specific part on the use of languages at the local level (*part V-Other Uses, 11. Local Self-Government, articles 41-43*). The rules previously stipulated through the Constitution and the Law on Local Self-Government are reaffirmed through the Law on Languages, i.e. the status of the Macedonian language as the official language used in the LSGUs, the status of the languages of the communities which consist at least 20 percent of the population within the LSGU, the status of the languages used by communities below 20 percent of the population in the LSGU, the role of the Municipality Council as a decision maker in issues of local language policy for the communities below 20%, as well as the use of the double-majority voting in the LSGUs and the City of Skopje.

The Law on Languages systematically united all relevant provisions of language use that were previously scattered in various laws. In regard to language use at the local level, the Law on Languages simply reconfirmed the already-existing rules previously introduced constitutionally, and through the laws on Local Self-Government and the City of Skopje.

SPHERES OF LANGUAGE USE

Relating to the provisions relevant for language use from the laws on Local Self-Government, the City of Skopje and the Law on Languages, this study analyzes five broad spheres of language use:

1. Use of languages in the municipality councils (both oral and written use);
2. Use in communication between citizens and LSGUs bodies and organs (both oral and written use, including the process of obtaining information from public character);
3. Use in communication between citizens and public enterprises formed and managed by LSGUs (both oral and written use);
4. Use for informative purposes: when publishing the Official Gazette of the LSGU, the LSGU bulletin board, the LSGU web-site, the newspaper of the LSGUs etc.;
5. Use for inscriptions on municipal buildings and municipal property, when writing road signs and directions, names of streets, bridges and other infrastructure facilities.

¹³ Law on Use of Languages Spoken by at Least 20 percent of the Citizens of the Republic of Macedonia and in the Local Self-Government Units, Official Gazette of the Republic of Macedonia, no. 101/08, 13 August 2008.

When examining the overall “state of play” of local language policies in Section III, as well as the situation in the selected case studies in Section IV, IDSCS’s researchers focused on these five spheres of language use. This does not mean that there might not be any other relevant spheres that can be examined through other additional research endeavors. However, it is important to emphasize that the analysis here is focused on the above identified spheres.

KEY POINTS:

1. The sphere of official language use is primarily defined through Article 7 of the Constitution and since 2008 with the so-called “Law on Languages”.
2. There are two most basic rules for local language policies: LSGUs have obligations to provide “guaranteed use” for the communities consisting 20% of the population; and LSGUs decide on the use of languages of the communities that consist less than 20%, i.e. “conditioned use”.
3. The Municipality Council decides over issues of language policy through the double-majority voting procedure.
4. In this public policy document IDSCS identifies and analyses five broad spheres of language use.

III. STATE OF PLAY

RELEVANCE OF LOCAL LANGUAGE POLICIES: LSGUS AND OFFICIAL LANGUAGES¹⁴

Since 2013 Macedonia is territorially divided in 80 municipalities and the City of Skopje which is a total of 81 local self-government units (LSGUs).¹⁵ More than one third of all LSGUs (30 in total, including the City of Skopje) have an obligation to guarantee official use of one of the non-majority languages and 1

14 The data used in this sub-section is taken from the last conducted census in the Republic of Macedonia (2002) in accordance with the territorial organization of local self-government from 2004. See: Popis na naselenieto, domakjinstvata I stanovite vo Republika Makedonija 2002, spored teritorijalnata organizacija od 2004 (Kniga XIII) (Census of Population, Households and Dwellings in the Republic of Macedonia in 2002, According to the Territorial Organization from 2004 [Book XIII]). State Statistical Office of the Republic of Macedonia, Skopje, May 2005

15 Macedonia territorially reorganized local governance in 2004 with a separate law. However, reorganization was conducted in several phases. In 2004, the number of municipalities was reduced from 123 to 84, while in 2013 this number was further reduced to 80. See the Law on Territorial Organization of Local Self-Government in the Republic of Macedonia, Official Gazette of the Republic of Macedonia, no. 55/2004, 16.08.2004.

LSGU has introduced a non-majority language without having a formal obligation (i.e. without having a community over 20% of the population). In 27 LSGUs the Albanian is in official use according to the rule of guaranteed official use. In those 27 LSGUs, the Albanian community consists at least 20% of the population. Some of these LSGUs (Arachinovo, Bogovinje, Lipkovo, Saraj, Tearce, Vrapchishte and Zhelino) have a considerable majority of ethnic Albanian population (close to 90% or over). Other group of LSGUs have an ethnic Albanian majority (over 50%), but also other ethnic groups are present, such cases are Brvenica, Chair, Debar, Gostivar, Kichevo, Struga, Studenichani and Tetovo. In a third group of LSGUs, ethnic Albanians are a community in minority, but are still over 20% of the population: the City of Skopje Butel, Chashka, Chucher Sandevo, Dolneni, Jegunovce, Kruchevo, Kumanovo, Petrovec, Shuto Orizari, Sopishte and Zelenikovo. In addition, in the City of Skopje, ethnic Albanians consist 20.49% of the population, which also provides guarantees for official use of the Albanian language in the capital.

3 LSGUs have an obligation to provide official use of the Turkish language, due to presence of at least 20% ethnic Turks as a part of the population. Centar Zhupa and Plasnica are two small municipalities by the number of population which have a large ethnic Turkish majority (80.17% and 97.82% respectively), while in Mavrovo and Rostushe nearly one-third of the population is of Turkish ethnicity. In addition, the Turkish language has been introduced as official in 5 LSGUs, even though the Turkish population there represents less than 20%: Chair, Dolneni, Gostivar, Studenichani and Vrapchiste.

The ethnic Serbian population consists 28.56% of the population in Chucher Sandevo, and thus the Serbian language has a guarantee for official use within this municipality. In addition, the Municipality Council of Staro Nagorichane introduced Serbian in official use in 2010. The ethnic Romani population represents a majority in the Municipality of Shuto Orizari (60.60%) and also has a legal right of official use of the Romani language in the municipality. Both Serbian and Romani have been introduced as working languages of the Municipality Council of Kumanovo, with a decision from 2010. The Vlach language has been introduced as official in the Municipality of Krushevo with a Council decision (the Vlach population represents 10.53% of the LSGU population). The Bosniak language have been introduced as official in Dolneni, an LSGU in which the Bosniak ethnic group represents 17.54% of the population.

Thus, in a total of 22 of all 31 LSGUs in which we find official multilingualism, i.e. at least one non-majority language is used as official in addition to Macedonian. In 7 of the 31 LSGUs two non-majority languages are used as official, and in 2 of the 31 LSGUs three non-majority languages are in official use. Table 1 gives a precise overview (as in April 2014) of all LSGUs which have multilingual language policies, together with the languages in official use and their ethnic composition.

A total of 8 LSGUs have introduced a language of a non-majority community which is representing less than 20% of the population in the LSGU. 2 of these LSGUs have done this for two languages (Dolneni for Turkish and Bosniak in 2005 and Kumanovo for Serbian and Romani in the Municipality Council in 2010). Beside Dolneni, Chair (in 2013), Gostivar (in 2009), Studenichani (in 2013) and Vrapchiste (2006) have also introduced Turkish in official use. Beside Kumanovo, Serbian was also introduced in official use in Staro Nagorichane with a Council decision in 2010. Krushevo has introduced the Vlach language in official use in 2006. Table 2 gives an overview of all these cases.

Table 1: LSGUs in which non-majority languages are used by official, including languages and ethnic composition (as in April 2014). Languages marked with an asterisk (*) have been granted a status of official use through decision of municipality councils in their respective LSGUs

	LSGU	OFFICIAL NON-MAJORITY LANGUAGE(S)	ETHNIC COMPOSITION
1	City of Skopje	Albanian	MAC: 66.75%, ALB: 20.49%
2	Arachinovo	Albanian	ALB: 93.81%, MAC: 5.14%
3	Bogovinje	Albanian	ALB: 95.23%, TUR: 4.08%
4	Brvenica	Albanian	ALB: 61.62%, MAC: 37.52%
5	Butel	Albanian	MAC: 62.25%, ALB: 25.19%
6	Centar Zhupa	Turkish	TUR: 80.17%, MAC: 12.49%, ALB: 6.96%
7	Chair	Albanian and Turkish*	ALB: 57%, MAC: 24.13%, TUR: 6.95%, ROM: 4.76%, BOS: 4,55%
8	Chashka	Albanian	MAC: 57.28%, ALB: 35.23%, TUR: 5.10%
9	Chucher Sandevo	Serbian and Albanian	MAC: 47.32%, SRB: 28.56%, ALB: 22.88%
10	Debar	Albanian	ALB: 58.07%, MAC: 20.01%, TUR: 13.73%
11	Dolneni	Albanian, Turkish* and Bosniak*	MAC: 35.90%, ALB: 26.65%, TUR: 19.14%, BOS: 17.54%
12	Gostivar	Albanian and Turkish*	ALB: 66.68%, MAC: 19.59%, TUR: 9.86%
13	Jegunovce	Albanian	MAC: 55.26%, ALB: 43.02%

14	Kichevo	Albanian	ALB: 54.51%, MAC: 35.74%, TUR: 5.82% ¹⁶ TUR: 3.25%
15	Krushevo	Albanian and Vlach*	MAC: 62.79%, ALB: 21.31%, VLA: 10.53%,
16	Kumanovo	Albanian, Serbian* and Romani*	MAC: 60.43%, ALB: 25.87%, SER: 8.59%, ROM: 4.03%
17	Lipkovo	Albanian	ALB: 97.42%, SER: 1.37%
18	Mavrovo and Rostushe	Turkish	MAC: 50.46%, TUR: 31.10%, ALB: 17.21%
19	Petrovec	Albanian	MAC: 51.44%, ALB: 22.86%, BOS: 17.47%
20	Plasnica	Turkish	TUR: 97.82%
21	Saraj	Albanian	ALB: 91.53%, MAC: 3.89%, BOS: 3.16%
22	Shuto Orizari	Romani and Albanian	ROM: 60.60%, ALB: 30.32%, MAC: 6.53%
23	Sopishte	Albanian	MAC: 60.18%, ALB: 34.34%, TUR: 4.30%
24	Staro Nagorichane	Serbian*	MAC: 80.70%, SER: 19.13%
25	Struga	Albanian	ALB: 56.85%, MAC: 32.09%, TUR: 5.72%
26	Studenichani	Albanian and Turkish*	ALB: 68.83%, TUR: 19.05%, BOS: 9.64%
27	Tearce	Albanian	ALB: 84.39%, MAC: 12.20%, TUR: 2.30%
28	Tetovo	Albanian	ALB: 70.32%, MAC: 23.16%
29	Vrapchishte	Albanian and Turkish* (info pending)	ALB: 83.08%, TUR: 12.34%, MAC: 4.10%
30	Zhelino	Albanian	ALB: 99.20%
31	Zelenikovo	Albanian	MAC: 61.86%, ALB: 29.58%

16 In absence of official data, the demographic composition for the Municipality of Kichevo is calculated through aggregation of available data from the former municipalities Kichevo, Zajas, Vraneshtica, Drugovo and Oslomej. These five LSGUs have been merged in a single LSGU, the Municipality of Kichevo in 2013.

Table 2: LSGUs which have introduced in official use languages of non-majority communities representing less than 20% of the population as official, with the introduced of languages, dates of council decision, entry into force of decisions and projected implementation date (if applicable).

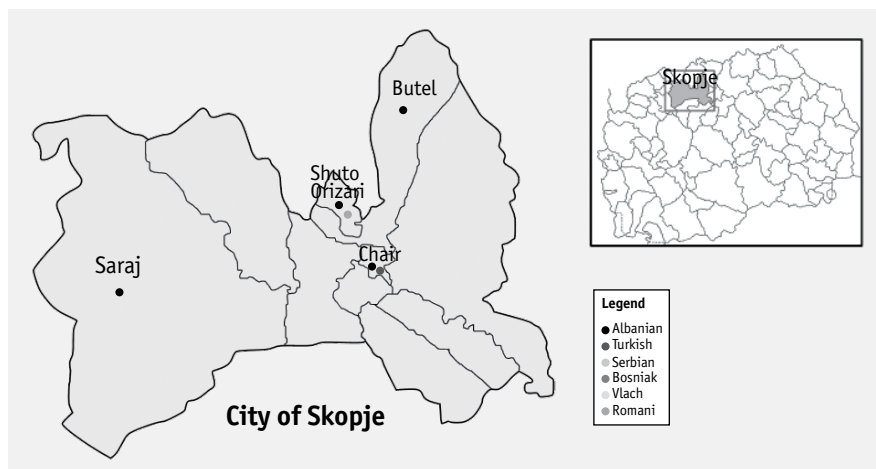
	LSGU	OFFICIAL NON-MAJORITY LANGUAGE(S) – LESS THAN 20%	DATE OF COUNCIL DECISION / ENTRY INTO FORCE / IMPLEMENTATION DATE
1	Chair	Turkish	10.10.2013 / 17.10.2013
2	Dolneni	Turkish and Bosniak	25.11.2005 / 03.12.2005
3	Gostivar	Turkish	15.07.2009 / 23.07.2009 / 01.01.2010
4	Krushevo	Vlach	30.05.2006 / 30.05.2006
5	Kumanovo	Serbian and Romani	04.05.2010 / 06.05.2010
6	Staro Nagorichane	Serbian	17.05.2010 / 25.05.2010
7	Studenichani	Turkish	29.04.2013 / 29.04.2013
8	Vrapchishte	Turkish	28.12.2006 / 05.01.2007

Geographically, the LSGUs which use non-majority languages in official communication are based in the north, north-western and western part of Macedonia. 4 of the municipalities are based in the City of Skopje. Maps 1 and 2 show where the Macedonian multilingual LSGUs are geographically situated.

Map 1 – Official languages of the LSGUs in Macedonia



Map 2 – Official languages of the LSGUs in the City of Skopje



The presented data shows that official multilingualism at the local level is not an extraordinary case in Macedonia. 31 out of 81 LSGUs implement, on one way or another, multilingual local language policies, and in nearly one-third of those LSGUs local language policies are directed at more than one non-majority community. A total of 832.184 people out of 2.022.547 Macedonian citizens as proclaimed with the census from 2002 live in LSGUs which have more than one language in official use (that is 41.14% of all Macedonian citizens).¹⁷ A majority of them are ethnic Albanians, 478.551 or 57.5%, while 236.659 or 28.44% are ethnic Macedonians. The other non-majority communities represent a smaller portion of the population in this projected “multilingual Macedonia” at the local level (Turks 5.94%, Romani 3.53%, Serbian 1.85%, Vlach 1.39% and Bosniak 0.25%).

This data shows the outreach of local language policies and their relevance for a big portion of the Macedonian population. This is derived from the fact that a considerable number of citizens live under a regime of “official multilingualism”. Subsequently, effective implementation of language policies in compliance with Constitutional Article 7 and the laws has effect over the “aggregate welfare” of the population, if we use Grin’s terminology presented in the definition in the first section. According to the understanding employed here, language policies have significance for all citizens and not just for the citizens – members of non-majority communities. Inefficient implementation of language policies may have consequences towards the work of the local administration and towards the overall quality of the

¹⁷ The City of Skopje is excluded from this calculation, however the for “multilingual” municipalities within its borders are included. According to the last census a total of 506.026 citizens live in the City of Skopje.

services provided to the citizens. Moreover, inefficient implementation can also be a burden for the local budgets. Consequently, in this study language policies are approached as important to all, and not just for the citizens from non-majority ethnic and linguistic background.

TRENDS IN IMPLEMENTATION OF LOCAL LANGUAGE POLICIES

Following the identification of all LSGUs which use more than one language in official use, IDSCS distributed survey questionnaires to all LSGUs, excluding the City of Skopje. The methodology behind the survey was presented in the Introduction to this public policy study. Here, only the conclusions, based on the responses from 17 LSGU officials will be presented.

In general, the survey revealed large discrepancies between LSGUs regarding the implementation of local language policies in the five analyzed spheres of language use. Also, large discrepancies were found within LSGUs regarding the implementation of the right of official use for different languages (i.e. unequal treatment between different languages). The following general conclusions were made based on the surveys' findings:

- » The use of non-majority languages at the **plenary sessions of the municipality councils** is already a very common and developed practice. Most of the LSGUs are completely equipped with the needed equipment for simultaneous translation as a result of foreign donations and most of the LSGUs have responsible person(s) for handling translations. If done at all, translation in committee sessions of the Municipality Councils is most commonly done in the method of consecutive translation. Only the plenary sessions are thus translated simultaneously.
- » Providing **written translation of the Municipality Council documents** on the official non-majority languages is also a practice which is quite common in the LSGUs. However, not all documents are translated in all official languages, this is the case especially for the less developed, rural LSGUs. The Agenda of the plenary meetings and the Decisions of the Municipality Council are translated in all official languages in most of the surveyed LSGUs and those are the two most commonly translated documents.
- » Another quite common use of non-majority languages (beside the use for the work of the Municipality Councils), as recorded with the survey, is in the **writing of the inscriptions on the municipal buildings and property**. Even the LSGUs with very limited budget resources manage to sufficiently implement this part of local language policy.
- » Regarding the **publication of LSGU's Official Gazettes**, IDSCS was unable to identify a case in which

the Official Gazette is published in more than two languages. Predominantly, Official Gazettes in the surveyed LSGUs are published in Macedonian and Albanian. Other languages are not used that often. The most usual form of publishing, when bilingual, is in the form of a split-page, rather than the form of consecutive written translation or the form of two separate publications. However, the last two forms for publication are also used in some LSGUs.

- » In regard to the issue of **obtaining information of public character**, the record is mixed. Some LSGUs do this effectively on at least two languages, and others allow the request to be written in one language, while the response is given on another. A small number of LSGUs organize this process only in Macedonian.
- » Implementation is also mixed in regard to **information shown on the bulletin boards**. Some LSGUs do this in only one language, however most write the information bilingually. A small number of LSGUs do this on more than two languages.
- » **Road signs** are predominantly monolingual in the smaller and rural LSGUs. The bigger and more developed LSGUs write road signs on Macedonian and the other official languages, however this is never completely consistent.
- » The sphere of **citizen communication with bodies and organs of the LSGU** seems to be less developed than all spheres of language use. When it comes to the “smaller”, under 20% of the population communities, by rule communication with citizens from those non-majority communities is not conducted in their mother tongue.
- » **Written communication** is usually available in two languages, the Macedonian and the language of the biggest non-majority community in the LSGU, and this is dependent on the linguistic competences of the available staff. In LSGUs where the population predominantly belong to a non-majority community, a greater number of employees is bilingual and thus written communication is conducted in both languages.
- » **Oral communication** between LSGUs and with citizens is rarely systematically implemented. If the particular employee speaks the language of the non-majority community, communication will be conducted in that language. If not, communication takes place on the language the employee understands, rather than the citizen. By rule, the LSGUs do not employ specific staff that could engage in oral communication.
- » The implementation of **communication between public enterprises and citizens** is also on a very low level, with some exceptions.
- » **None of the surveyed LSGUs have a specific budget line for language policy** in their annual budgets. Most of the surveyed officials were not able to give an answer on the financial implications

of language policy.

- » By rule, the bigger and richer with financial resources LSGUs employ **professional translators/interpreters**. Also, by rule, the smaller and resource-limited LSGUs use their existent staff for translations and do not hire professionals. Outsourcing of translation is not common, but it has happened in some LSGUs in specific occasions.
- » The **number of translation/interpretation staff** varies across LSGUs. Some of the biggest LSGUs stated that they have hired four (4) persons for translation/interpretation and that is the maximum which was provided as an answer. The small LSGUs which are limited with financial resources have hired one (1) or none translators/interpreters. None of the LSGUs have a specific unit which would only engage only in translation/interpretation.

Relating to these conclusions, it is worth to point out that both the success stories and problems will be presented in depth in the next Section IV that provides data from six case studies of LSGUs implementing local language policies towards non-majority communities.

KEY POINTS:

1. There are 31 LSGUs including the City of Skopje which implement multilingual language policies. 8 of them have introduced official use of the languages of the “smaller” communities.
2. 22 of the 31 LSGUs use one non-majority language as official, 7 LSGUs use two, and 2 LSGUs use three.
4. 832.184 citizens of the Republic of Macedonia live under a multilingual language-use regime at the local level. A majority of them are ethnic Albanians and less than one-third are ethnic Macedonians.
5. The use of non-majority languages is most commonly implemented in the Municipality Councils and when writing inscriptions on LSGUs buildings and property.
6. Communication between LSGUs and citizens and public enterprises and citizens on non-majority languages is quite underdeveloped, especially in the cases of the “smaller” (less than 20%) communities.
7. None of the LSGU has a specific budget line for language policy and most of them do not calculate the expenses.
8. The bigger LSGUs hire professional staff for translation and interpretation, while the smaller rarely do that. Translation activities are sometimes handled by the existent staff, if adequate linguistic competences are present.

IV. CASE STUDIES: SIX EXAMPLES

OF IMPLEMENTATION OF LOCAL LANGUAGE POLICIES

This section of the study will portray the situation of six LSGUs: the City of Skopje (as the biggest and most developed, LSGU with “special status”), Kumanovo (the biggest municipality, as well as one which implements a specific model of language policy relevant for the “smaller” non-majority communities), Gostivar (an LSGU which uses three languages in official communication and one of the most developed LSGUs in this respect), Chair (an urban LSGU in the City of Skopje which recently introduced third language in official communication), Studenichani (a rural LSGU which recently introduced third language in official communication) and Dolneni (a small rural LSGU which, at least formally, uses four languages in official communication). The criteria for selection of the case studies were given in the Introduction of this study. The six cases show that a particular language policy model can be (and is) employed according to the context of each LSGU. This is made available by the current character of the legal framework, which, as we saw in Section II is not completely defined and leaves room for policy makers to create different policies according to the context. Each case study here is presented in a separate sub-section.

CITY OF SKOPJE

The City of Skopje is an LSGU with a “special status in the Macedonian system of local governance”. Within Skopje, which is a separate administrative division, ten municipalities are incorporated: Aerodrom, Butel, Centar, Chair, Gazi Baba, Gjorche Petrov, Karposh, Kisela Voda, Saraj and Shuto Orizari. The municipalities within the City of Skopje perform their competences within their jurisdiction under the principle of subsidiarity with the jurisdiction of the City of Skopje.

The City of Skopje has a legal obligation to provide official use of the Albanian language within its institutions, public enterprises and matters in its jurisdiction. The Albanian community consists approximately 20.49% of the population, and thus is eligible under the Constitution and the laws for official use of its language. The majority of the City of Skopje population is consisted by ethnic Macedonians (66.75%), while the other communities constitute a smaller portion of the population: the Romani 4.63%, the Serbian 2.82%, the Turkish 1.7% and the Bosniak 1.5%. The total population of the City of Skopje is 506.026 inhabitants.

The use of the Albanian language in the Council of the City of Skopje is implemented through simultaneous translation on the Council meetings and consecutive translation in the meetings of the Councils' committees. Moreover, the Council decisions, strategies, action plans, the Rules of procedure, the records of the Council and Committee meetings as well as all other related Council and committees documents are bilingual, issued on both Macedonian and Albanian in the form of consecutive written translation. The Official Gazette of the City of Skopje and its Statute are both published on Macedonian and Albanian in the form of consecutive written translation. Public announcements on the City of Skopje bulletin board as well as announcements published in newspapers and in other media are also predominantly done in both languages. The newspaper of the City of Skopje is also published bilingually, as well as brochures, flyers, other promotional and informational material etc. The web-page of the City of Skopje (www.skopje.gov.mk) is available in Macedonian, Albanian and English.

The inscriptions on the offices of the City of Skopje are bilingual, as well as the inscriptions on the public institutions and enterprises, if this is demanded by the institution or enterprise.

Written communication between citizens and the organs and bodies of the City of Skopje is predominantly done in both Macedonian and Albanian, while oral communication is also done in this way, however only on demand by the citizen. Information of public character can be also requested and obtained (if available) on both languages.

All translation and interpretation activities in the City of Skopje fall under the responsibility of the General Affairs Department and its Unit for expert and professional-administrative affairs. At the moment, four (4) persons are responsible for translation and interpretation. They predominantly work on translation of documents, materials for the office of the Mayor, the Council and the committees, the web page, the Official Gazette and newspaper etc., however they can also engage in oral translation/interpretation in communication with the citizens, if the citizens requests so. IDSCS organized meetings with the head of the General Affairs Department and the employed translators. The overall impression was that the current human resources engaged in translation are enough to cover the needs and that all activities are running without a considerable lag.

Based on a report from February 2011, drafted by the General Affairs Department and adopted by the Council of the City of Skopje, only two out of seven public enterprises have employed a translator (Komunalna Higiена and Drisla). However, all seven public enterprises which fall under the competences of the City of Skopje implement "bilingualism". This is usually done through outsourcing of translation

activities.¹⁸

MUNICIPALITY OF KUMANOVO

The Municipality of Kumanovo is the biggest municipality in the Republic of Macedonia, according to the number of inhabitants. It is situated in the northern part of the state. With a total of 105.484 inhabitants it incorporates several ethnic groups. The majority of the population is ethnic Macedonian (60.43%), a quarter of the population is ethnic Albanian (25.87%), 8.59% are declared ethnic Serbs and 4.03% belong to the Romani community. Since 2010, the Municipality of Kumanovo, beside the guaranteed use of the Albanian language, introduced the languages of the Serbian and the Romani community in the Municipality Council.

On the 4 May 2010, the Municipality Council adopted the *Decision on use of the Serbian and Romani languages in the work of the Council of the Municipality of Kumanovo*.¹⁹ Prior to the decision, only the Albanian language has been used as official language of the Municipality, in formal equality with Macedonian.

The use of the Albanian, Serbian and Romani in the Municipality Council of Kumanovo is implemented through simultaneous translation on the Council meetings and consecutive translation in the meetings of the Councils' committees. The municipality possesses the necessary equipment for simultaneous interpretation on the three languages (three booths for translators/interpreters and a sufficient number of earphones). All written Council documents such as strategies, action plans, the Rules of procedure, the records of the Council and Committee meetings as well as all other related Council and committees documents are however published only on Macedonian and Albanian in separate documents.

The Official Gazette of the Municipality of Kumanovo is published only on Macedonian and Albanian, in two separate publications. Public announcements on the bulletin board are also predominantly done in both languages. The web-page of the municipality (www.kumanovo.gov.mk) is available in Macedonian and Albanian. However, the web-page contains less information in Albanian than in Macedonian.

18 Informacija za upotrebatu na albanskiot jazik vo gradskata administracija, javnite pretprijetija, obrazovnite i kulturnite ustanovi chij osnovach e Gradot Skopje (Information on the Use of the Albanian Language in the city administration, public enterprises, educational and cultural institutions whose founder is the City of Skopje). February 2011.

19 Odluka za upotreba na srpskiot i romskiot jazik vo rabotata na Sovetot na Opshtina Kumanovo (Decision on use of the Serbian and Romani languages in the work of the Council of the Municipality of Kumanovo). Official Gazette of the Municipality of Kumanovo, no. 8, 6 May 2010.

The inscriptions on the offices of the Municipality of Kumanovo are bilingual. The inscriptions on the public institutions and enterprises are predominantly written in two language, however some inconsistencies are present.

Written communication between citizens and the municipality organs and bodies is predominantly done on Macedonian, however there are also infrequent demands by arriving citizens to do so in Albanian. In such situation ethnic Albanian employees assist the communication. The interviewed employee at the Unit on Information and Public Relations stated that it is not a practice to receive and respond to Demands for free access of information in Albanian, so the form is only available to the citizens in the Macedonian language.

At the moment, all translation and interpretation activities on Macedonian and Albanian in the Municipality of Kumanovo are done by two (2) persons, full time employees in the Unit for Support of the Council. The interpreters on Serbian and Romani are outsourced and are hired only during Council meetings. The *Rulebook for systematization of job positions in the Municipal administration of the Municipality of Kumanovo (2010)*²⁰ envisages a total of eight (8) working positions for translation, simultaneous translation and proofreading. As stated in the Rulebook, this persons need to possess “excellent knowledge/fluency in Macedonian and Albanian and the languages of the other communities in the Municipality”. Job positions are thus, not distinguished on the basis of a particular language competence of the employee.

MUNICIPALITY OF GOSTIVAR

Gostivar is a municipality in north-western Macedonia where ethnic Macedonians represent a minority (19.59%). The majority of the population in the municipality is consisted of ethnic Albanians (66.68%), while a considerable portion of the population is from ethnic Turkish belonging (9.86%). The total population of the Municipality of Gostivar is 81.042 inhabitants.

In 2009 the Municipality Council of Gostivar decided positively on the introduction of the Turkish language as official language of the Municipality. It was stipulated that Macedonian, Albanian and Turkish would enjoy “equal status... and equal rights of use in the organs of the Municipality of Gostivar”²¹. Moreover,

20 Pravilnik za sistemizacija na rabotnite pozicii vo opštinska administracija na opština Kumanovo (Rulebook for systematization of job positions in the Municipal administration of the Municipality of Kumanovo), Official Gazette of the Municipality of Kumanovo, no. 9, 2 april 2010.

21 Odluka za upotreba na jazicite vo opština Gostivar (Decision on the use of languages in the Municipality of Gostivar). Official Gazette of the Municipality of Gostivar, no. 7/2009, 15 July 2009.

the decision stipulated equal use beside in the municipality institutions, also in the public enterprises of the LSGU. With this, the Municipality of Gostivar introduced a far-reaching model in regard to the right of use of languages of the “smaller” communities.

However, implementation on the field is not always consistent in regard to the equal use of all three languages. The meetings of the Municipality Council are conducted in all three languages and simultaneous translation is provided. The municipality possesses the necessary equipment. However, written documents are issued only in Macedonian and Albanian, with the exception of the Meeting Agenda which is issued in all three languages.

The Official Gazette of the Municipality is published only in Macedonian and Albanian in a split-page method. Public announcements on the bulletin board of the municipality are written in all three languages – Macedonian, Albanian and Turkish. The web-page of the Municipality of Gostivar (www.gostivari.gov.mk) is also available in Macedonian, Albanian and Turkish. The inscriptions on the offices of the municipality are trilingual, as well as the inscriptions on the public institutions and enterprises.

Written communication between citizens and the organs and bodies is predominantly done on Macedonian and Albanian, however if a request is received in Turkish it is also processed, though the response can only be issued on Macedonian or Albanian.

In the Municipality of Gostivar an interesting development is that the public enterprises use all three languages extensively in communication with citizens. For example, communal bills are issued in all three languages.

All translation and interpretation activities in the bodies and organs of the Municipality of Gostivar are currently handled by a total of three (3) translators/interpretations for all three languages. Two (2) of them are engaged in Macedonian-Albanian translations and one (1) is engaged in Turkish translations. Translation/interpretation activities fall under the responsibilities of Department for IT Support and General Affairs. In the *Rulebook for systematization of job positions in the Municipal administration of the Municipality of Gostivar (2013)*²² one (1) position is foreseen for a Macedonian-Albanian translator and one (1) for Macedonian-Turkish. During the interviews it was concluded that the current workforce responsible for translation/interpretation is sufficient for all translation/interpretation activities to be

22 Pravidnik za sistematizacija na rabotnite mesta vo opštinskata administracija na opština Gostivar (Albanian: Rregullore për sistematizim të vendeve të punës në administratën komunale të Komunës së Gostivarit; English: Rulebook for systematization of job positions in the Municipal administration of the Municipality of Gostivar), no. 08/2013. Municipality of Gostivar, 2013.

handled without considerable problems.

MUNICIPALITY OF CHAIR

The Municipality of Chair is one of the ten LSGUs based in the City of Skopje. With 64.733 inhabitants it is one of the biggest LSGUs in the City of Skopje by the number of the population. Several ethnic groups are based in the municipality - ethnic Albanians represent a majority of the population (57%), while ethnic Macedonians compose short than a quarter (24.13%). Ethnic Turks (6.95%), Romani (4.76%) and Bosniaks (4.55%) also form a considerable portion of the population as representatives of the “smaller” non-majority communities. This LSGU was firstly formed in 2005, following the 2004 territorial division of local governance. Because of its composition of population, the Municipality of Chair, has a legal obligation to provide official use of the Albanian language. However, since late 2013 the Municipality Council introduced the Turkish language as a third official language of the municipality.²³ With this Chair became one of the municipalities which use three official languages in official communication and another municipality where Turkish is introduced through a Council decision. The model employed is similar to the one in Gostivar, as official use of Turkish is introduced for all spheres, in equality with Macedonian and Albanian.

At the time of writing of this study, the implementation of the Turkish language as official in the Municipality of Chair has taken a slow start. Until now, only the inscription on the building of the municipality was made trilingual, as well as the seal and stamp of the municipality. The other spheres of language use are so far treated bilingually.

Currently, the municipality possesses equipment for simultaneous translation only for Macedonian and Albanian. Consecutive translation on the meetings of the Council committees is also provided on Macedonian and Albanian. Moreover, all documents related to the work of the Council are also published bilingually, as well as the Official Gazette and the Statute of the Municipality (in the form of a split-page). The web-site (www.cair.gov.mk) is currently available only on Albanian, however a link has been placed for a Macedonian version.

Written and oral communication between citizens and the organs and bodies of the Municipality of Chair

23 Unlike Gostivar and Kumanovo in regard to the introduction of the language of the “smaller” communities as official, the Municipality of Chair amended its Statute to introduce Turkish. This was done in two phases: 1) Initiated by the Mayor, the Council accepted the initiative for introduction of Turkish in a meeting on 26.09.2013; and 2) The Council adopted the *Decision* which also foresees statutory changes in a meeting on 10.10.2013. See: Official Gazette of the Municipality of Chair no. 14/2013, 03 October 2013 and Official Gazette of the Municipality of Chair no. 15/2013, 17 October 2013.

is conducted bilingually – on both Macedonian and Albanian. Information of public character can be also requested and obtained on both languages.

Currently, the Municipality of Chair has four (4) employed translators/interpreters which perform the responsibilities of Macedonian-Albanian translation/interpretation. Two (2) of them are engaged only in translation/interpretation related to the work of the Council.

MUNICIPALITY OF STUDENICHANI

Studenichani is a small rural municipality in the northern part of Macedonia, predominantly inhabited by ethnic Albanian population. Out of total of 17.246 inhabitants, 68.38% are ethnic Albanians, while 19.05% are ethnic Turks. The third biggest community in the Municipality of Studenichani is the Bosnian community, composing 9.64% of the population. Because of this composition of the population, the municipality has an obligation to use Albanian as an official language of the LSGU. However, in 2013 the Municipality Council of Studenichani decided to introduce the Turkish language as a third official language.²⁴ Similarly as in the Municipality of Chair, the implementation of the Turkish language as official in the Municipality of Studenichani has taken a slow start. Currently, the inscriptions on the Municipality building are trilingual, and as the interviewed employee of the Municipality reported, oral communication between citizens and municipality organs is available in Turkish, beside Macedonian and Albanian. The employee also reported that information of public character can also be obtained on all three languages.

All other considered spheres of use of languages in the Municipality of Studenichani are treated bilingually. The Municipality possesses the necessary equipment for simultaneous translation of Council meetings (Macedonian-Albanian). All written Council documents are also available on the two languages.

The Official Gazette of the Municipality of Studenichani is published on Macedonian and Albanian in the form of a split-page. The Statute is also available in both languages. Announcements on the Municipal bulletin board are issued in Macedonian and Albanian. Most of the contents of the web-page of the Municipality of Studenichani (<http://studenicani.gov.mk/>) is published on Macedonian and Albanian.

Written communication between citizens and the organs and bodies of the Municipality of Studenichani

24 This decision was adopted on 29 April 2013, See: Odluka, Turskiot jazik sluzhben jazik vo opshtina Studenichani (Decision, the Turkish Language Official in the Municipality of Studenichani), no. 07 – 337/03, 29 April 2013.

is also done on both Macedonian and Albanian, while oral communication can also be done in Turkish, upon request of the citizen.

As a small rural municipality with limited financial resources, Studenichani was not able until now to hire professional translators/interpreters. This means that all translation and interpretation activities are conducted by the already employed civil servants which are mostly bilingual, fluent in both Macedonian and Albanian. Practically, the civil servants draft the official documents in both languages as a part of their day-to-day responsibilities and obligations. The *Rulebook for systematization of job positions in the Municipal administration of the Municipality of Studenichani (2012)*²⁵ has envisaged one (1) job position for a Macedonian-Albanian translator, a post which is not yet filled.

MUNICIPALITY OF DOLNENI

Dolneni is also a small rural municipality, located in the western part of Macedonia, characterized by a high level of ethnic and linguistic diversity. In the municipality borders four larger (relative to the total population) ethnic groups reside. Out of total of 13.568 inhabitants, 35.90% are ethnic Macedonian, 26.65% are ethnic Albanian, 19.14% are of Turkish ethnic belonging and 17.54% are of Bosnian ethnicity. With such composition of the population the Albanian language has guaranteed official use, and the languages of the “smaller”, Turkish and Bosniak, fall a bit short to fulfill the requirement. However, the Municipality Council of Dolneni in 2005 decided positively on the introduction of Turkish and Bosniak as official and with that become the only LSGU in Macedonia with four official languages (we saw before that Kumanovo uses four languages, but only in the work of the Council). The Municipality changed its Statute to provide official use of Turkish and Bosniak.²⁶ Based on the questionnaire that IDSCS received from the Municipality, as well as the interview with the official person, we found that the official use of Turkish and Bosniak is limited only to inscriptions on Municipality buildings. All other spheres of language use are predominantly bilingual, with some inconsistencies.

The meetings of the Municipality Council are conducted on Macedonian and Albanian, and the Municipality possesses the necessary equipment for simultaneous translation. Written documents related to the work of the Council are also predominantly issued on both languages. The Official Gazette

²⁵ Pravilnik za sistemizacija na rabotnite mesta vo opshtinskata administracija na Opshtina Studenichani (Albanian: Rregullore për sistemizim të vendeve të punës në administratën komunale në Komunën ë Studenichanit; English: Rulebook for systematization of job positions in the Municipal administration of the Municipality of Studenichani), no. 08-649/1, 16 August 2012. Municipality of Studenichani.

²⁶ Odluka za izmeni I dopolnuvanja na Statutot na opshtina Dolneni (Decission on ammendments and supplements of the Statute of the Municipality of Dolneni), no. 07-713/2, 25 November 2005.

of the Municipality of Dolneni is published in Macedonian and Albanian in separate documents. Public announcements on the bulletin board are issued only in Macedonian. The web-page of the Municipality (<http://www.opstinadolneni.gov.mk/>) is available in Macedonian, Albanian and English.

Written communication between citizens and the organs and bodies of the Municipality of Dolneni is predominantly done in Macedonian, while oral communication can be conducted on both Macedonian and Albanian. Information of public character can be also requested and obtained in Macedonian and Albanian.

All translation and interpretation activities (Macedonian-Albanian) are conducted by one employee, who is a part of the Department for legal, social and public affairs (Одделение за правни, општествени и јавни дејности). In the *Rulebook for systematization of job positions in the Municipal administration of the Municipality of Dolneni* (2013) one job-position is envisaged for a Macedonian-Albanian translator²⁷.

KEY POINTS:

1. The City of Skopje and the Municipality of Gostivar seem to be most advanced in effective implementation of local language policies. The implementation of local language policies is most inconsistent in the resource-limited LSGUs, such are both Studenichani and Dolneni.
2. Kumanovo and Gostivar employ opposite models in regard to the “smaller” communities. Kumanovo’s model is minimalistic and limits the use of the “smaller” languages only to the work of the Council. Gostivar’s model is maximalist, and stipulates equality of use for the Turkish.
3. In Chair and Studenichani, a third language in official use has been recently introduced (Turkish) and implementation has taken a slow start.
4. Out of all six case studies only Studenichani does not have any employed translators/interpreters.
5. Same spheres of language use are differently implemented by LSGUs. For example, written translation of official documents may be conducted in the form of a split-page, consecutive translation or in separate unilingual publications. In a similar manner, implementation of official use of different languages varies within the same LSGU, even if formal equality is stipulated. Even the most advanced LSGU, Gostivar, has not been able to provide equal treatment for its three official languages.

27 Pravilnik za sistematzacija na rabotnite mesta vo opshtinskata administracija na Opshtina Dolneni (Rulebook for systematization of job positions in the Municipal administration of the Municipality of Dolneni), no. 01-1230/1, 11 September 2013.

V. CONCLUSIONS AND RECOMENDATIONS

The last section of this study summarizes the main conclusions (Cs) from the previous sections, and based on them, offers recommendations (Rs) for various policy stakeholders at national and local level with a goal to support more effective implementation of local language policies. Cs and Rs are given in five separate thematic areas. In general, this study advocates for more inclusive and thoughtful decision making at the local level (this can be somewhat influenced by a more systematical legal framework), more and better information for the users of local language policies (the citizens), certain reorganization of translation/interpretation activities in the more advanced LSGUs and better tracking of implementation, more support and assistance by the central government towards the small and resource-limited LSGUs, as well as better monitoring and strategic planning of the process at the central level.

DECISION-MAKING ON LOCAL LANGUAGE POLICY

C1: The legal framework for official use of non-majority languages and language policy is in place by virtue of constitutional Amendment V to Article 7 and through the so-called “Law on Languages” from 2008. However, the legal framework fails to precisely identify all spheres of use of languages at the local level. This creates a certain uncertainty for policy and decision makers at the local level when designing language policies. At the same time, this uncertainty opens the way for LSGUs to design language policies according to the specific context and needs. The cases of Kumanovo and Gostivar in regard to official use of the language of the “smaller” non-majority communities demonstrate that different models can be indeed employed by LSGUs.

R1: There is a need to define what represents official use of a language of a non-majority community more precisely in the legal framework or through additional documents without creating barriers for the LSGUs to introduce a model suitable for their context and the needs within a particular LSGU.

C2: 8 LSGUs have made alterations to their language policies by introducing the languages of the “smaller” non-majority communities in official use through decision of Municipality Councils. The decisions vaguely contain the main contours of language policy and most often only introduce a particular language without a specific definition of the spheres of use for that language. This effects implementation on the ground.

R2: When deciding, the Councils need to give more precise provisions of the spheres of use of the introduced language in official use. The decision of the Municipality Council of Gostivar represents a positive example in this respect.

R3: When deciding, the Councils need to engage into a broader consultation process, thus including the needs and opinions of all stakeholder communities. The Committees for Inter-community Relations (CICRs) need to be included more decisively in the decision-making process regarding language policy. CICRs could facilitate a wider consultation process at the local level.

MORE INFORMATION ON LOCAL LANGUAGE POLICIES AND THE RIGHTS OF LANGUAGE USE

C3: Local language policies have important consequences. Currently, 832.184 Macedonian citizens live under a multilingual language-use regime, i.e. in LSGUs which have more than one language in official communication (the City of Skopje is excluded from the calculation). 31 of 81 LSGUs (including the City of Skopje) use more than one language in official communication. In regard to this out-reach, citizens living in this LSGUs are not informed on the benefits and constraints of multilingual local language policies.

R4: Citizens living in this LSGUs and especially those citizens from non-majority background need to be informed on the specifics of the language policy of the LSGU. The LSGUs should organize this process by themselves.

TIPS AND ASSISTANCE FOR ADVANCED LSGUS

C4: None of the surveyed LSGUs have a specific budget line in their budgets that covers the implementation of local language policies. This makes it really hard to calculate the expenditure caused by local language policies, and information on the expenditure is very important to design effective policies.

R5: LSGUs need to start to introduce specific budget lines in their budget and to track expenditure caused by local language policies in order to have a precise overview of the resources spent and needed to effectively implement the official use of non-majority languages.

C5: None of the considered LSGUs have a special translation/interpretation unit in their administration. Such a unit could considerably raise the effectiveness in implementation of local language policies.

R6: In LSGUs where the workload of translation/interpretation is bigger, LSGUs should form specific units that would cover all activities related language policies. This will raise the effectiveness of the delivery of services towards end-users from non-majority ethnic background.

C6: In some LSGUs there is a lack of professional staff for translation/interpretation activities.

R7: LSGUs need to precisely project the staff needed for implementation of local language policies and to fulfill their translation/interpretation posts accordingly.

R8: Existing staff working on translation/interpretation in the LSGUs need to be properly trained. Trainings should be organized, either in the framework of SIOFA or ZELS, or at another appropriate body at the national level.

ASSISTANCE FOR SMALLER, RESOURCE-LIMITED LSGUS

C7: Some of the LSGUs, predominantly those that are small and/or rural have quite limited financial resources and are disadvantaged to comprehensively implement local language policies.

R9: These LSGUs need to be financially supported to effectively deliver local language policies. Financial means should be allocated from the state budget. With this the central government will substantially support multilingual language policy and this, will show determination to raise the effectiveness of the process.

R10: Smaller and resource-limited LSGUs could be supported in the implementation of local language policies by centralizing (regionalizing) translation/interpretation activities. Rather than hiring specific translators/interpreters, separate bodies could be formed on a regional basis that could give translation/interpretation services to several geographically close LSGUs at the same time. This type of regional bodies will best function if financed by the state budget. They would hire translators/interpreters which would assist LSGUs in implementation of local language policies.

MONITORING OF THE IMPLEMENTATION OF LOCAL LANGUAGE POLICIES AND STRATEGIC PLANNING AT THE CENTRAL LEVEL

C8: At the moment, the Unit for monitoring of the processes of education, culture and use of languages in the framework of the Secretariat for Implementation of the Ohrid Framework Agreement (SIOFA)

is still not completely equipped with staff and is still not properly functioning, even though it was established in 2012. In such situation, monitoring of the implementation of Constitutional Amendment V is neglected, i.e. there is no specific body which monitors implementation of local language policies.

R11: The central Government must make sure that the Unit for monitoring of the processes of education, culture and use of languages is equipped with staff as soon as possible and that it is made functional. The leading role in monitoring processes of language policies (not just at the local level) should be undertaken by this body.

C9: There is a lack of strategic planning regarding implementation of the state language policy which needs to be filled. Moreover, comprehensive analysis of the main problems and challenges of implementation of local language policies is also needed. An Action Plan drafted in the period 2010-2012 is still not adopted.

R12: A specific Strategy and Action Plan for effective implementation of local language policies should be adopted. Consultations with ZELS and the LSGUs must be conducted regarding the Action Plan. The plan should address all main problems and should be based on a thoughtful research and analysis of the problems and challenges. The Strategy should be further supported through allocation of resources from the state budget in order to achieve the projected ends.

REFERENCES

Official Documents

Constitution of the Republic of Macedonia, with the amendments I-XXXII (English version), accessed at: <http://sobranie.mk/the-constitution-of-the-republic-of-macedonia.nspx> (last visit: 17 april 2014)

Izveshtaj po odnos na sostojbata za implementacijata na site politiki shto proizleguvaat od Ohridskiot ramkoven dogovor (Report on the status of the implementation of all policies arising from the Ohrid Framework Agreement). Government of the Republic of Macedonia, Secretariat for Implementation of the Ohrid Framework Agreement, Skopje 2012

Law on the City of Skopje, Official Gazette of the Republic of Macedonia, no. 55/04, 16 August 2004

Law on Local Self-Government, Official Gazette of the Republic of Macedonia, no. 5/02, 29 January 2002

Law on Territorial Organization of Local Self-Government in the Republic of Macedonia, Official Gazette of the Republic of Macedonia, no. 55/2004, 16.08.2004

Law on Use of Languages Spoken by at Least 20 percent of the Citizens of the Republic of Macedonia and in the Local Self-Government Units, Official Gazette of the Republic of Macedonia, no. 101/08, 13 August 2008

OSCE High Commissioner for National Minorities. 1996. *The Hague Recommendations Regarding the Educational Rights of National Minorities & Explanatory Note*, October.

OSCE High Commissioner for National Minorities. 1998. *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities & Explanatory Note*, February.

OSCE High Commissioner for National Minorities. 1999. *The Lund Recommendations on the Effective Participation of National Minorities in the Public Life & Explanatory Note*, September.

OSCE High Commissioner for National Minorities. 2012. *The Ljubljana Recommendations on Integration of Diverse Societies & Explanatory Note*, November

Ohrid Framework Agreement, accessed at: <http://www.ucd.ie/ibis/filestore/>

Ohrid%20Framework%20Agreement.pdf (last visit: 17 april 2014).

Popis na naselenieto, domakjinstvata I stanovite vo Republika Makedonija 2002, spored teritorijalnata organizacija od 2004 (Kniga XIII) (Census of Population, Households and Dwellings in the Republic of Macedonia in 2002, According to the Territorial Organization from 2004 [Book XIII]). State Statistical Office of the Republic of Macedonia, Skopje, May 2005

The Former Yugoslav Republic of Macedonia 2013 Progress Report. SWD (2013) 413 final. Brussels, 16.10.2013

Official Documents of LSGUs

Informacija za upotrebata na albanskiot jazik vo gradskata administracija, javnite pretprijatija, obrazovnite i kulturnite ustanovi chij osnovach e Gradot Skopje (Information on the Use of the Albanian Language in the city administration, public enterprises, educational and cultural institutions whose founder is the City of Skopje). February 2011

Odluka, Turskiot jazik sluzhben jazik vo opshtina Studenichani (Decision, the Turkish Language Official in the Municipality of Studenichani), no. 07 – 337/03, 29 April 2013

Odluka za izmeni i dopolnuvanja na Statutot na opshtina Dolneni (Decision on amendments and supplements of the Statute of the Municipality of Dolneni), no. 07-713/2, 25 November 2005

Odluka za upotreba na jazicite vo opshtina Gostivar (Decision on the use of languages in the Municipality of Gostivar). Official Gazette of the Municipality of Gostivar, no. 7/2009, 15 July 2009

Odluka za upotreba na srpskiot i romskiot jazik vo rabotata na Sovetot na opshtina Kumanovo (Decision on use of the Serbian and Romani languages in the work of the Council of the Municipality of Kumanovo). Official Gazette of the Municipality of Kumanovo, no. 8, 6 May 2010

Official Gazette of the Municipality of Chair no. 14/2013, 03 October 2013

Official Gazette of the Municipality of Chair no. 15/2013, 17 October 2013

Pravilnik za sistematizacija na rabotnite mesta vo opshtinskata administracija na Opshtina Dolneni (Rulebook for systematization of job positions in the Municipal administration of the Municipality of Dolneni), no. 01-1230/1, 11 September 2013.

Pravilnik za sistematizacija na rabotnite mesta vo opshtinskata administracija na opshtina

Gostivar (Albanian: Rregullore për sistematizim të vendeve të punës në administratën komunale të Komunës së Gostivarit; English: Rulebook for systematization of job positions in the Municipal administration of the Municipality of Gostivar), no. 08/2013. Municipality of Gostivar, 2013

Pravilnik za sistematizacija na rabotnite pozicii vo opshtinskata administracija na opshtina Kumanovo (Rulebook for systematization of job positions in the Municipal administration of the Municipality of Kumanovo), Official Gazette of the Municipality of Kumanovo, no. 9, 2 april 2010

Pravilnik za sistematizacija na rabotnite mesta vo opshtinskata administracija na Opshtina Studenichani (Albanian: Rregullore për sistematizim të vendeve të punës në administratën komunale në Komunën e Studeniçanit; English: Rulebook for systematization of job positions in the Municipal administration of the Municipality of Studenichani), no. 08-649/1, 16 August 2012. Municipality of Studenichani

Books and Articles

Grin, François (2003) *Language Policy Evaluation and the European Charter for Regional or Minority Languages*. Houndmills, Basingstoke, Hampshire and New York: Palgrave Macmillan

Kaplan B., Robert, and Richard B. Baldauf Jr. (1997) *Language Planning from Practice to Theory*. Clevedon: Multilingual Matters ltd

Patten, Alan (2001) Political Theory and Language Policy. *Political Theory* 29(5): 691-715

Pool, Jonathan (1991) The Official Language Problem. *The American Political Science Review* 85(2): 495-514

Van Parijs, Phillipe (2002) Linguistic Justice. *Politics, Philosophy and Economics* 1(1): 59-74

ABOUT THE AUTHOR

Jovan Bliznakovski is a political scientist with a research orientation in the fields of multicultural policies and identity politics. He works as a researcher in the Institute for Democracy “Societas Civilis” Skopje (IDSCS). He holds an MSc in political science from the University of Ljubljana, Slovenia, and a BA in political science from the University “ss. Cyril and Methodius”, Skopje, Macedonia.

E-mail: j.bliznakovski@gmail.com, jovan@idscs.org.mk.

The Institute for Democracy “Societas Civilis” Skopje (IDSCS) is a Macedonian based think - tank organisation that is non-governmental, non-partisan and non-profit. It was established in 1999 by a group of intellectuals gathered around the idea for democracy, solidarity and civil society. Long term objectives of the Institute are to work on balanced socio economic development, active citizen engagement and participative political culture. In this direction, we focus our activities on rule of law, good governance and multiethnic and multicultural coexistence. IDSCS work is primarily based on sociometric research and project-based activities. We believe that human capital is a key precondition for positive social change, hence we eagerly undertake capacity building projects based on skills and knowledge transfer. Finally, ours society improvement is directly linked to availability of resources for self-reflection. In this sense, we advocate policy recommendations and strive to enrich the public discourse through promotion of evidence based policy, publishing and public events.



RESTRICTED OPPORTUNITIES, CHOICE OR IMPOSITION: INCLUSION OF ROMA CHILDREN IN "SPECIAL" SCHOOLS

Ramcho Kundevski

Research Assistant:

Fatima Osmanovska



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EXECUTIVE SUMMARY

In this paper we analyse the problem and the reasons for the inclusion of Roma children in schools for children with disabilities in their development a so-called “special schools”. Problem that although three years is been elaborated, yet institutionally not resolved, particularly as procedures for enrolment in special schools and their categorization is made according to an old regulation adopted in 2000, which has certain drawbacks.

Although the adoption of new Rulebook was announced since 2012 by the Ministry of Labour and Social Policy, it has not happened yet. One of the most important things in this process is that healthy Roma children are not classified as children with special needs and hence been enrolled in special schools. This practice leaves lifelong consequences for children, especially that the categorization is done only once, and re-categorization almost does not exist in practice. It is particularly important to prevent abuse of the system for education of children in special primary and secondary schools by both parents and institutions, where the only damage is inflicted on children.

The problem with enrolment of Roma children in special schools is still a “taboo” topic amongst institutions and Roma families. Therefore this analysis is aiming to further assist for better understanding of the issue, to encourage institutions to rethink about adopting a new Rulebook for assessment of the specific needs of people with physical and mental disabilities, improve the practical implementation of the policy, improve inter-ministerial coordination of local cooperation and assistance and work with parents of children labelled as “special” in order to strengthen parental care and improve the social inclusion of children.

Children with difficulties in development have a wide range of rights and benefits that they can enjoy. Mainly the motivation of the parents for enrolling their children in special schools is the monthly fee that is paid to the family by the Centre for Social Work, free daily meal and free transportation from home to school. Such benefits are sufficient to be recognised as a source of subsistence by families from the Roma community who are the most marginalized and live on the edge of poverty.

Solving the problem requires multi-disciplinarian measures and intense inter-ministerial cooperation between state institutions at the local level.

In the past three years in the period between 2010 and 2013 many relevant institutions conducted researches to examine the situation of Roma children in special schools who emerged with comprehensive recommendations. Especially significant are the findings of the Ombudsman (reports of 2010 and 2013) and the European Roma Rights Center (report of 2012) that are comprehensive and their achievement would overcome the negative situation.

For many of the identified recommendations almost no measures were taken, and the situation of children involved in special schools remains the same.

Based on the analysis of current and previously issued documents related to this area can be concluded that in practice, the institutions do not make distinction between educationally neglected children and children with special needs. The language barrier is a huge obstacle for the inclusion of children in mainstream education. Further it is even greater obstacle in the process of categorization because the overall testing is conducted in Macedonian language. Monitoring the situation of children and the preparation of appropriate statistical analysis is difficult because data by ethnicity are not collected. It is necessary for institutions to establish mechanisms to monitor and support these children, and very few activities are implemented to follow their further development. Mostly this is due to lack of staff in the Centres for Social Work. It has been expected that most of the gaps in the process of categorization will be overcome with the adoption of new Rulebook for categorization. However, although announced two years ago, the new rulebook has not been adopted.

For comprehensive overcoming of the situation it is necessary that measures are undertaken for implementation of the recommendations identified by the Ombudsman reports in February 2010 and December 2013 as well as the recommendations made by the European Centre for Roma Rights in its report of 2012.

RECOMMENDATIONS

This analysis complements on the previously identified recommendations and identifies additional improvements that are needed in order to achieve better quality in the categorization of children and to prevent possible abuse, such as:

- ▶ **Improving the legal regulations through:** 1) Immediate adoption of a new Rulebook for assessment of the specific needs of children with physical or mental disabilities; 2) The rulebook particularly to emphasise establishment of second instance body that would review the first instance findings; 3) Include appropriate regulations to monitor the development of children after completion of categorization; 4) Given that in the case of Roma children, more often is a case of educationally neglected children (antisocial), this category of children to be taken into account in the process of categorization; and 5) For better statistical monitoring of the issue, the relevant templates and forms in the Centres for social work and the special schools to include field for the ethnicity of the children.

- ▶ **Eliminating language barriers through:** 1) Interviews for enrollment in special schools to be conducted in Roma language; 2) In cases where children are referred from regular to special schools, the tests to assess the capacity of children to be conducted in a language understood by children or during the tests a representative of the ethnic community of the children who speaks language understood by the child to be present; 3) The interview and test in the process of categorization of the children to be implemented in a language understood by children (Roma, Turkish, etc.). Herewith to be considered the

possibility of inclusion of Roma health mediators who operate under the Ministry of Health; 4) The standardized questionnaires for categorization of children to be translated into languages understandable to children.

- ▶ **Improving the practical implementation of the regulations for school enrolment and categorization of children through:** 1) Active engagement of the Centres for social work in the assessment and work with Roma children before referral is made for categorization; 2) To ensure appropriate application of the mechanism for re-categorization for timely re-categorization of the identified children in need for their possible transfer to regular schools; 3) Ministry of Labour and Social Welfare to take measures to overcome the lack of human capacity in the Centres for social work through employment or hiring additional qualified personnel or through cooperation with civil society organizations specialized in the field.
- ▶ **Resolving the dilemma of whether the child is with disability or educationally neglected through:** 1) Centres for Social Work should take appropriate measures to identify children and to assess whether in the certain cases the child is educationally neglected or child with special physical or mental disability; 2) For the identified educationally neglected children, the Centres for social work are required to maintain individual records and files; 3) Strengthening the role of psychologists from the Centres for Social Work to conduct initial assessment of the child and to monitor their development;
- ▶ **Enhancing cooperation with Roma parents through:** 1) Inclusion of civil society in working with parents; 2) To consider, in cooperation with the civil sector to create community centres that would work with Roma parents, especially mothers to strengthen their capacity to better care for children; 3) Inclusion of Roma health mediators to assist in the cooperation of institutions with the parents;
- ▶ **Enhance cooperation at the local level and establishing operational measures through:** 1) the Ministry of Labour and Social Policy, the Ministry of Education and Ministry of Health to sign documents (memoranda or protocols)

for inter-sectorial collaboration at the local level in order to establish a mechanism cooperation between special schools, mainstream schools, centres for social work and health care institutions. 2) To consider adopting of individual approach in the work with children. It is recommended to establish working groups at the local level with representatives from all participating institutions would will review every case identified by the Centre for Social Work or the special school.

In order to determine the actual number of children with special needs and eliminating possible abuse in schools in Stip and Veles where the Ombudsman again concluded high number of Roma, the Ministry of Labour and Social Policy and the Ministry of Education and Science to examine the files maintained in Centres for social work and in the special primary and secondary schools.

ПРЕДГОВОР

Здружението на граѓани за поддршка на маргинализирани групи “Ромски Ресурсен Центар” (РРЦ) ја изготви оваа анализа врз основа на досегашното свое четири годишно искуство во областа на истражување на причините за големиот број на запишани Роми во посебните училишта за деца со посебни потреби т.н. „специјални училишта“ како и врз основа на квалитативното истражување спроведено во 2014 година. Истражувањето беше поддржано од страна на Балканската мрежа за развој на граѓанското општество (БМРГО)¹.

РРЦ кон крајот на 2010 година се приклучи во циклусот на градење на капацитетите на организации за застапување, спроведуван од Националниот Демократски Институт во Република Македонија (НДИ)². РРЦ аплицираше за градење на организациските капацитети со цел да се стекнат вештини и знаења за ефективно застапување за прашањето. Со помош на НДИ, РРЦ во соработка со здружението на граѓани Сумнал од Скопје почна да спроведува активности за застапување за прашањето.

На 14 и 15 мај 2012 година РРЦ присуствуваше на јавната расправа на тема “Имплементација на Стратегијата за Ромите во Република Македонија” организирана од страна на Комисијата за труд и социјална политика во Собранието на Република Македонија. Проблемот за застапеноста на децата Роми во специјалните училишта беше презентиран пред сите членови на Комисијата, која што на својата 23та седница одржана на 26 јуни 2012 го усвои заклучокот кој што гласи: *„Комисијата ќе ги испиша посебните потреби кои го регулираат прашањето за застапеноста на децата Роми во образовните установи за деца со посебни потреби, нивната имплементација, како и штоа дали се потребни одредени законски промени.“*

Во ноември 2013 година, РРЦ доби грант од страна на БМРГО за спроведување на квалитативно истражување и изготвување на анализа за прашањето. Истражувањето имаше за цел да ги поткрепи или да се спротивстави на досегашните информации и наоди на РРЦ и другите организации и институции во однос на прашањето. Со истражувањето се направи обид да се пробие дебелиот слој

1 За повеќе информации види <http://www.balkancsd.net>

2 За повеќе информации види <https://www.ndi.org/macedonia>

на табу околу оваа тема, вклучувајќи ги родителите и институциите надлежни за спроведување/мониторирање на целокупниот процес.

Во почетокот на 2014 година, Народниот правобранител на Република Македонија го објави своето истражување за состојбата на децата Роми во специјалните училишта кон кое се дополнува и оваа анализа.

Овој труд претставува синтеза на досегашните достапни информации објавени од страна на многу владини институции и невладини (домашни и странски) организации како и на информации од терен собрани со помош на квалитативното истражување на РРЦ.

Потребата од ваква анализа се наметна поради исклучителната важност за подобро разбирање на состојбата, причините за запишувањето на децата во посебни училишта, како и промена и подобрување на постоечкиот систем за проценка и категоризација на деца со цел превенција за нивно вклучување во “специјални” училишта.

Иако правната материја на прашањето е регулирана и има одредени недостатоци, анализата покрај останатите области се фокусира на имплементацијата на на законските и под-законските акти во Република Македонија во оваа област. Сметаме дека оваа анализа ќе помогне на институциите и на останатите клучни актери вклучени во прашањето во креирањето на подобри и поквалитетни јавни политики за надминување на овој проблем.

ИЗВРШНО РЕЗИМЕ

Во овој труд се анализира проблемот и причините за вклученоста на децата Роми во посебни училишта за деца со потешкотии во развојот т.н. “специјални училишта”. Проблем кој што иако веќе три години се елаборира, сеуште институционално не е решен, особено што сеуште процедурите за запишување на деца во посебни училишта и нивна категоризација се врши според стар правилник усвоен во 2000 година кој има одредени недостатоци.

Иако донесување на нов Правилник беше најавено уште во 2012 година од страна на Министерството за труд и социјална политика, тоа сеуште се нема случено. Една од најважните работи во овој процес е здравите Ромски деца да не се бесправно категоризираат како деца со посебни потреби и со самото тоа да се запишуваат во посебни училишта. Ваквата пракса остава доживотни последици кај децата, особено што категоризација се врши само еднаш, а ре-категоризација скоро и да не постои во практика. Особено е важно да се спречи злоупотребата на системот за образование на деца во посебни основни и средни училишта како од родителите така и од институциите, при што единствената штета се нанесува на децата.

Проблемот со запишување на деца Роми во посебни училишта сеуште е “табу” тема како помеѓу институциите така и помеѓу ромските семејства. Од тие причини понатамошната анализа е со цел да се помогне за подобро разбирање на прашањето, да се поттикнат институциите на размислување за донесување на нов правилник за оцена на специфичните потреби на лицата со пречки во физичкиот или психичкиот развој, подобрување на практичната имплементација на правилникот, подобрување на меѓуресорната соработка на локално ниво како и помагање и работа со родителите на децата одбечжани како посебни деца со цел да се зајакне родителската грижа и подобрување на социјалната вклученост на децата.

Децата со потешкотии во развојот имаат широка лепеза на права и бенефиции кои можат да ги уживаат. Така, најчесто мотивацијата на родителите Роми за запишување на децата во посебните училишта е месечниот надомест што го исплаќа Центарот за социјална работа, бесплатниот дневен оброк како и бесплатниот превоз од дома до училиште. Ваквите бенефиции се доволни за да бидат согледани како извор на егзистенција од страна на семејствата од ромската заедница кои се најмаргинализирани и живеат на работ на сиромаштијата.

Решавањето на проблемот подразбира мултидисциплински мерки и интензивна меѓуресурска соработка помеѓу државните институции на локално ниво.

Во изминатите три години во периодот од 2010 - 2013 година многу релевантни институции извршија истражувања за испитување на состојбата со децата Роми во специјалните училишта од кои истражувања произлегоа и сеопфатни препораки. Особено значајни се наодите на Народниот правобранител (извештаи од 2010 и 2013 година) и Европскиот Центар за Правата на Ромите (извештај од 2012 година) кои се сеопфатни и со нивна помош би се надминала негативната состојба.

За многу од идентификуваните препораки речиси и не се превземени активности, при што состојбата со децата вклучени во посебните училишта останува иста.

Врз основа на досегашната анализа како и претходно издадените документи поврзани со оваа област може да се заклучи дека во практиката, институциите не прават дистинкција помеѓу воспитно запустени деца и деца со посебни потреби. Јазичната бариера претставува огромна пречка за вклучување на децата во редовното образование. Дополнително е уште поголема пречка во процесот на категоризација бидејќи целокупното тестирање се одвива на македонски јазик. Следењето на состојбите на децата и изготвувањето на соодветни статистички анализи е отежнато бидејќи не се собираат податоци за етничка припадност. Неопходно е за институциите да воспостават механизам за следење и поддршка на овие деца при што многу малку активности се имплементираат за следење на нивниот понатамошен развој. Најчесто тоа се должи на недостатокот на кадар во Центрите за социјална работа. Се очекува дека најголемиот број на празнини во процесот на категоризација ќе се надминат со усвојувањето на новиот правилник за категоризација. Сепак, иако најавен уште пред две години, новиот правилник сеуште не е донесен.

За сеопфатно надминување на состојбата неопходно е превземањето на мерки за имплементирање на препораките идентификувани од страна на Народниот Правобранител во извештаите од февруари 2010 и декември 2013 година како и препораките дадени од страна на Европскиот Центар за Правата на Ромите во својот извештај од 2012 година,

Оваа анализа се надополнува на претходно идентификуваните препораки и идентификува дополнителни подобрувања кои се потребни за да се постигне подобар квалитет во категоризацијата на децата и да се спречи можна злоупотреба, како што се:

- ▶ **Подобрување на правните прописи кои ја регулираат материјата преку:** 1) Итно донесување на нов правилник за проценка специфичните потреби на децата со пречки во физичкиот или психичкиот развој; 2) Во правилникот особено да се обрати внимание за воспоставување на двостепена комисија која би ги разгледувала издадените првостепени наоди; 3) Да се вклучат соодветни прописи за следење на развојот на децата после извршената категоризација; 4) Со оглед дека во случајот со децата Роми, најчесто се работи за воспитно запуштени деца (асоцијални), оваа категорија на деца да се земе во предвид во процесот на категоризација. и 5) За подобро статистичко следење на прашањето, релевантните обрасци во Центрите за социјална работа и во посебните училишта да вклучат етничка припадност на децата.

- ▶ **Елиминирање на јазичната бариера преку:** 1) Интервјуата за запишување на деца во посебни училишта да се одвиваат на Ромски јазик; 2) Во случаите каде што децата се препраќаат од редовни во посебни училишта тестовите за проценка на капацитетите на децата да се одвиваат на јазик разбирлив за децата или пак за време на тестовите да присуствува претставник од етничката заедница на детето кој што зборува на јазик разбирлив за детето; 3) Интервјуто и тестирањето при процесот на категоризација на децата да се спроведува на јазик разбирлив за децата (Ромски, Турски итн.). Да се разгледа и можноста за вклучување на Ромските Здравствени Медијатори кои оперираат во рамки на Министерството за Здравство; и 4) Стандардизираниите прашалници за категоризација на децата да се преведат на јазиците разбирливи за децата.

- ▶ **Подобрување на практичната имплементација на прописите за запишување и категоризација на децата преку:** 1) Поактивно вклучување на центрите за социјална работа во проценката и работата со децата Роми, пред упатување на категоризација; 2) Да се обезбеди соодветна примена на механизмот за ре-категоризација за навремено ре-категоризирање на идентификуваните деца кај кои има потреба со цел нивно можно префрлување во редовни училишта; и 3) Министерството за труд и социјална работа да превземе мерки за надминување на недостатокот на човечките капацитети во Центрите за социјална работа преку вработување или ангажирање на дополнителен стручен кадар или преку соработка со граѓански здруженија специјализирани во областа.

- ▶ **Разрешување на дилемата дали станува збор за деца со вистински пречки во развој или пак за воспитно запуштени преку:** 1) Центрите за социјална работа треба да превземат соодветни мерки за идентификација на децата и да вршат проценка дали во одредените случаи станува збор за воспитно запуштени деца или за деца со пречки во физичкиот или психичкиот развој; 2) За идентификуваните воспитно запуштени деца, Центрите за социјална работа потребно е да изготвуваат индивидуални досиеа за децата; 3) Зајакнување на улогата на психолозите од Центрите за социјална работа да вршат следење на децата и да направат првична проценка на детето;

- ▶ **Подобрување на соработката со родителите роми преку:** 1) Вклучување на граѓанскиот сектор во работата со родителите; 2) Да се разгледа можноста во соработка со граѓанскиот сектор да се отворат центри за поддршка во заедницата кои би работеле со родителите Роми, особено со мајките за јакнење на нивните капацитети за подобра грижа за децата; 3) Вклучување на Ромски здравствени медијатори во соработката со родителите;

- ▶ **Подобрување на соработката на локално ниво и воспоставување на оперативни мерки преку:** 1) Министерството за труд и социјална политика, Министерството за образование и Министерството за здравство да потпишаат документи (меморандуми или протоколи) за меѓусекторска соработка на локално ниво со цел да се воспостави механизам за соработка помеѓу посебните училишта, редовните училишта, центрите за социјална работа и здравствените институции. 2) Да се разгледа можноста за усвојување на индивидуалниот пристап за работа со децата. Се препорачува воспоставување на работни тела на локално ниво со претставници од сите вклучени институции кои би го разгледувале секој случај идентификуван од страна на Центарот за социјална работа или пак посебното училиште.

За утврдување на вистинскиот број на деца со посебни потреби и елиминирање на евентуална злоупотреба во училиштата во Штип и Велес каде што Народниот правобранител повторно констатирал голем број на Роми, Министерството за труд и социјална политика и Министерството за Образование и наука да направи увид во предметите во Центрите за социјална работа и во посебните основни и средни училишта.

1. ВОВЕД

Во последните осум години (2005-2013) може да се забележи дека има видливи подобрувања во вкупниот опфат на ромските деца и млади во образовниот систем во Република Македонија. Анализата на УНДП сведочи дека бројот на деца опфатени во предшколско образование пораснал од 1,5% на 4%, има пораст од 0,84% на бројот на деца со завршено основно образование (во учебната година 2011/12 во споредба со 2006/07), пораст од 27,5% на бројот на запишани Роми во средно образование и пораст на бројот на ромските ученички од 29,5% (во учебната година 2011/12 во споредба со 2006/07).³

Во однос на децата Роми запишани во посебни училишта (специјално образование) се бележи намалување, при што вкупниот број на деца за 2013 година бил 570, што е за 155 деца помалку отколку во 2010 година кога бројот на деца изнеувал 725, односно бројот на деца Роми е намален од 34,06% на 24,56%.⁴ Сепак, сеуште бројот на деца Роми вклучени во специјалните училишта е голем. Особено голем е бројот на ромските ученици во ДСУ „Искра“ - Штип 41,17%, ДСУ „Св. Наум Охридски“ - Скопје 35,94%, во ПОУ „Маца Ѓорѓиева Овчарова“ - Велес 32,81%, во ПОУ „Д-р. Златан Сремец“ 16.67% и во ПОУ „Иднина“ 7,62%. Најмалку Роми има запишано во ПОУ „Св. Климент Охридски“ Ново Село, каде има само еден ученик Ром.⁵

Според регионалното истражување на УНДП, Светска банка и Европска комисија, севкупната стапка на запишување во претшколско образование (деца на возраст од 3 до 6 години) е генерално ниска, но таа е многу пониска меѓу Ромите (16%) за разлика од не-Ромите (25%). Само 73% од девојчињата Ромки во Македонија во 2011 година се запишале во основно образование, споредено со 87% на девојчињата не-Ромки. Според истото истражување, 70% од жените и девојчињата Ромки на возраст од 15 до 64 години се невработени споредено со 35% меѓу девојчињата и жените не-Ромки.⁶

3 Геровска-Митев, М. *Преглед на остварениот најредок ѝри сироведувањето на Националната стратегија за интеграција на Ромите и на најредокот во социо-економскиот стандард на Ромите*. Програма за развој на Обединетите нации – УНДП, канцеларија во Скопје (цитирано од Министерство за труд и социјална политика, Стратегија за Ромите во Република Македонија 2014 – 2020, стр.65).

4 Народен Правобранител на Република Македонија (2013).

5 Ibid.

6 Регионална анкета за Ромите на УНДП/СБ/ЕК од 2011 Европски Центар за Правата на Ромите (2013). *Македонија: Извештај за состојбите 2011-2012*.

Најголемиот број на Роми во Македонија сеуште се соочуваат со низок степен на образование кој е еден од најважните фактори кои придонесуваат за зголемена сиромаштија. Причини за тоа се лошата економско – социјална состојба на голем дел на ромските семејства, голем процент на незапишани деца во предучилишното образование како значаен момент за социјализација и инклузија во образовниот систем, недоволното познавање на македонскиот јазик што доведува до неможност за нормално следење на наставата, непостоењето на соодветни домашни услови за учење поради несоодветното решение за домување на поголем дел од ромското население како и отсуството на свеста за значењето на образованието во ромските средини, особено на родителите (Министерство за труд и социјална политика, 2011).

Според законот за основно образование и Законот за средно образование, децата Роми се вклучени во редовни училишта и паралелки. Не постојат посебни училишта за Роми. Постоечките посебни училишта ги вклучуваат сите деца, Роми и не-Роми со физички или ментални пречки во развојот.

Поради лошата економска состојба, Ромите се принудени на секаков начин да изнајдат извор за егзистенција, при што родителите неретко се одлучуваат и за запишување на своите деца во посебни училишта (специјално образование) со цел да остварат одредени бенефиции.⁷

Проблемот на лицата со пречки во присхичкиот или физичкиот развој е пред сè социјален и културолошки проблем, а не медицински. Третманот на овие лица треба да биде насочен кон нивните потенцијали и можности, нивниот однос со околината, а не кон нивната попреченост. Овие лица имаат специфични и комплексни потреби кои можат да се задоволат преку добивање на услуги од многубројни институции, организации и сектори на општественото делување.

Оваа анализа има за цел да се осврне на причините за големата застапеност на децата Роми во посебни училишта како што се: ставови на стручниот кадар за проблемот, капацитетите на децата Роми во однос на нивната вклученост во посебните училишта како и соработката помеѓу клучните засегнати страни (стручен кадар, родители) со цел подобрување на состојбата.

Дополнително, анализата се обидува да даде одговор и насока на надлежните институции со цел поефективно справување со проблемот во насока на идентификување на деца кои се бесправно запишани во посебно училиште, донесување на мерки за соодветна проценка на децата и

7 Интервју на РРЦ во Штип, социјален работник, август 2014.

изготовка на програми и мерки за подобра социјализација и интеграција во социјалната средина и општеството.

1.1. МЕТОДОЛОГИЈА

Анализата вклучува квалитативна методологија на истражување. Собирањето на податоци вклучува анализа на примарни извори (интервјуа со претставници на институции и фокус групи со Роми родители и деца) и секундарни извори како што се извештаи од домашни и странски невладини организации и владини институции како и текстови објавени во медиумите. Во однос на квантитативните податоци се користеа веќе спроведените истражувања од страна на Народниот правобранител на република Македонија (2010 и 2013 година), и истражувањата на Европскиот Центар за правата на Ромите во 2011 година (со Македонскиот Хелсиншки Комитет) и 2012 година (со Националниот Ромски Центар од Македонија). Со цел да се разбере подобро прашањето, направена е и кратка анализа на правната рамка на прописите кои ја регулираат категоризацијата на децата за запишување во посебни училишта како и правата и бенефициите на децата со посебни потреби.

Анализата се фокусира на најважните постоечки информации од терен, вклучувајќи преглед на состојбата, имплементацијата на системот за посебно образование во пракса (запишување на деца Роми во училиштата како и нивна категоризација) како и ставовите на директно засегнатите лица, Ромските семејства и нивните деца. Овие информации се собрани преку интервјуа со социјални работници, дефектолози, наставници, вработени во Агенцијата за вработување, родители и деца. Со интервјуата беа опфатени градовите Скопје и Штип.

2. АНАЛИЗА НА СОСТОЈБАТА СО ВКЛУЧЕНОСТА НА ДЕЦАТА РОМИ ВО ПОСЕБНИ УЧИЛИШТА, ПРЕГЛЕД И ФАКТИ

2.1. ИСТОРИСКИ, ОПШТЕСТВЕН И ЕКОНОМСКИ КОНТЕКСТ НА ПРОБЛЕМОТ

Прашањето за сегрегација на децата Роми во специјалните училишта во Македонија потекнува уште пред 2006 година кога неколку меѓународни организации објавија споредбени анализи за состојбата по ова прашање во земјите низ Балканот (РЕФ, 2004).

Ромите во процесот на образование се соочуваат со два типа на пречки и тоа од *обласџа на сиромашџијата* во која спаѓаат: а) невидливи трошоци за школување не се достапни за ромски семејства; б) недостаток на родителска писменост за поддршка на образованието; в) родителска невработеност, како и *социјални и културни пречки* во кои спаѓаат јазичните бариери; б) стравот од дискриминацијата во училиштата и в) недостаток на претходни вештини.

Ромите кои што посетуваат училиште најчесто страдаат од три различни форми на физичка сегрегација од кои секоја од нив го ограничува квалитето на нивното образование. Прво, Ромите често живеат во групи и посетуваат локални училишта во екстремно рурални средини или во урбани сиромашни квартави. Овие области имаат посиромашни објекти и помал квалитет на наставнички кадар во споредба со другите македонски училишта (ФОО, 2007). Децата Роми вклучени во редовните училишта најчесто се издвојуваат во задниот дел на училницата или пак во други класови само за Роми. Конечно, најекстремната сегрегација се случува кога децата Роми се влеваат во “специјални училишта за ментално хендикепираните (ФОО, 2007). Ромската заедница во Македонија страда од недостаток на запишување и завршување на сите нивоа на образование.

Истражувањето на Европскиот Центар за Правата на Ромите⁸ (во понатамошниот текст: ЕЦПР) од 2012 година, открива дека многу родители се подготвени да ги испратат своите деца во специјални училишта, а за таквата одлука се наведени различни причини: од финансиски причини и

⁸ види <http://www.errc.org>

придобивки од посетувањето специјални училишта, до дискриминација и насилство во редовните училишта од страна на не-Ромите и поголеми можности за наоѓање работа во индустрискиот сектор, бидејќи работодавците плаќаат помали даноци и добиваат владини субвенции кога вработуваат лица со попречености.

Процентот на Роми во посебно образование е многу поголем од процентот на Ромите во вкупното население во земјата, ситуација која што укажува на сериозни пречки во постапката за запишување и во дистрибуцијата на социјални бенефиции и помош на семејствата. Учениците во училиштата за деца со посебни потреби добиваат одредени бенефиции, како и бесплатни оброци и училишен прибор за децата и социјалната помош за семејства. Ова делува како поттик за сиромашните Роми да го прифатат упатувањето што нивните деца го добиле кога нивните наставници сакале да избегнат справување со нив во редовната настава (РЕФ, 2007).⁹

Во периодот од 2010 до 2012 година, прашањето повторно се актуелизираше како резултат на реакциите од страна на медиумите, неколку домашни и странски невладини организации како и извештајот на Европската комисија против расизам и нетолеранција од 2010 година. После овие реакции, следувахе извештајот на Народниот правобранител на Република Македонија од февруари 2010 година според кој 34,06% од деца вклучени во училиштата со посебни потреби се ромски деца. Извештајот посочува дека во ПОУ „Д-р Златан Сремац“ од Скопје, како централно училиште заедно со подрачните паралелки што се отворени во повеќе населби, вкупно биле запишани 165 ученици од кои 86 биле од ромската заедница, што претставува повеќе од 50%. Исто така, во ПОУ „Иднина“ - Скопје заедно со подрачните паралелки, запишани се вкупно 253 ученици, од кои 93 се од ромската заедница, што исто така е доста висок процент во однос на другите заедници што живеат во Република Македонија.¹⁰

На почетокот на 2011 година, ЕЦПР и Македонскиот хелсиншки комитет за човекови права направија истражување на оваа тема во сите специјални училишта и во редовните основни училишта со специјални класови, барајќи информации за вкупниот број деца кои ги посетуваат овие училишта, десегрегирани според етничка припадност, и информации за постапките за распоредување на

⁹ Ромски Образовен Фонд (2007). *Advancing Education of Roma in Macedonia*.

¹⁰ Информација на Народниот правобранител за неговите посети на специјалните основни училишта „Златан Сремац“ и „Иднина“ – Скопје, „Св. Климент Охридски“ – Ново Село и јавното средно училиште за едукација и рехабилитација „Св. Наум Охридски“ – Скопје и „Искра“ – Штип. Достапно на <http://ombudsman.mk/upload/documents/Informacija-deca-2010.doc>

учениците во овие училишта. Истражувањето ја потврди преголемата застапеност на ромските деца во специјалното образование, при што ромските деца претставувале 42,5% од севкупната ученичка популација во специјалните училишта и 52% од севкупната ученичка популација во класовите за деца со посебни образовни потреби во редовните основни училишта, што претставува многу поголемо учество од нивниот удел во севкупното население.¹¹

2.2. СЕГАШНА СОСТОЈБА: ВКЛУЧЕНОСТА НА ДЕЦАТА РОМИ ВО ПОСЕБНИ УЧИЛИШТА И ФУНКЦИОНАЛНОСТ НА СИСТЕМОТ

Во учебната 2013/14 година, во Република Македонија имало 44 посебни основни училишта и 4 специјални средни училишта наменети за деца со пречки во развојот и со други посебни потреби. Во овие училишта настава посетувале 787 деца во основно образование и 285 ученици во средното образование.¹²

На 28 јуни 2012 година, Министерството за труд и социјална политика, Министерството за образование и наука и Министерството за здравство организираа заедничка прес конференција за подобрување на работата на комисиите за категоризација на децата со пречки во развојот. Во таа прилика, Министерот за труд и социјална политика, Спиро Ристовски, изјави дека се откриени десетици случаи на здрави деца кои се испраќаат во специјалните училишта, алудирајќи дека родителите ги советуваат своите деца „да глумат дека се хендикепирани“ за да бидат сместени во специјалното образование и да добиваат бенефиции и објави дека министерството ќе ги ревидира сите релевантни случаи. Тој изјави дека овие деца доаѓаат од маргинализирани семејства и најави покренување кривични пријави против сите родители кои ги присилуваат децата да глумат.¹³

По изјавите на тогашниот министер за труд и социјална политика, Спиро Ристовски, веќе на 29 јуни 2012, медиумите алармираа за постоечкиот проблем и прашањето се крена високо на агендата

11 ЕЦПР и Националниот ромски центар (август 2012). Листа на факти: преголема застапеност на ромските деца во специјалното образование во Македонија. Достапно на: <http://www.errc.org/cms/upload/file/macedonia-factsheet-education-mk-30-august-2012.pdf>

12 Државен Завод за Статистика, 2013 година.

13 Европски Центар за Правата на Ромите (2013). *Македонија: Извештај за состојбите 2011-2012*, стр. 24.

на владините институции. Особено што притоа беше најавено дека интересорна комисија ќе ги преиспитува сите 500 случаи на деца биле запишани во посебни училишта.¹⁴

На 23 август 2012 година, весникот Дневник објави информација за увидот направен од Државниот пазарен инспекторат во специјалните училишта, при што констатирале дека дури 137 деца Роми посетувале настава во училишта несоодветни за нивната здравствена состојба. Состојбата била најалармантна во посебното основно училиште “Иднина” во Скопје каде што дури 108 деца биле откриени без документи за својата здравствена состојба.¹⁵

Во декември 2013 година Народниот правобранител го објави својот втор извештај за состојбата со вклученоста на децата со посебни потреби во основните и средните посебни училишта. Во извештајот е наведено дека вкупниот број на деца за 2013 година бил 570, што е за 155 деца помалку отколку во 2010 година. Исто така во извештајот е утврдено и намалување на бројот на деца Роми на 24,56%.¹⁶

Подолу следи споредбен приказ на објавените информации од страна на Народниот правобранител за состојбата со вклученоста на децата, со посебен фокус на Ромите, во посебните училишта.

14 Динев, А. (29 јуни 2012). Морале да глумат инвалиди за 4.200 денари месечно. *Сител* достапно на: <http://sitel.com.mk/morale-da-glumat-invalidi-za-4200-denari-mesechno-0>[пристапено на 18.08.2014г.]

15 Тасев, М. (29.06.2012). Над 130 здрави деца учат како да се со посебни потреби. *Дневник* достапно на: <http://dnevnik.mk/?ItemID=DFF23B66AAD3334DB5E286A809DC04AD>, [пристапено на 20.08.2014г.].

16 Народен Правобранител на Република Македонија (декември, 2013), “ИНФОРМАЦИЈА за состојбата со вклученоста на децата со посебни потреби во основните и средните посебни училишта”. [Интернет] Достапно на: <http://ombudsman.mk/upload/documents/2013/Izvestaj-Posebni%20ucilista-2014.pdf> [пристапено на 01.07.2014г.].

Табела 1.1 Спореџбен приказ на наодише на Народниот правобранишел за 2010 и 2013 година

ИМЕ НА УЧИЛИШТЕ	2010 ГОДИНА			2013 ГОДИНА		
	Вкупно ученици	Роми	%	Вкупно ученици	Роми	%
ПОУ „Д-р Златан Сремац“ од Скопје	165	86	52,12	120	20	16,66
ПОУ „Иднина“ – Скопје, заедно со подрачните паралелки	253	93	36,75	105	8	7,61
ДСУ за рехабилитација и образование „Св. Наум Охридски“ - Скопје	169	50	29,58	153	55	35,94
ДСУ за образование и рехабилитација „Искра“ од Штип	84	17	20,23	85	35	41,17
ПОУ „Св. Климент Охридски“ во Ново Село	54	1	1,85	43	1	2,32
ПОУ „Маца Ѓорѓиева Овчарова“ – Велес	/	/	/	64	21	32,8
ВКУПНО	725	247	34,06	570	140	24,56

Според погоренаведеното, може да се заклучи дека најголемиот број на деца запишани без соодветна документација биле најверојатно отпишани после акцијата на Министерството за труд и социјална политика и Државниот Инспекторат во втората половина на 2012 година.

Според постоечкиот Правилник за оцена на специфичните потреби на лицата со пречки во физичкиот или психичкиот развој (2000), Центарот за социјална работа е надлежен за општо водење евиденција и извлекување податоци за статистички цели. Тој отвора ново досие и обезбедува информации за Комисијата за проценка да ги изврши своите должности. Комисијата за проценка користи стандардизирани обрасци за документирање на сите релевантни наоди и мислења. Ваквите обрасци опфаќаат некои основни информации што ги дава Центарот за социјална работа по упатување. Обрасците не содржат поле за евидентирање на етничката

припадност на детето, што е една од неопходните категории за ефективно следење на состојбата со децата Роми.

Според постоечките прописи заради олеснување на соработката меѓу Центарот за социјална работа и Комисијата за процена, Центарот за социјална работа назначува раководител на случајот којшто е одговорен за целиот процес на идентификација и утврдување подобност. Меѓу членовите на Комисијата за процена, едно лице треба да биде назначено како раководител на процената на секој случај за да се обезбеди сите релевантни информации да се вклучат во наодите и мислењата, а родителите и другите засегнати страни соодветно да се консултираат и да се информираат.

Во пракса, оваа процедура не функционира со оглед дека нема никаква соработка помеѓу институциите на локално ниво.¹⁷

3. АНАЛИЗА НА ПРАВНАТА РАМКА

3.1. ОПШТА НОРМАТИВНА РАМКА

Во поголем број на меѓународни документи и конвенции на кои Република Македонија е потписничка, образованието зазема значително место.

Република Македонија ја ратификува Конвенцијата за правата на детето во 1993 година. Согласно член 23 од Конвенцијата за правата на детето, Македонија е обврзана на дете со психички или физички пречки во развојот да му овозможи уживање на целосен и достоинствен живот, во услови со кои се обезбедува негово достоинство, се поттикнува самостојноста и се олеснува активното учество на детето во заедницата. Притоа, уважувајќи ги посебните потреби на детето со пречки во развојот, државата треба да обезбеди ефикасен пристап и овие деца да добиваат образование, обука, здравствена заштита и рехабилитација, со цел да се подготват за што е можно поцелосна општествена интеграција и да се овозможи личен развој на детето.

Во член 35 во рамките на економските, социјални и културни права, Уставот на Република Македонија пропишува дека Републиката се грижи за социјалната заштита и социјалната сигурност

17 Интервју на РРЦ, август 2014, наставник, Штип.

на граѓаните согласно со начелото на социјална праведност. Републиката им гарантира право на помош на немоќните и на неспособните за работа граѓани. Републиката им обезбедува посебна заштита на инвалидните лица и услови за нивно вклучување во општествениот живот.

Со Законот за основно образование од 2008 година е уредено задолжителното основно образование како дел од воспитно образовниот систем и трае девет години. Според член 2 од овој закон секое дете има право на образование и при тоа се забранува дискриминација по основа на пол, раса, боја на кожа, национална, социјална, политичка, верска, имотна и општествена припадност во остварувањето на правата од основното воспитување и образование.¹⁸

Законот за средно образование на секого му гарантира еднакви услови и право на средно образование и при тоа не е дозволена дискриминација врз основа на пол, раса, боја на кожата, национално и социјално потекло, политичко и верско уверување, имотна и општествена положба.

Воспитно-образовната дејност за ученици со лесна интелектуална попреченост се организира и остварува со посебни наставни планови и програми во посебни паралелки во рамките на редовните училишта или во специјални училишта. Децата со лесна интелектуална попреченост можат да го следат воспитно-образовниот процес и во редовните паралелки на основните училишта. Средното образование се остварува преку програми и планови за средно образование за соодветни занимања или за работно оспособување за ученици со посебни образовни потреби.

Во средното образование за ученици со посебни образовни потреби се вклучуваат ученици кои се евидентирани и распоредени според видот и степенот на пречките во развојот.

Системот за специјално образование е спротивен на Конвенцијата за правата на лицата со попречености, која Македонија ја ратификуваше во 2011 година, а диспропорционалниот број на ромски деца во овие училишта упатува на дискриминација врз основа на етничка припадност и претставува прекршување на меѓународните правни обврски што ги преземала Македонија (ЕЦПР, 2013).

¹⁸ Закон за основно образование („Службен весник на РМ “ бр. 103/08 од 19.8.2008, 33/10, 116/10, 156/10, 18/11, 51/11, 6/12)

Во случаите каде деца Роми неправедно се сместени/категоризирани во специјални училишта, според член 6, став 1 од Законот за спречување и заштита од дискриминација се прави директна дискриминација, што значи неповолно постапување, разликување, исклучување или ограничување, кое како последица има или би можело да има одземање, нарушување или ограничување на еднаквото признавање или уживање на човековите права и основни слободи.

3.2. ПРАВА И БЕНЕФИЦИИ

Инвалидно лице, е лице со оштетен вид, оштетен слух, со пречки во гласот, говорот и јазикот, телесно инвалидно лице, лице со пречки во интелектуалниот развој и лице со комбинирани пречки кое поради степенот на инвалидност има специфични потреби во работењето.¹⁹

Според Законот за социјална заштита, ментален хендикеп е состојба на забавен или непотполн психички развој кој особено се карактеризира со нарушување на оние способности кои се појавуваат во текот на развојниот период и кои придонесуваат за општото ниво на интелигенцијата, како што се когнитивните, говорните, моторните и социјалните способности.

Лицата со пречки во интелектуалниот и физичкиот развој се делат на четири категории на лица: со лесен хендикеп, со умерен ментален хендикеп, со тежок ментален хендикеп и со длабока интелектуална попреченост (Правилник, 2000)

Законските права кои можат да ги користат овие лица се регулирани во повеќе области: 1. Права од системот на социјална заштита (Закон за социјална заштита; Закон за семејство; и Закон за детска заштита); 2. Права од областа на здравствената заштита (Закон за здравствена заштита); 3. Право на образование (Закон за предучилишно образование, Закон за основно образование, Закон за средно образование, Закон за високо образование); 4. Право на вработување (Закон за работни односи, Закон за вработување на инвалидни лица) итн.

Ромите најчесто се категоризираат во првата категорија на лица со лесен хендикеп, односно лесна попреченост во интелектуалниот развој.²⁰ Припадниците на оваа категорија на лица можат да се стекнат со разни видови на бенефиции и права (види Табела 1).

19 Закон за вработување на инвалидни лица („Службен весник на РМ “ бр. 87/05 од 17.10.2005, Пречистен текст), Член 2, став 1.

20 Интервју на РРЦ, август 2014, дефектолог, Штип

Табела 1.2 Преглед на ѓрава ѓредвидени со закон за лица со лесен хендикеј

ЗАКОН	ПРАВА ПРЕДВИДЕНИ СО ЗАКОН
Закон за социјалната заштита ²¹	<ul style="list-style-type: none"> ▶ Право на социјална помош, доколку лицето има родители може да се јави како соуживател на правото. ▶ Право на постојана парична помош, доколку лицето има родители може да се јави како соуживател на правото. ▶ Право на домување, ако е лице без родители или безродителска грижа до 18 годишна возраст, односно и по престанување на старателството, а најмногу до 26 годишна возраст. ▶ Парична помош, ако е лице кое до 18 години возраст имало статус на дете без родители и родителска грижа. ▶ Право на еднакратна парична помош или помош во натура. ▶ Право на сместување во згрижувачко семејство, ако е дете без родители и родителска грижа
Закон за заштита на децата ²²	<ul style="list-style-type: none"> ▶ Детски додаток ; ▶ Помош за опрема на новороденче; ▶ Згрижување и воспитување на деца од предучилишна возраст; ▶ Одмор и рекреација на деца и ▶ Други облици на заштита.
Закон за основно образование ²³	<ul style="list-style-type: none"> ▶ Право на бесплатен превоз. ▶ Доколку не може да се обезбеди превоз, право на бесплатно сместување во ученички дом или семејство.
Закон за вработувањена инвалидни лица ²⁴	<ul style="list-style-type: none"> ▶ Вработување; ▶ Право на работно оспособување со вработување; ▶ Право на ослободување од персонален данок од доход; ▶ Право на користење на средства од посебниот фонд за подобрување на условите за вработување и работење на инвалидните лица.

21 Закон за социјалната заштита („Службен весник на РМ “ бр. 148/13 од 29.10.2013, 164/13, 187/13, 38/14, 44/14, 116/14)

22 Закон за заштита на децата („Службен весник на РМ “ бр. 23/13 од 14.02.2013, 12/14, 44/14)

23 Закон за основното образование („Службен весник на РМ “ бр. 103/08 од 19.08.2008, 33/10, 116/10, 156/10, 6/11, 18/11, 42/11, 51/11, 100/12, 41/14, 116/14)

24 Закон за вработување на инвалидни лица („Службен весник на РМ “ бр. 87/05 од 17.10.2005, 113/05, 29/07, 88/08, 161/08, 99/09, 136/11)

3.3. НЕДОСТАТОЦИ НА ПРАВНАТА РАМКА

Европскиот Центар за Правата на Ромите и Националниот ромски центар во своето истражување од 2012 година утврдија голем број празнини и недостатоци во законодавната рамка што се однесува на специјалното образование во Македонија во однос на специјалното образование, како што се: Отсуство на правна дефиниција за „ученици со посебни образовни потреби“; Непрецизни прописи за оценување на пречки во физичкиот или психичкиот развој и за работата на комисиите за категоризација; Непрецизни прописи за основно образование на ученици со пречки во развојот; Двојна и нејасна примена на правилниците за остварување на основното образование на учениците со пречки во развојот и за оценување на посебните потреби на лицата со пречки во физичкиот и психичкиот развој; Недостиг на јасни насоки за обезбедување соодветни информации на родителите и постапки за давање информирана согласност; Несоодветни алатки за проценка; Неуспех да се донесе регулативата за начинот и условите за запишувањето на учениците со посебни образовни потреби во основните училишта, што е пропишана во член 51(2) од Законот за основно образование; Нејасни процеси и одговорности за следење, ре-категоризација и префрлување во други класови на деца со посебни образовни потреби и пречки во развојот.²⁵

Дополнително, Народниот Правобранител во својот извештај од декември 2013 година, препорачува измена на Правилникот за оцена на специфичните потреби на лицата со пречки во физичкиот или психичкиот развој со цел спречување на можноста за издавање наод кој не соодветствува на реалната состојба на детето.

Од направената анализа на терен може да се заклучи дека сите погоре идентификувани пречки и недостатоци сеуште постојат и поради тоа е неопходна ургентна акција на релевантните институции.

Иако нов правилник за категоризација на деца со пречки во развојот беше најавен уште во август 2012 година, Правилникот сеуште не е донесен од страна на Министерството за труд и социјална политика.

25 За повеќе информации и детална листа на препораки види: ЕЦПР и Националниот ромски центар (август 2012). *Листа на факти: Преголема застапеност на ромските деца во специјалното образование во Македонија*. Достапно на: <http://www.errc.org/cms/upload/file/macedonia-factsheet-education-mk-30-august-2012.pdf>

4. СОСТОЈБАТА НА ТЕРЕН И ПРАКТИЧНА ПРИМЕНА НА ПРОПИСИТЕ

Од истражувањето и интервјуата со претставници на стручните кадри вклучени во прашањето како и родителите Роми, можеше да се забележи дека сеуште темата за вклученоста на децата Роми во посебни училишта е “табу тема”. Многу од лицата одбиваа да разговараат на темата, додека и дел од тие кои што учествуваа во интервјуата одговараа со значителна резервација.

4.1. СТАВОВИ НА СТРУЧНИОТ КАДАР ЗА ПРОБЛЕМОТ

Ставовите на стручните кадри вклучувајќи ги стручните служби во посебните основни и средни училишта, членовите на Комисиите за проценка како и вработените во Центрите за социјална работа (социјални работници, психолози) се поделени.

Интервјуираните социјални работници од градот Скопје сметаат дека застапеноста на децата Роми во посебните училишта не е голема и нивниот број изнесува околу 145. Може да се забележи дека овој податок соодветствува со податоците утврдени од страна на Народниот правобранител во извештајот од 2013 година.

Дополнително, социјалните работници сметаат дека децата Роми навистина имаат попреченост и дека не се способни да ја посетуваат редовната настава. Исто така сметаат дека децата имаат добро познавање на македонскиот јазик и дека влијанието на родителите е пресудно во запишувањето на децата во специјални училишта. Според социјалните работници, Центрите за социјална работа редовно контактираат со родителите вклучувајќи и нивно редовно известување.²⁶

Од друга страна, стручните служби кои работат со децата на секојдневна основа во посебните основни и средни училишта (после извршената категоризација и нивно запишување во училиште) сметаат дека најголем дел од децата не се со посебни потреби.

²⁶ Интервју на РРЦ, август 2014, социјален работник, Скопје

Стручните служби во училиштата не прават доволно за да се откријат децата кои би можеле да посетуваат настава во редовни училишта. Потребно е да се зголеми присутноста на психолог и социјален работник како и преведувач за во случај детето да не разбира толку добро македонски.²⁷

Родителите пак објаснуваат дека најмалку се запознаени со процедурите за префрлување на децата во редовни училишта и негираат дека воопшто се повикани од страна на институциите за соработка.²⁸

4.2. ПРОЦЕДУРА ЗА ЗАПИШУВАЊЕ НА ДЕТЕ ВО ПОСЕБНО УЧИЛИШТЕ

Процедурата на запишување на децата во посебни училишта е речиси иста како и за во редовните училишта. Потребно е наод од Завод за ментално здравје дека детето е категоризирано како дете со посебни потреби, извод од матичната книга на родените како и потврда за вакцинација. Детето прво треба да помине на интервју, да се види дали е способно да посетува редовна настава или треба да се прати во специјално училиште.²⁹

Децата со идентификувани развојни тешкотии често се упатуваат на Комисија за категоризација. Ова испитување се наплаќа, што е уште една пречка за ромските родители. Во пракса, стручниот тим од училиштето ги препраќа ромските деца со идентификувани пречки во развојот на Комисијата за категоризација.

За разлика од претходните години, според фактите утврдени од страна на Народниот Правобраните (2013) во училиштата нема запишано деца без соодветен документ издаден од надлежен орган. Поголемиот дел од ромските деца во посебните училишта се со лесна попреченост во развојот и со едукативна запоставеност.

Ромските деца во Македонија се запишуваат во специјалното образование без јасен и транспарентен процес кој им овозможува на родителите да донесат целосна и информирана одлука. Откако едно дете е запишано во специјалното образование, речиси невозможно е тоа дете да се префрли назад во редовните училишта, со што сериозно се ограничуваат можностите на

27 *Ibid.*

28 Интервју на РРЦ, јуни 2014, фокус групи со родители. Скопје и Штип

29 Интервјуа на РРЦ со социјални работници, август 2014. Скопје

децата понатаму во животот. Дополнително, повеќе од две третини (69,6%) од интервјуираните родители изјавиле дека по иницијалната категоризација нивните деца никогаш не биле повторно тестирани.³⁰

Поради лошата социо-економска состојба родителите имаат интерес да ги запишат своите деца во посебни училишта бидејќи е поевтино. Во посебните училишта се учи по скратена програма и учењето е полесно. Децата Роми поради јазичната бариера полесно можат да завршат образование во посебно училиште.³¹

Најголемата предност на децата кои што учат во посебните училишта е тоа што групите на деца се мали и работат со дефектолог. Секое дете работи со посебен индивидуален план и добиваат бесплатен превоз до училиште и до својот дом како и бесплатен ручек. Учениците во средно училиште имаат поволност што учат занаети и стекнуваат вештини за полесно да се вработат.³²

Институциите треба да обратат внимание на случаите кога родителите инсистираат за запишување на нивните деца во посебни училишта.

4.3. КАТЕГОРИЗАЦИЈА НА ДЕЦА

Целокупната постапка на категоризација на децата за вклучување во посебни училишта се одвива според Правилникот за оцена на специфичните потреби на лицата со пречки во физичкиот или психичкиот развој од 2000 година.³³

Со Правилникот се уредува степенот на попреченост и специфичните потреби на лицата со пречки во физичкиот или психичкиот развој, стручниот профил на членовите на стручниот орган што дава наод и мислење за оцена на видот и степенот на попреченост и специфичните потреби, на првостепениот и на второстепениот орган, начинот и постапката за оценување на специфичните потреби, водењето на евиденцијата за посебните потреби за овие лица и установите што

30 ЕЦПР и Националниот ромски центар (август 2012). *Листа на факти: Преголема зависаност на ромските деца во специјалното образование во Македонија*. Достапно на: <http://www.errc.org/cms/upload/file/macedonia-factsheet-education-mk-30-august-2012.pdf>

31 Интервју на РРЦ, социјален работник, август 2014, Штип

32 Интервју на РРЦ, социјални работници, август 2014, Скопје

33 Службен весник на Р.М., бр. 30 од 19 април 2000.

формираат стручни органи кои што даваат наод и мислење, врз основа на кој што Центарот за социјална работа донесува решение за остварување на права од детска и социјална заштита.

Правилникот ги категоризира децата во посебни групи. Една од тие групи се и лицата со пречки во психичкиот развој кои се распоредуваат на лица со лесен, умерен, тешок и длабок хендикеп. Правилникот за секоја од овие категории на лица одредува дополнителни карактеристики вклучувајќи и очекуван коефициент на интелигенција.

Табела 2. Преглед на категории на лица со пречки во психичкиот развој и нивни карактеристики

КАТЕГОРИЈА НА ЛИЦА	КАРАКТЕРИСТИКИ	ОЧЕКУВАН КОЕФИЦИЕНТ НА ИНТЕЛЕГЕНЦИЈА
Лица со лесен хендикеп	Благо намалување на нивото на интелектуалните, говорните, јазичните, моторните и социјалните способности.	50-69
Лица со умерен ментален хендикеп	покажуваат забавен развој и ограничени достигнувања во дометот на развојот и употребата на говорот и јазикот, моторните способности и грижата за себе.	35-49
Лица со тешок ментален хендикеп	Постои значително ограничување на достигнувањето во областа на говорот и јазикот, моторните способности и грижата за себе. Поголем број од лицата имаат изразени, моторно или други придружни пречки кои укажуваат на присуство на значајно оштетување или пореметување во развојот на централниот нервен систем.	20-34
Лица со длабока интелектуална попреченост	изразито ограничената способност за разбирање и прифаќање на барањата или упатствата, имаат зачувана способност за многу рудиментарни форми на невербална комуникација. Голем дел од нив се полуподвижни или неподвижни, неспособни за волева контрола на офинктерите	< 20

Децата Роми најчесто се категоризираат во лица со лесен хендикеп. Најчесто на тестовите децата покажуваат гранични вредности со коефициент на интелигенција помеѓу 65-69. Правилникот предвидува правилно стандардизирани тестови за интелигенција според кои се врши категоризацијата. Категоризацијата се заснова на унифицирани тестови на кои Ромите најчесто имаат граничен коефициент (60-69) што е доволно да се категоризираат.³⁴

Комисијата нема моќ ништо да направи, бидејќи детето се упатува на категоризација од страна на Центарот за социјална работа. Најголемиот пропуст се прави токму од страна на Центарот за социјална работа, којшто треба да превземе поголема одговорност пред да го упати детето на Комисија.³⁵

За децата запишани во училиштата за деца со посебни потреби се врши категоризација и се издава наод од посебен стручен тим, но одреден број деца иако не се категоризирани како деца со посебни потреби се препраќаат од страна на редовните до посебните училишта и се под посебна опсервација. Категоризацијата не се врши во соодветни услови, а во малите населени места се врши во Центрите за социјална работа. Дополнително, за упис на децата во посебните училишта наод и мислење даваат неколку установи (образовни и здравствени). Тоа е можност за манипулација и нереална оцена за психофизичката способност на децата.³⁶

Од друга страна пак, социјалните работници сметаат дека децата немаат интелектуален капацитет и не се умствено способни за совладување на образовните содржини кои се изучуваат во редовното образование. Најчесто нивната проценка се заснова на интервју со децата при што најчесто поради јазичните бариери, родителите се покануваат да преведуваат во текот на интервјуто со цел да се утврди капацитетот на детето.³⁷

Ова остава место за манипулација од страна на родителите со цел да се издејствува запишување на нивните деца во посебно училиште. Кон оваа состојба се надоврзува и исказот на дел од

34 Интервју на РРЦ, август 2014, член на Комисија за оценка, Штип.

35 *Ibid.*

36 *Ibid.*

37 Интервју на РРЦ, август 2014, социјален работник, Штип

испитаниците кои наведуваат дека најчесто родителите вршат притисок врз децата за да имаат пониски резултати за време на интервјуто за категоризација³⁸

Од разговорите со родителите се забележа дека родителите имаа многу ниска свест за процедурите во училиштата и најчесто се информирани преку методот „уста на уста“ од други родители. Родителите се свесни за бенефициите кои може да ги користи семејството доколку има дете запишано во посебно училиште.³⁹

Категоризација се врши само еднаш.

Според Правилникот (2000), по потреба на сите лица со пречки во физичкиот или психичкиот развој може да им се овозможи да бидат упатени на повторно дијагностицирање доколку за тоа се достави барање од лицето, родителот, односно старателот, од социјалната односно воспитно образовната установа и од одделни стручни лица вклучени во процесот на третманот на овие деца, заради промена во условите на живеење со што можат да побараат преоценка на специфичните потреби. (член 19)

Од досегашната работа на училиштата, речиси и не се случила ре-категоризација на деца иако стручниот тим при училиштата го известувале надлежниот Центар за социјални работи. Најчесто кај децата се препорачува ре-категоризација во период од две години но тоа воопшто не се почитува и во училиштата има деца кои што се со првични решенија и повеќе од 5 години.⁴⁰ Досега речиси и да немало случај на деца префрлени во редовното образование.⁴¹

Родителите не се запознаени со можностите да бараат повторна категоризација на нивните деца. Дури и да постои таква можност најчесто не се одлучуваат да побараат поради ниското ниво на свест и неможност да препознаат дали кај детето има подобрување или пак сметаат дека за тоа се потребни финансиски средства кои тие не можат да ги одвојат.⁴²

38 Интервју на РРЦ, август 2014, член на Комисија за оценка, Штип.

39 Интервју на РРЦ, јуни 2014, фокус група со родители, Скопје

40 Интервју на РРЦ, август 2014, стручна служба, Штип.

41 *Ibid.*

42 Интервју на РРЦ, јуни 2014, фокус група со родители, Скопје

4.4. ДЕЦА СО ПРЕЧКИ ВО РАЗВОЈОТ ИЛИ ВОСПИТНО ЗАПУШТЕНИ ДЕЦА

Деца со воспитно социјални проблеми и нарушено поведење се деца кои манифестираат неприлагодено поведење како што е: скитање, безделничење, бегање од училиште, просење и правење кражби.⁴³

Стручната работа со оваа категорија на деца се реализира преку центрите за социјална работа. Во зависност од нивната возраст и видот и степенот на асоцијално однесување или нивото на нарушеното поведење се применуваат соодветни мерки за корекција на нивното однесување. Со примена на некоја од воспитните мерки се прави интервенција во однесувањето на малолетникот во рамки на семејството и средината во која малолетникот живее. Во случаите кога ресоцијализацијата на однесувањето на детето не е можна во рамки на семејството се применуваат мерките упатување во воспитна установа и во Воспитно поправен дом.⁴⁴ Во Македонија постојат само две установи за сместување на деца и младинци со воспитно социјални проблеми и со нарушено поведење: ЈУ Завод за згрижување деца со воспитно социјални проблеми – Скопје (за деца на возраст од 7-18 години) и ЈУ Завод за згрижување и воспитување и образование на деца и младинци “Ранка Милановиќ” Скопје за деца и младинци на возраст од 10-18 години.⁴⁵

Воспитно запуштените деца се најпроблематичната категорија на деца од аспект на образование. Децата поради воспитната запуштеност се немирни и имаат асоцијално однесување поради што е речиси невозможно оддржување на редовна настава заедно со 30 други ученици во еден клас и предизвикуваат проблеми во редовните училишта. Откако детето ќе отиде во Центарот за социјална работа и таму имаат проблем поради што не знаат како да го згрижат. Поради тоа, на крај за да се реши институционално случајот, детето се препраќа на Комисија од каде што најверојатно ќе добие решение за лице со лесна попреченост.⁴⁶

43 Министерство за труд и социјална политика (декември, 2007). Национална стратегија за деинституционализација во системот на социјалната заштита во Република Македонија (2008-2018). Скопје. Достапна на: http://www.mtsp.gov.mk/wbstorage/files/nacionalna%20strategija%20za%20deinstitutionalizacija%20_2008-2018_%20_2_.pdf

44 *Ibid.*

45 *Ibid.*

46 Интервју на РПЦ, август 2014, член на Комисија за оценка, Штип.

Децата Роми не се деца со посебни потреби. Најчесто децата се социјално и воспитно запуштени и недоволно згрижени од страна на своите семејства и затоа и посетуваат настава во посебни училишта. Децата не се соочуваат со примарна попреченост туку со секундарна попреченост, како резултат од средината.⁴⁷

Децата се асоцијални, не ги извршуваат училишните задачи (домашна работа) и немаат хигиенски навики. Има случаи и каде децата биле вклучени во редовна настава, но поради нивното асоцијално однесување и минимално напредување, училишните служби ги препраќаат на Комисија за категоризација при ЈЗУ “Д-р Панче Караџов” во Штип при што децата поради нивниот граничен коефициент на интелигенција се категоризираат како деца со посебни потреби.⁴⁸

За да се надмине оваа состојба и децата Роми успешно да се вклопат во редовната настава во основно и средно образование, потребно е исполнување на следните три фактори: 1) посветување на доволно внимание; 2) познавање на македонскиот јазик; и 3) родителска грижа.⁴⁹

Дополнителен проблем се стандардизираните тестови за категоризација и унифицираните прашања кои што не може да се менуваат. Децата кои биле исклучени од школо и имаат асоцијално однесување и со самото тоа што се неписмени на тестовите за интелигенција ќе покажат ниски резултати и ќе бидат проценети како хендикепирани. За надминување на овој проблем е потребно Центрите за социјални работи да вршат соодветно тестирање и набљудување на децата пред да дадат препорака за проценка од страна на Комисијата за категоризација. За Центрите за социјални работи е полесно да се процени дали детето е воспитно запуштено, дали глуми или не глуми и според тоа да не даваат препорака за изготвување на наод и мислење за видот и степенот на попреченост во психичкиот или физичкиот развој и специфичните потреби на детето. Доколку детето се појави пред Комисија, самата воспитна запуштеност ќе придонесе за симнување на коефициентот на интелигенција и на детето ќе му се издаде позитивен наод врз основа на кој Центарот за социјални работи ќе издаде Решение за категоризација.⁵⁰

47 *Ibid.*

48 *Ibid.*

49 *Ibid.*

50 Интервју на РРЦ, август 2014, член на Комисија за проценка, Штип.

ЕЦПР во своето истражување (2012) има утврдено дека воспитната запушеност (асоцијално однесување) и престапничкото поведение се основни за распоредување во образование за деца со посебни образовни потреби, на деца со пречки во психички развој без оглед на евидентно отсуство на физичка или ментална попреченост.

Констатациите од погоре оставаат широко поле за манипулација доколку родителот сака да го запише своето дете во посебно училиште со цел да се здобие со одредени бенефиции. Со цел да се спречи ваквата рутинска пракса за упатување на децата на Комисија за категоризација.

4.5. ЈАЗИЧНАТА БАРИЕРА КАКО ПРИЧИНА ЗА КАТЕГОРИЗИРАЊЕ НА ДЕЦАТА КАКО ЛИЦА СО ПОСЕБНИ ПОТРЕБИ

Министерството за труд и социјална политика во мај 2010 година, во својата Анализа за состојбата и намалувањето на ромските девојчиња и момчиња во образовниот процес во Република Македонија, го нагласува недоволното познавање на македонскиот јазик како една од причините за слабиот успех и препраќање на учениците во специјалните училишта или прекинувањето на образовниот процес.

“Децаџа речиси и да не го знаат македонскиот јазик. Ние ги учиме македонски.”- изјава на еден од интервјуираните наставници во Штип, август 2014.

Мајчин јазик на децата Роми е ромскиот јазик (за лица од Скопје) или Турски јазик (за лица од Штип) и при нивна категоризација се случува да не можат да ги разберат прашањата од комисијата и тоа е уште една причина едно нормално и здраво дете да се категоризира како дете со посебни потреби. Категоризација се врши само еднаш, од стручен тим во време од 2 до 2,5 часа и ова време не е доволно ниту е показател за правилна категоризација.⁵¹

Како пример за оваа пракса сведочи една ситуација кога еден од испитаниците (социјален работник) присуствувал случајно на интервју како дел од категоризација на едно дете. Целото интервју се одвивало на македонски јазик и детето не одговорило ништо, поради што присутните добиле впечаток дека тоа не ги разбира прашањата, не е заинтересирано, нема познавања и сл.

⁵¹ Интервју на РРЦ, јуни 2014, фокус група со родители и деца, Скопје

Во тој момент се донел заклучок дека детето е подобно да посетува настава во посебно училиште. Социјалниот работник предложил интервјуто да го спроведе на ромски јазик. Исходот бил изненадувачки при што детето одговорило на сите прашања и се заклучило дека детето треба да посетува редовна настава.⁵²

Ова е доволен показател дека јазичната бариера може да биде причина за неправилна категоризација и да се загрози иднината на децата. Интервјуто треба да се спроведува и на македонски и на ромски јазик со поголем акцент на ромскиот јазик затоа што тоа пред се, ромскиот им е мајчин јазик на децата и интервјуто би било поефикасно.⁵³

Непознавањето на македонскиот јазик го отежнува и следењето на напредокот на децата за време на наставата во посебните училишта.⁵⁴ Според извештајот на Народниот Правобранител (2013) иако во повеќе од училиштата застапеноста на ромите е близу 50%, во ниту едно од училиштата за деца со посебни потреби нема вработено лица Роми, иако во некои од училиштата бројот на деца Роми е близу 50%.

4.6. ЦЕНТРИ ЗА СОЦИЈАЛНА РАБОТА

Центрите за социјална работа (ЦСР) ја имаат главната улога во процесот на категоризација на децата. Според информациите од терен, ЦСР имаат повеќе можност да утврдат дали одредено дете е за категоризација или не поради фактот дека можат по нивно барање да се видат со детето повеќе пати, психологот да спроведе повеќе тестови и сл.⁵⁵

Сепак, посебните училишта кога и да се обратат до ЦСР, добиваат негативен одговор со изговор дека социјалните работници се презафатени со тековната работа на администрирање на социјалните права.⁵⁶

За жал, во социјалната заштита главен проблем е сериозниот недостаток на кадар, особено во центрите за социјална работа (ЦСР). Иако Законот за социјалната заштита - пречистен текст

52 Интервју на РРЦ, август 2014, социјален работник, Скопје

53 *Ibid.*

54 Интервју на РРЦ, јуни 2014, фокус групи со родители и деца, Скопје и Штип.

55 Интервју на РРЦ, наставник, Штип, август 2014

56 *Ibid.*

(2009), нагласува дека ЦСР може да се основа само доколку е вработен најмалку следниот кадар: социјален работник, психолог, педагог или специјален педагог и правник, во Македонија постојат ЦСР што не ги исполнуваат овие минимални обврски во однос на кадарот. Следствено, недостатокот на персонал негативно влијае врз стручната работа и способноста за обезбедување добар квалитет на услугите.⁵⁷

Дополнително, фактот дека во ЦСР не постојат советодавни служби како одделни организациски единици на ЦСР, туку советувањето се врши како една од многуте други функции на ЦСР, ја зголемува веќе преголемата оптовареност на стручниот кадар.⁵⁸

4.7. РОДИТЕЛИТЕ КАКО ФАКТОР

Најчесто децата кои се запишуваат во специјалните училишта доаѓаат од воспитно запустени семејства. Нивните родители најчесто живеат на работ на сиромаштијата и не посветуваат внимание на своите деца. Нивото на интерес на родителите е на многу ниско ниво.

На дел од родителите, децата да им посетуваат настава во посебните училишта и најмногу им одговара бидејќи се ослободени од било каква обврска и знаат дека нивното дете е згрижено додека тие работно се ангажирани во собирање на старо железо и пластични шишиња. Најчесто тоа е и причината поради слабата мотивираност за соработка со стручните служби во посебните училишта и Центрите за социјална работа.⁵⁹

Училишната програма во посебните училишта предвидува бесплатни учебници, скратена наставна содржина и не се регистрираат изостаноци. Дополнителна мотивација за запишување на децата во посебни училишта се и бенефициите кои се даваат на децата и на семејствата. Децата добиваат бесплатен оброк и организиран превоз до училиштето и назад. Особено важна е мотивацијата за запишување на деца во средните посебни училишта поради можноста за вработување веднаш по завршувањето на школото бидејќи работодавачите користат бенефиции од страна на државата.⁶⁰

57 Димитриевска В. (август 2011). *Механизми за обезбедување на социјални услуги во Македонија: Какви се и какви треба да бидат*. ГИЗ: Скопје. стр. 26.

58 *Ibid.*

59 Интевју на РРЦ, јуни 2014, фокус група со родители, Скопје,

60 Интервју на РРЦ, август 2014, социјален работник, Штип,

Друг проблем се и несовесните и неупатени родители кои дозволуваат нивните деца да се запишуваат во “специјалните” училишта затоа што од државата добиваат определен паричен надоместок или други бенефиции, или пак сметаат дека нивните деца полесно ќе завршат училиште кое помалку ќе ги чини и подоцна полесно ќе се вработат. Според досегашните правила, родителот е тој кој што со давање изјава одлучува дали неговото дете ќе оди во специјално училиште.

Традицијата е дополнителен фактор кој влијае на запишување на децата во посебни училишта. Во многу ромски семејства, се случува по инерција, ако постарото дете е запишано во училиште за деца со посебни потреби, родителите бараат во истото училиште да биде запишано и помалото дете, само затоа што таму добиваат храна и имаат бесплатен превоз од местото на живеење до училиштето и назад.⁶¹

4.8. МЕЃУСЕКТОРСКА СОРАБОТКА НА ЛОКАЛНО НИВО

Во однос на меѓусекторската соработка на локално ниво, ЦСР соработуваат со други пренесени тела кои претставуваат релевантни министерства (полициски станици, локални медицински центри, посебни и редовни училишта итн.), како и со релевантни НВО што работат на полето на детската заштита. Оваа соработка е најчесто поврзана со спроведувањето на релевантни закони (т.н. “соработка по службена должност”). Не постојат ниту официјални меморандуми за соработка, ниту протоколи кои ја регулираат оваа соработка на поефикасен и попрецизен начин, во однос на точните улоги и одговорности на засегнатите страни.⁶²

Според извештајот на Народниот Правобранител (2013) поголемиот број на посебни училишта и понатаму се соочуваат со родители коишто не соработуваат со училиштето, а не е задоволителна и соработката со здравствените установи кои ги издаваат наодите и мислењата за попреченоста на децата.

Посебните училишта немаат никаков контакт со Центрите за социјална помош. Од страна на посебното училиште во Штип неколку пати и писмено се имаат обратено до Центрите за социјална помош за да се излезе во пресрет при решавањето на одредени случаи, но поради недостиг на човечки ресурси, Центарот за социјална работа не излегува во пресрет.

61 Интервју на РРЦ, август 2014, фокус група со родители, Штип,

62 Димитриевска В. (август 2011). *Механизми за обезбедување на социјални услуги во Македонија: Какви се и какви треба да бидат*. ГИЗ: Скопје. стр. 17.

Со цел да се постигне максимален ефект за подобрување на социјалното однесување на децата потребно е да се зајакне соработката помеѓу центрите за социјална работа, редовните училишта, посебните училишта и Министерството за внатрешни работи со цел да се работи на рано идентификување и превенција на малолетничка деликвенција.⁶³

5. КОМЕНТАРИ И ЗАКЛУЧОЦИ

Во изминатите три години во периодот од 2010 - 2013 година многу релевантни институции извршија истражувања за испитување на состојбата со децата Роми во специјалните училишта од кои истражувања произлегоа и сеопфатни препораки. Особено значајни се наодите на Народниот правобранител (извештаи од 2010 и 2013 година) и Европскиот Центар за Правата на Ромите (извештај од 2012 година) кои се сеопфатни и со нивна помош би се надминала негативната состојба.

За многу од идентификуваните препораки речиси и не се превземени активности, при што состојбата со децата вклучени во посебните училишта останува иста.

Врз основа на досегашната анализа како и претходно издадените документи поврзани со оваа област може да се заклучи дека:

- ▶ Во практиката, институциите не прават динстинкција помеѓу воспитно запуштени деца и деца со посебни потреби.
- ▶ Јазичната бариера претставува огромна пречка за вклучување на децата во редовното образование. Дополнително е уште поголема пречка во процесот на категоризација бидејќи целокупното тестирање се одвива на македонски јазик. Најчесто децата не ги разбираат прашањата кои им се поставуваат при што не даваат солиден одговор и се категоризираат како деца со посебни потреби.
- ▶ Следењето на состојбите на децата и изготвувањето на соодветни статистички анализи е отежнато бидејќи во образците за евиденција кои се водат од страна на Центрите за

⁶³ Интервју на РРЦ, август 2014, член на Комисија за оценка, Штип.

социјална работа не се вметнати податоци за етничка припадност.⁶⁴ Таков вид на податоци се прибираат во моментот на аплицирање за остварување на права од социјалната заштита (право на посебен додаток)⁶⁵.

- ▶ Со цел да се обезбеди соодветна институционална грижа за децата со посебни потреби, неопходно е за институциите да воспостават механизам за следење и поддршка на овие деца. Откако на детето му се издава Решение за категоризација, многу малку активности се имплементираат за следење на неговиот развој. Најчесто тоа се должи на недостатокот на кадар во Центрите за социјална работа. Дополнително, следењето на децата не е регулирано со соодветен акт.
- ▶ Се очекува дека најголемиот број на празнини во процесот на категоризација ќе се надминат со усвојувањето на новиот правилник за категоризација. Сепак, иако најавен пред две години, новиот правилник сеуште не е донесен.

6. ПРЕПОРАКИ

Врз основа на заклучоците и анализата, потребно е превземање на одредени мерки и имплементација на препораки кои можат да помогнат во подобрување на состојбата и намалување на бројот на деца Роми запишани во посебни училишта.

Со цел да се обезбеди подобар квалитет во процесот на категоризација на децата како и да се превенира можна злоупотреба потребно е:

- ▶ Превземање на мерки за имплементирање на препораките идентификувани од страна на Народниот Правобранител во извештаите објавени во февруари 2010 и декември 2013 година како и препораките дадени од страна на Европскиот Центар за Правата на Ромите во својот извештај од 2012 година.

64 Министерство за труд и социјална политика (2000). *Правилник за оцена на специфичнише потреби на лицата со пречки во физичкиот или психичкиот развој*, Образец 3 и 4.

65 Види: Министерство за труд и социјална работа, Пилот 2 БПД, достапно на <http://www.mtsp.gov.mk/WBStorage/Files/obrztvor.pdf>

Дополнително на ова потребно е подобрување во следните области:

- ▶ **Подобрување на правните прописи кои ја регулираат материјата преку:** 1) Итно донесување на нов правилник за проценка специфичните потреби на децата со пречки во физичкиот или психичкиот развој; 2) Во правилникот особено да се обрати внимание за воспоставување на двостепена комисија која би ги разгледувала издадените првостепени наоди; 3) Да се вклучат соодветни прописи за следење на развојот на децата после извршената категоризација; 4) Со оглед дека во случајот со децата Роми, најчесто се работи за воспитно запустени деца (асоцијални), оваа категорија на деца да се земе во предвид во процесот на категоризација; и 5) За подобро статистичко следење на прашањето, релевантните обрасци во Центрите за социјална работа и во посебните училишта да вклучат етничка припадност на децата.

- ▶ **Елиминирање на јазичната бариера преку:** 1) Интервјуата за запишување на деца во посебни училишта да се одвиваат на Ромски јазик; 2) Во случаите каде што децата се препраќаат од редовни во посебни училишта тестовите за проценка на капацитетите на децата да се одвиваат на јазик разбирлив за децата или пак за време на тестовите да присуствува претставник од етничката заедница на детето кој што збори на јазик разбирлив за детето; 3) Интервјуте и тестирањето при процесот на категоризација на децата да се спроведува на јазик разбирлив за децата (Ромски, Турски итн.). Да се разгледа и можноста за вклучување на Ромските Здравствени Медијатори кои оперираат во рамки на Министерството за Здравство; и 4) Стандардизираниите прашалници за категоризација на децата да се преведат на јазиците разбирливи за децата.

- ▶ **Подобрување на практичната имплементација на прописите за запишување и категоризација на децата преку:** 1) Поактивно вклучување на центрите за социјална работа во проценката и работата со децата Роми, пред упатување на категоризација; 2) Да се обезбеди соодветна примена на механизмот за ре-категоризација за навремено ре-категоризирање на идентификуваните деца кај кои има потреба со цел нивно можно префрлување во редовни училишта; и 3) Министерството за труд и социјална работа да превземе мерки за надминување на недостатокот на човечките капацитети во Центрите за социјална работа преку вработување или ангажирање на дополнителен стручен кадар или преку соработка со граѓански здруженија специјализирани во областа.

- ▶ **Разрешување на дилемата дали станува збор за деца со вистински пречки во развој или пак за воспитно запуштени преку:** 1) Центрите за социјална работа треба да превземат соодветни мерки за идентификација на децата и да вршат проценка дали во одредените случаи станува збор за воспитно запуштени деца или за деца со пречки во физичкиот или психичкиот развој; 2) За идентификуваните воспитно запуштени деца, Центрите за социјална работа потребно е да изготвуваат индивидуални досиеа за децата; 3) Зајакнување на улогата на психолозите од Центрите за социјална работа за правење на првична проценка на детето и нивно следење;
- ▶ **Подобрување на соработката со родителите роми преку:** 1) Вклучување на граѓанскиот сектор во работата со родителите; 2) Да се разгледа можноста во соработка со граѓанскиот сектор да се отворат центри за поддршка во заедницата кои би работеле со родителите Роми, особено со мајките за јакнење на нивните капацитети за подобра грижа за децата; 3) Вклучување на Ромски здравствени медијатори во соработката со родителите;
- ▶ **Подобрување на соработката на локално ниво и воспоставување на оперативни мерки преку:** 1) Министерството за труд и социјална политика, Министерството за образование и Министерството за здравство да потпишаат документи (меморандуми или протоколи) за меѓусекторска соработка на локално ниво со цел да се воспостави механизам за соработка помеѓу посебните училишта, редовните училишта, центрите за социјална работа и здравствените институции. 2) Да се разгледа можноста за усвојување на индивидуалниот пристап за работа со децата. Се препорачува воспоставување на работни тела на локално ниво со претставници од сите вклучени институции кои би го разгледувале секој случај идентификуван од страна на Центарот за социјална работа или пак посебното училиште.

За утврдување на вистинскиот број на деца со посебни потреби и елиминирање на евентуална злоупотреба во училиштата во Штип и Велес каде што Народниот правобранител повторно констатирал голем број на Роми, Министерството за труд и социјална политика и Министерството за Образование и наука да направи увид во предметите во Центрите за социјална работа и во посебните основни и средни училишта.

БИБЛИОГРАФИЈА

1. Димитриевска В. (август 2011). *Механизми за обезбедување на социјални услуги во Македонија: Какви се и какви треба да бидат*. ГИЗ (Deutsche Gesellschaft für Internationale Zusammenarbeit - GIZ): Скопје. Достапно на: http://www.nacionalnakomisija.gov.mk/sites/default/files/prikachyvanja/studija_mehanizmi_za_obezbeduvanje_na_socijalni_uslugi_vo_makedonija.pdf
2. Европски Центар за Правата на Ромите (2013), Македонија: Извештај за состојбите 2011-2012. Достапно на <http://www.errc.org/cms/upload/file/macedonia-country-profile-in-macedonian-2011-2012.pdf>
3. Европски Центар за Правата на Ромите и Националниот ромски центар (август 2012). Листа на факти: преголема застапеност на ромските деца во специјалното образование во Македонија, достапно на: <http://www.errc.org/cms/upload/file/macedonia-factsheet-education-mk-30-august-2012.pdf>
4. Министерство за труд и социјална политика (мај, 2010). *Анализа за состојбата и намалувањето на ромските девојчиња и момчиња во образовниот процес во Република Македонија*. Скопје. Достапно на: http://www.mtsp.gov.mk/WBStorage/Files/analiza_obrazovanie_romi.pdf
5. Министерство за труд и социјална политика (2000). *Правилник за оцена на специфичните потреби на лицата со пречки во физичкиот или психичкиот развој*. Службен весник на Р. М. бр. 30 од 19 април 2000. Скопје.
6. Народен Правобранител на Република Македонија (декември, 2013). *Информација за состојбата со вклученоста на децата со посебни потреби во основните и средните посебни училишта*. Скопје, Достапно на: <http://ombudsman.mk/upload/documents/2013/Izvestaj-Posebni%20ucilista-2014.pdf> [пристапено на 01.07.2014г.].
7. Народен Правобранител на Република Македонија (февруари, 2010). *Информација на Народниот Правобранител по посетата на посебните основни училишта „Злајан Сремац“ и „Игнина“ - Скопје, „Св. Климент Охридски“ - Ново Село и државното средно училиште за образование и рехабилитација „Св. Наум Охридски“ - Скопје и „Искра“ – Штип*. Скопје. Достапно на: <http://ombudsman.mk/upload/documents/Informacija-deca-2010.doc>
8. Ромски Образовен Фонд. Roma Education Fund (2007). *Advancing Education of Roma in Macedonia: Country Assessment and the Roma Education Fund's Strategic Directions*.

ABOUT THE AUTHORS

Ramcho Kundeovski is engaged in the Roma civil society since 2004 working with many national and international agencies in areas related with Roma particularly in advocacy, education, health, employment and documentation issues. He graduated at the Faculty of Law “Iustinianus Primus” in Skopje and currently he is completing his master studies in MBA Management in the Faculty of Economics in Skopje. He is born in Berovo and lives in Skopje, Macedonia. Ramcho has extensive experience in research; he is author of several analysis and has participated in many field researches and evaluations.

Fatima Osmanovska is born in Kumanovo, lives in Skopje, Republic of Macedonia. She is NGO activist since 2006, actively working on different initiatives related with the Roma issues, especially on improvement the health and social status of Roma people. She is one of the founders of RRC, and since 2011 regular employed in RRC, president of the Association since 2013. She has participated in various researches related with inclusion of Roma people in the society, especially in the area of access to health, education and employment.

e-mail: fatima.osmanovska@rrc.org.mk

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**IPA Balkan CS Acquis, Strengthening the Advocacy
and the Monitoring Potential and Capacities of CSOs**

Ilina Nesik, Project Manager
Balkan Civil Society Development Network (BCSDN)
Mitropolit Teodosij Gologanov 39/II-2
1000 Skopje, Macedonia
Tel.: + 389 (0)2 614 42 11
E-mail: ins@balkancsd.net;
Website: www.balkancsd.net





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