

Implementation of the 2006 UNCRPD in Central and Eastern Europe: A Comparative Overview with Special Reference to Bosnia and Herzegovina

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ABSTRACT

Persons with disabilities constitute one of the most vulnerable groups in society, frequently experiencing social stigma, discrimination, and marginalisation. Even in countries with a strong tradition of upholding human rights, individuals with disabilities continue to face significant discrimination, social exclusion, and inequitable treatment. They tend to have lower income and educational attainment, higher rates of unemployment, precarious housing conditions, and poorer health outcomes compared to persons without disabilities. These challenges are further exacerbated in countries in transition, such as Bosnia and Herzegovina (BiH), where ongoing social, political, and economic changes often intensify these vulnerabilities. The paper examines the application of the provisions of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in countries of Central and Eastern Europe, with special reference to BiH (which ratified the Convention and its Optional Protocol in 2010). It explores the current status of the Convention's application across the region, as well as the communication procedures initiated before the Committee on the Rights of Persons with Disabilities concerning the Central and Eastern European countries. The study also presents the legal framework for the protection of the rights of persons with disabilities in BiH (its entities – the Republic of Srpska and the Federation of Bosnia and Herzegovina). Special attention is given to the realisation of rights whose implementation in BiH has faced challenges in the past, as well as those rights that are particularly difficult to ensure in transition economies.

KEYWORDS

United Nations, Convention on the Rights of Persons with Disabilities, Central and Eastern Europe, Bosnia and Herzegovina, disability rights, Article 12, legal capacity, employment, education, political participation

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1. Introduction: Relevance of the Convention on the Rights of Persons with Disabilities and its Optional Protocol for Disability Rights Protection

People with disability constitute the largest definable disadvantaged group in the world. The World Health Organisation (WHO) estimates that more than one billion individuals, or approximately 15% of the world's population, have some form of disability.¹ If their relatives and friends are included, it is safe to say that most lives on the planet are touched by disability in one way or another.²

The concept of disability is complex and multidimensional, encompassing physical, mental, sensory, and cognitive impairments that limit individuals' ability to engage in everyday activities and fully participate in society. According to Article 1, paragraph 2 of the United Nations (UN) Convention on the Rights of Persons with Disabilities (UNCRPD), persons with disabilities are individuals 'who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'.³ Some authors claim there are two main approaches to understanding disability, one grounded on an individual bio-medical view and the other based on a social, structural and contextual perspective.⁴ The former, a traditionally prevalent approach to disability ('medical model of disability') 'regards disability as an impairment that needs to be treated, cured, fixed, or rehabilitated'.⁵ The latter, a more recent approach ('social model of disability') 'shifts the attention from the individual and the impairment to the environment and the impact of cultural, social, and environmental barriers'.⁶ The social model of disability conceptualises disability as a social construct shaped by discrimination and oppression, shifting the focus from the individual to society. It distinguishes between impairment and disability: impairment refers to a condition affecting the body or mind of an individual, while disability is understood as the outcome of the interaction between the impairment and the attitudinal or environmental barriers that restrict full and effective participation in society. Exclusion of persons with disabilities from society is thus analysed through a political lens, attributing it to barriers and discriminatory practices.⁷

The UNCRPD is the first legally binding international treaty to provide a comprehensive framework for the protection and promotion of disability rights.⁸ It was adopted by consensus at the UN General Assembly on 13 December 2006 and was formally opened for signature and ratification in March 2007. On the day of its opening,

1 Davy et al., 2022, p. 2.

2 Shakespeare, 2018, p. 1.

3 United Nations, 2006a.

4 Traustadottir, 2009, p. 8.

5 Degener, 2017, p. 42.

6 Traustadottir, 2009, p. 8

7 Degener, 2017, p. 41.

8 Lang et al., 2011, p. 208.

over eighty UN Member States signed the UNCRPD (a record number for the first day of signature of any UN Convention so far). This marked a paradigm shift, recognising people with disabilities as active ‘subjects’ of human rights rather than passive ‘objects’ of charity or pity. It represented the culmination of a long and successful campaign led by the international disability movement and was celebrated globally as a catalyst for advancing human rights and disability inclusion.⁹

Prior to the adoption of the UNCRPD, legal frameworks that addressed individuals with disabilities typically regarded them as objects of care rather than as autonomous legal subjects entitled to full respect and the complete range of human rights.¹⁰ The development of the UNCRPD was achieved after decades of activism that challenged the prevailing perception of people with disability as dependent subjects of charity who require society to provide them with support to compensate for their incapacity.¹¹ Legal responses to disability and impairment embodied a mix of charity, paternalism and social policy rather than a human rights-based approach, viewing persons with disabilities as individuals who evoke sympathy, if not pity, and require societal protection and support to compensate for their inabilities (as an example, special education policies for children with disabilities have historically, and often continue to, emphasize specialised, segregated education based on the disability of the child, such as schools specifically for the blind).¹² A key benefit of the UNCRPD is that it provides an international human rights instrument that directly challenges these hitherto unquestioned assumptions about people with disability.¹³ The Convention is explicitly grounded in the social model of disability, which understands disability in the context of the environmental and social conditions and structures that disadvantage individuals with impairments, and endorses a rights-based approach to inclusion.¹⁴

The UNCRPD encompasses the full spectrum of human rights – civil, political, social, economic, and cultural. Rather than establishing new rights, the Convention was designed to clarify how existing human rights apply to persons with disabilities. This clarification was necessary, as previous human rights instruments were insufficiently responsive to the specific needs of persons with disabilities. Consequently,

9 Davy et al., 2022, p. 2.

10 Ibid., p. 3.

11 It took several decades for disability to be recognised as a human rights issue within the UN. In retrospect, this development can be divided into four distinct phases. The first phase, from 1945 to 1970, was characterised by the invisibility of persons with disabilities in UN policy. This shifted in the second phase, from 1970 to 1980, when persons with disabilities were acknowledged primarily as subjects of rehabilitation. The third phase, spanning the years from 1980 to 2000, marked the recognition of persons with disabilities as objects of human rights. It was only in the new millennium, during the fourth phase, that persons with disabilities were fully recognised as subjects of human rights. Degener and Begg, 2017, p. 2.

12 Quinlivan, 2012, p. 73.

13 Ibid.

14 Davy et al., 2022, p. 4.

the UNCRPD complements existing human rights instruments by elucidating the application of established human rights norms in the context of disability.¹⁵

The UNCRPD is composed of a preamble with 25 paragraphs, 50 articles, and an Optional Protocol. The UNCRPD's preamble is by far the longest preamble among the core human rights instruments.¹⁶ While its paragraphs are not legally binding, they provide interpretative guidance for the application of the Convention's provisions. Article 1 of the CRPD outlines the Convention's purpose, while key definitions are provided in Article 2. According to Article 1(1), the purpose of the Convention is 'to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity'. Perhaps the most innovative aspects of the Convention are found in Articles 3–9, which are described as having a 'crosscutting' application, meaning they apply broadly to all provisions within the Convention. These general principles underpin every aspect of the Convention.¹⁷ Articles 10–30 delineate the substantive rights, encompassing civil, political, economic, social, and cultural rights. Articles 31–40 establish the framework for implementation and monitoring, while Articles 41–50 contain provisions on the operation of the Convention.¹⁸ The core international mechanism for monitoring the implementation of the UNCRPD is outlined in Articles 34–36 of the Convention. This mechanism is based on the establishment of the Committee on the Rights of Persons with Disabilities as the monitoring body¹⁹ and requires States Parties to submit regular reports on the implementation of the UNCRPD. The Committee reviews these reports and provides recommendations to foster implementation of the UNCRPD's provisions. The Optional Protocol to the UNCRPD (OP-UNCRPD) supplements this mechanism by enabling the Committee to receive and examine individual complaints regarding alleged violations and to initiate inquiries in cases of serious violations by States Parties.²⁰

The OP-UNCRPD²¹ was adopted alongside the Convention on 13 December 2006. The Protocol grants the Committee on the Rights of Persons with Disabilities the authority to review individual complaints concerning alleged violations of the Convention by States Parties to the Protocol and to initiate inquiries when there is credible

15 Quinlivan, 2012, p. 75.

16 Lord, 2018, p. 3.

17 Quinlivan, 2012, p. 75.

18 Ibid.

19 According to Art. 34(2) of the UNCRPD, the Committee is composed of 18 experts. The selection process, outlined in Art. 34(3) of the Convention, requires that Committee members be of high moral character and possess recognised competence and experience in the field covered by the CRPD, though they are not necessarily required to be lawyers. States Parties are encouraged to nominate candidates through close consultation with organisations representing persons with disabilities and to actively involve persons with disabilities in the process. This selection procedure ensures the specialised expertise of Committee members, resulting in the great majority of members having personal experience of living with disabilities. In 2011, 16 out of 18 Committee members were living with disabilities. Uerpmann-Witzack, 2018, pp. 37–38.

20 Ferrajolo, 2017, p. 708.

21 United Nations, 2006b.

evidence of serious and systematic violations of the Convention.²² Concerning the scope of application of the procedure *ratione materiae*, there are thus no restrictions on the rights that may be asserted through an individual claim, as long as those rights are encompassed within the UNCPRD.²³

The Optional Protocol reproduces the dual model of complaints and inquiry procedures established by the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.²⁴ The procedures for individual communications and inquiries represent the only optional mechanisms within the UNCPRD's monitoring framework. The obligation of States Parties to submit reports on the measures taken to fulfil their obligations under the Convention, as well as on the progress achieved, is enshrined in Article 35 and subsequent articles of the UNCPRD (it constitutes the sole mandatory international monitoring procedure of the UNCPRD; in addition, Article 33 of the UNCPRD establishes a national implementation and monitoring mechanism).²⁵ The Protocol recognises the right of individuals or groups of individuals to submit communications. Article 1 of the Protocol explicitly permits collective complaints, provided that the group can demonstrate they are victims of a violation. In other words, collective entities are not required to act through a specific individual, such as one of their members. However, the alleged violation must be linked to one or more identifiable victims. The Committee has further clarified that, for an individual to claim victim status under the Convention, they must demonstrate that an act or omission by the concerned States Party has already adversely impacted their enjoyment of a protected right, or that such an impact is imminent, for example, based on existing law or judicial, administrative decisions, or practices.

Article 1(1) provides for the possibility of introducing a complaint on behalf of individuals or groups of individuals (which represents a common practice in the UN treaty-based complaint procedures).²⁶ In cases where communications are submitted by a representative on behalf of a victim, the author must provide evidence of the victim's consent. The Committee has specified that individuals submitting communications on behalf of others without such evidence must provide a written justification explaining why the alleged victim is unable to submit the communication personally and why authorisation cannot be formally obtained.²⁷

According to Article 1(2) of the OP-UNCPRD, complaints can only be directed against a States Party to both the Convention and its Optional Protocol. Above all, the victim must be subject to the jurisdiction of the States Party concerned. This principle underscores the obligation of States Parties to uphold the rights of individuals within their jurisdiction, which they must do through the exercise of their legislative, executive, and judicial authorities.

22 Stavrinaki, 2018, p. 1219.

23 Ferrajolo, 2017, p. 714.

24 Stavrinaki, 2018, p. 1219.

25 Ibid.

26 Ibid., p. 1223.

27 CRPD Committee, 2011, para. 7 cited in *ibid.*, p. 1224.

Article 2 of the OP-UNCRPD sets forth the criteria, procedural and substantive, that a communication must satisfy to be admissible. According to this article, the Committee declares a communication inadmissible if: (a) the communication is anonymous, (b) it constitutes an abuse of the right to submit communications or is incompatible with the provisions of the UNCRPD, (c) the matter has already been or is currently being examined by the Committee or under another international investigation or settlement procedure, (d) all domestic remedies have not been exhausted, (e) the communication is manifestly ill-founded or insufficiently substantiated, or (f) the facts underlying the communication occurred prior to the entry into force of the Optional Protocol for the States Party concerned.

Proceedings on individual communications are conducted in closed meeting.²⁸ The fact that no oral hearings are provided for in the entire proceedings is explicitly confirmed by the Committee's Rules of Procedure (Rule 73 para. 1).²⁹ Pursuant to Article 3 of the Optional Protocol, the Committee submits any communication it has received to the States Party against which it is directed confidentially. The States Party is afforded a six-month period to provide a written response, including explanations and information regarding any remedies it has implemented, if any. Article 4 grants the Committee the authority to indicate interim measures to the States Party to prevent irreparable harm to the victim pending the adoption of a final decision on the merits of the case. Articles 6–8 of the Optional Protocol provide for an inquiry procedure, that the Committee initiates in the case that it has received reliable information indicating grave or systematic violations by a States Party of rights set forth in the UNCRPD³⁰. Based on any observations submitted by the States Party and other reliable information available, the Committee may appoint one or more of its members to conduct an inquiry and report urgently to the Committee, which, if warranted and with the States Party's consent, may include a visit to its territory.³¹ Upon assessment by the Committee, the findings of an inquiry are communicated to the state concerned, accompanied by the Committee's comments and recommendations (Article 6 paragraph 3). The States Party concerned is required to submit its observations to the Committee within six months of receiving the Committee's findings, comments, and recommendations, while the Protocol mandates that inquiry be conducted confidentially, ensuring the States Party's cooperation throughout all stages of the proceedings.³²

The Optional Protocol does not specify whether decisions on communications should be adopted by consensus or by majority vote. In line with the practice of other treaty bodies, the UNCRPD Committee has adopted Rule 34 of its Rules of Procedure, which provides that decisions should be reached by consensus whenever possible. However, at the request of any member, the Chair is authorised to put the proposal

28 Art. 5 of the OP-UNCRPD.

29 Ferrajolo, 2017, p. 718.

30 Art. 6 para. 1 of UNCRPD.

31 *Ibid.*, Art. 6 para. 2.

32 *Ibid.*, Art. 6 paras. 4–5.

to a vote (when it is adopted by a simple majority).³³ The Optional Protocol does not include any provision on the legal status of the Committee's findings. Although the Committee's views, as those of other treaty bodies, are not legally binding, international human rights scholarship acknowledges that States Parties cannot simply disregard such findings and interpretations.³⁴

2. The Status and Implementation of the UNCRPD in Central and Eastern Europe

All Central and Eastern European countries have ratified the UNCRPD. Hungary and Croatia ratified the Convention in 2007, Slovenia in 2008, the Czech Republic, Serbia, and Montenegro in 2009, Ukraine, the Slovak Republic, Moldova, and BiH in 2010, Romania and North Macedonia in 2011, Bulgaria and Poland in 2012, Albania in 2013, and Georgia in 2014. The majority of these countries have also ratified the OP-UNCRPD. Albania and Poland have not yet signed the Optional Protocol, while Romania has signed it but has yet to ratify it.³⁵

The majority of these states have not put forward any reservations regarding the application of the Convention or its Optional Protocol. Poland has submitted an interpretative declaration regarding Article 12 of the UNCRPD. In this declaration, the Republic of Poland affirms that it will interpret Article 12 in a manner that permits the application of incapacitation measures, in the circumstances and in the manner set forth in domestic law, as a measure indicated in Article 12.4, when a person suffering from a mental illness, mental disability or other mental disorder is unable to control his or her conduct. Poland has also submitted a reservation to Article 23(1)(a) and (b), as well as Article 25(a) of the UNCRPD. The Republic of Poland interprets Articles 23(1)(b) and 25(a) as not establishing an individual right to abortion or imposing an obligation on States Parties to ensure access to abortion unless such a right is provided for under national legislation. Furthermore, pursuant to Article 46 of the Convention, Poland has reserved the right not to apply Article 23(1)(a) – which guarantees the right of persons with disabilities of marriageable age to marry and found a family based on free and full consent – until relevant domestic laws are amended. The Slovak Republic has entered a reservation to Article 27(1)(a) of the UNCRPD, pursuant to Article 46 of the Convention. In its declaration, the Slovak Republic affirms that it will apply the provisions of Article 27(1)(a) – which concerns the prohibition of discrimination on the basis of disability in employment – on the condition that this prohibition shall not extend to the recruitment, hiring, or continued employment of members of the armed

33 Stavrinaki, 2018, p. 1247.

34 *Ibid.*, p. 1249.

35 See more: <https://indicators.ohchr.org/> (Accessed: 11 September 2024).

forces, armed state security services, armed corps, the National Security Authority, the Slovak Information Service, and the Fire and Rescue Service.³⁶

The implementation of UNCRPD-relevant legislation in European Union (EU) Member States is monitored by the European Commission. The first official report of the EU on the implementation of the UNCRPD was published in 2014, while internal reports on policy for and the situation of persons with a disability are issued annually by the Disability High Level Group (DHLG).³⁷ Since 2008, the European Commission and the DHLG have issued an annual joint report on the implementation of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). These reports provide detailed information on the progress achieved in establishing the governance structures and procedures envisaged under Article 33 of the UNCRPD, as well as in the development and implementation of national strategies and measures aimed at ensuring its effective application. Furthermore, the DHLG reports serve as a valuable tool for identifying and disseminating examples of good practice among Member States.³⁸

The ratification of the UNCRPD was followed by corresponding reforms within national legal frameworks. These reforms included the enactment of relevant anti-discrimination legislation in countries where such provisions had not previously existed, as well as amendments to existing laws. In addition, a wide range of legislative changes was introduced across multiple sectors to ensure alignment with the principles and obligations set forth in the Convention. Nevertheless, despite the efforts undertaken in Central and Eastern European countries to implement the provisions of the UNCRPD, significant challenges persist in certain areas of social life. These obstacles will be examined in the following text through a brief analysis of the situation in a number of countries of this region, some of which have resulted in the submission of communications to the UN Committee on the Rights of Persons with Disabilities (which will also be analysed in the subsequent discussion).

Given the scope of the paper, it is not possible to provide a detailed analysis of reforms in all countries of the region. Instead, the analysis will present a selective overview of legislative developments in a number of states, with particular attention to provisions concerning the legal capacity of persons with disabilities, their rights to work and education, as well as their participation in public and political life.

Hungary was among first countries in the world to ratify the UNCRPD and submit a State Report reviewed by the UN Committee on the Rights of Persons with Disabilities (the Report was submitted in 2010). In its Concluding observations, the Committee welcomed Hungary's early reporting and its constructive engagement during the dialogue process. It welcomed the explicit prohibition of disability-based discrimination in the Hungarian Fundamental Law, the adoption of the National Programme of

36 Disability High-Level Group, 2016, pp. 6–9.

37 Bratan et al., 2020.

38 Disability High-Level Group, Eight Disability High Level Group Report on the Implementation of the UN Convention on the Rights of Persons with Disabilities, 2016, p. 4.

Disability Affairs (2007–2013), the publication of the Convention in accessible formats (Braille, sign language, easy-to-read), and the adoption of legislation (Act CXXV of 2009) recognising Hungarian Sign Language.³⁹ On the other hand, the Committee criticised the fact that the Hungarian Report was grounded in a medical model of disability and excludes certain groups – such as those with psychosocial disabilities – from the UNCRPD’s target population. No specific health programmes for persons with intellectual disabilities are described beyond awareness campaigns.⁴⁰ Following the publication of the UN Committee on the Rights of Persons with Disabilities’ Concluding Observations on Hungary’s Initial Report (October 2012), the Hungarian government adopted a series of legal, policy, and institutional measures to improve alignment with the Convention. Hungary revised Act XXVI of 1998 (Disability Act) in 2013 to incorporate a more inclusive, human rights-based definition of disability, while accessibility obligations were extended to all public services without delay. The structure of the National Disability Council was reformed to enhance its independence from the government. The national organisations of people with psychosocial disabilities and people with linguistic disabilities also became members of the Council. Progress was made in the deinstitutionalisation of children with disabilities: by 2014, 56% of children with disabilities in care were placed in foster families (up from 44.1% in 2011). Legal reforms strengthened the role of child protection guardians. However, institutionalisation remains an issue for children with complex needs. The education system has been restructured to better support inclusive and special education. Inclusive measures include flexible curricula, accommodations during exams, and development of a traveling teacher network.⁴¹ One of the controversial issues, not only in Hungary but also in other countries of the region and around the world, is the implementation of the supported decision-making model as envisaged in Article 12 of the UNCRPD. The UNCRPD marks a ‘paradigm shift’ in the regulation of legal capacity by affirming the principle of universal legal capacity and requiring States Parties to transition from substitute to supported decision-making. The Hungarian Civil Code (2013) preserves both plenary and partial guardianship, continuing to allow for the full or partial removal of an adult’s legal capacity based on mental incapacity. These guardianship models constitute classical forms of substitute decision-making and are incompatible with Article 12 of the CRPD, as interpreted by General Comment No. 1 of the Committee on the Rights of Persons with Disabilities, which calls for the abolition of guardianship regimes.⁴² In the field of employment, Act CXCI of 2011 on Benefits for Persons with Reduced Work Capacity introduced a disability employment quota system. Available research demonstrates that the sharp increase in the non-compliance levy led firms to employ more persons with disabilities. However, the overall impact on inclusion has remained modest, with a substantial proportion of quotas

39 Committee on the Rights of the Persons with Disabilities, 2012.

40 Brehmer-Rinderer et al., 2013, p. 29.

41 Disability High-Level Group, 2016, pp. 48–58.

42 Szerletics, 2022, pp. 89–91.

still unmet. Structural obstacles, including limited labour supply, high hiring costs, and significant regional disparities, continue to constrain the policy's effectiveness.⁴³ The right of persons with disabilities to participate in the electoral process has been subject to significant legal and political debate. The European Court of Human Rights in *Alajos Kiss v. Hungary* (2010) held that the automatic disenfranchisement of persons under guardianship violated the European Convention on Human Rights, prompting constitutional and legislative reforms that abolished blanket voting bans. Since 2012, the law requires an individualised judicial assessment of voting eligibility in guardianship proceedings. However, this approach remains inconsistent with Article 29 of the UNCRPD, as persons with intellectual and psychosocial disabilities may still be deprived of the franchise by court decision. In practice, additional barriers persist: although measures such as tactile templates, large-print materials, and sign-language information have been introduced, accessibility of polling stations is uneven, secrecy of the ballot is not always guaranteed, and independent voting is not systematically ensured. While cooperation between electoral authorities and disability organisations has been noted as a positive practice, the Hungarian framework continues to fall short of fully securing equal and independent participation in political and public life for persons with disabilities.⁴⁴

Serbia ratified the UNCRPD and its Optional Protocol in 2009. The legislative framework for the protection of the rights of persons with disabilities includes several key statutes, notably the Law on Vocational Rehabilitation and Employment of Persons with Disabilities, the Law on the Prevention of Discrimination against Persons with Disabilities, and the General Anti-Discrimination Law. These laws, in principle, guarantee equal access to employment, education, and public services, while prohibiting all forms of discrimination on the basis of disability. In addition to legislative measures, Serbia has adopted technical standards and strategic documents aimed at enhancing physical and informational accessibility. However, as highlighted by several scholars, a persistent gap remains between normative commitments and their effective implementation. Persons with disabilities continue to encounter substantial barriers in accessing public institutions, transportation systems, health-care services, and educational facilities. The accessibility of the built environment remains inconsistent, with pronounced disparities between urban and rural areas. Moreover, local authorities frequently lack the financial resources and administrative capacity necessary to effectively implement inclusive policies.⁴⁵ One of the unresolved issues concerns the implementation of Article 12 of the Convention. In Serbia, the continued application of both plenary and partial deprivation of legal capacity allows for the appointment of guardians, thereby reinforcing a substitute decision-making model (according to some estimations, the measure of full deprivation of

43 Kreko and Telegdy, 2025.

44 Rabitsch, Moledo and Lidauer, 2023.

45 Popivoda, 2017.

legal capacity is applied significantly more frequently than partial deprivation).⁴⁶ In this country, the political participation of persons with disabilities continues to be hindered by structural and institutional barriers, notwithstanding the country's ratification of the UNCRPD and the formal recognition of universal suffrage in national legislation. Although electoral law guarantees the right to vote and stand for election (with the exception of persons deprived of legal capacity),⁴⁷ the political participation of persons with disabilities remains limited, often reduced to formal rather than substantive involvement. Although organisations of persons with disabilities (OPDs) are occasionally consulted in policymaking processes, their influence is weakened by structural barriers, insufficient reasonable accommodation, and persistent stereotypes that frame persons with disabilities as passive beneficiaries rather than active stakeholders. Participation at the local level is particularly underdeveloped, with only a small number of municipalities establishing councils that involve OPDs, while internal fragmentation within the disability movement further diminishes collective advocacy. Persons with intellectual and psychosocial disabilities remain especially excluded, with very limited opportunities for self-representation. In addition, the reliance of OPDs on public funding and the broader restrictive civic environment undermine their independence, resulting in sporadic and inconsistent participation. These shortcomings indicate that Serbia has yet to realise the requirements of Article 29 of the UNCRPD in a meaningful way. The right to employment of persons with disabilities is likewise characterised by a substantial gap between legal guarantees and practical implementation. The Law on Professional Rehabilitation and Employment of Persons with Disabilities introduced an employment quota system and established a Budgetary Fund to support vocational rehabilitation, yet enforcement and monitoring remain inadequate. Employment rates among persons with disabilities remain very low, with systemic obstacles such as inaccessible workplaces, insufficient support services, limited development of supported employment schemes, and persistent stigma and discrimination in the labour market. Moreover, the management of the Budgetary Fund has been criticised for a lack of transparency and accountability, raising doubts about its effectiveness in promoting inclusion. As a result, the Serbian framework, while normatively aligned with the UNCRPD, continues to fall short of ensuring equal opportunities in the labour market and requires systemic reforms to achieve substantive compliance with Article 27 of the Convention.⁴⁸

46 Kovaček, Stanić and Samardžić, 2023.

47 The electoral legislation of Serbia denies the right to vote for persons who have been fully deprived of legal capacity. In the case of individuals partially deprived of their legal capacity, the law provides that they retain the right to elect members of parliament and to stand for election, unless the court, by a decision on partial deprivation of legal capacity, has determined that they are incapable of exercising electoral rights. (Art. 3, Law on the Election of Members of Parliament, *Official Gazette of the Republic of Serbia*, No. 14/22; Art. 3, Law on the Election of the President of the Republic, *Official Gazette of the Republic of Serbia*, No. 14/22).

48 UNPRPD, 2024.

The Czech Republic ratified the UNCRPD in 2009, thereby committing to ensure the equal recognition of persons with disabilities before the law as set out in Article 12. Subsequent reforms sought to bring national legislation into closer alignment with these obligations, most notably through the 2014 recodification of civil law, which abolished plenary guardianship and introduced more flexible models of limited guardianship⁴⁹. While these changes represent a step toward compliance, the legal framework continues to rely predominantly on substitute decision-making, with supported decision-making mechanisms remaining underdeveloped and insufficiently embedded in practice. As a result, many persons with disabilities continue to experience significant restrictions in exercising their legal capacity. This reflects the broader tension between legislative adaptation and the substantive realisation of the CRPD's transformative vision. Despite formal progress, further systemic reforms are necessary to secure genuine autonomy, equality, and effective participation for persons with disabilities in the Czech Republic. In this country, the participation of persons with disabilities in elections remains constrained by both legal and practical barriers. Although reforms have been introduced to strengthen inclusiveness, individuals placed under guardianship may still be deprived of their voting rights through judicial decision, a practice incompatible with Article 29 of the UNCRPD, which guarantees universal suffrage. Accessibility challenges persist, as not all polling stations are physically accessible, limiting independent participation for many voters with disabilities. At the same time, certain positive measures have been noted, such as the inclusion of QR codes on voting instructions, link to sign-language videos for deaf voters, and collaborative efforts between electoral authorities and organisations of persons with disabilities to prepare accessible materials. Nevertheless, the overall implementation remains uneven, as accessible information and independent voting are not systematically guaranteed. As a result, significant reforms are still required to ensure that the Czech Republic fully complies with its international obligations to secure equal political participation for persons with disabilities.⁵⁰ The most significant reform concerning the right to education was the 2016 amendment to the Education Act, which established a five-tier system of support measures and ensured state funding for inclusive practices in mainstream schools. This legislative innovation signalled a formal departure from the medical model of disability toward a social model, thereby strengthening the entitlement of children with disabilities to education in mainstream settings. Nonetheless, despite measurable progress in enrolment, the advancement of inclusive education remains hampered by systemic obstacles, including insufficient teacher preparation, a persistent reliance on external specialists, heavy administrative burdens, and prevailing societal and professional preferences for segregated schooling. Consequently, although Czech legislation has been formally aligned with the standards of the UNCRPD, the substantive realisation of the right to inclusive education is still constrained by structural and attitudinal barriers, casting

49 Hurdík and Selucká, 2014.

50 Rabitsch, Moledo and Lidauer, 2023.

doubt on the extent to which a genuine paradigm shift has occurred.⁵¹ In Czechia, the right to employment of persons with disabilities has been strengthened through significant legislative reforms, most notably the 2016 amendment to the Labour Code, which abolished provisions allowing reduced minimum wages, and subsequent amendments to the Employment Act (Act No. 435/2004 Coll.) that expanded subsidies and introduced insurance incentives for employers. The National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2021–2025 further sought to stimulate employment in the open labour market. Despite these measures, the absence of measurable targets, weak monitoring, and insufficient guidance on reasonable accommodation continue to undermine effective implementation, leaving reforms fragmented and largely partial rather than comprehensive.⁵²

2.1. Communication Procedures Before the Committee on the Rights of Persons with Disabilities Regarding Central and Eastern European Countries

The UN Committee on the Rights of Persons with Disabilities has considered several communications alleging violations of the rights of persons with disabilities by Central and Eastern European countries.

In *Nyusti and Takacs v. Hungary* (2013), the Committee examined a violation of Article 9 of the CRPD, which guarantees the right to accessibility. The case concerned two Hungarian nationals, Szilvia Nyusti and Peter Takacs, both of whom have visual impairments and encountered significant barriers in accessing automatic teller machines (ATMs) operated by OTP, a privately owned bank which offered services to the public. Under their contracts with OTP Bank, the complainants were entitled to use bank cards at ATMs and were charged annual fees identical to those paid by non-disabled customers. However, the lack of Braille markings on ATM keyboards and the absence of audible instructions or voice assistance rendered the ATMs inaccessible to them, preventing independent use. In 2005, the complainants' legal representative contacted OTP Bank to inquire about the availability of accessible ATMs near their residences and requested retrofitting if none were available, to enable equitable access. OTP acknowledged the absence of accessible ATMs in the specified areas but declined the retrofitting request. Consequently, Nyusti and Takács initiated a civil action against OTP, alleging that the bank had violated their right to equal treatment. While domestic courts initially ruled in favour of the complainants, identifying discrimination, higher courts overturned these decisions, citing principles of contractual freedom and concerns about user safety. The Committee ultimately concluded that Hungary had failed to fulfil its obligations under Article 9(2)(b) of the UNCRPD, underscoring the critical importance of ensuring accessible financial services for persons with disabilities.⁵³

51 Vaďurová and Pančocha, 2023, p. 196.

52 European Commission, *Employment of Persons with Disabilities: An Assessment of the Effectiveness of National Policies in Czechia*. Brussels: European Commission, 2025.

53 Lawson, 2014.

The case *Zsolt Bujdosó v. Hungary* concerned six Hungarian nationals who challenged the automatic disenfranchisement of individuals under guardianship, asserting that this practice violated Articles 12 (equal recognition before the law) and 29 (participation in political and public life) of the UNCRPD. The complainants, all individuals with intellectual disabilities, had been placed under partial or general guardianship through separate judicial decisions. As an automatic consequence of their guardianship status, their names were removed from the electoral register in accordance with Article 70, paragraph 5, of Hungary's 1949 Constitution, which deemed individuals under guardianship ineligible to vote. Due to the direct application of this constitutional provision, and the restriction on their legal capacity, the complainants were disenfranchised and prevented from participating in the 2010 parliamentary and municipal elections. The Committee ruled in favour of the complainants, finding that the automatic disenfranchisement of individuals under guardianship constituted an act of discrimination. The Committee also recommended remedies for the complainants to redress the harm they experienced. It urged Hungary to reinstate their names on the electoral register, thereby restoring their right to vote. Additionally, the Committee emphasised the need to provide adequate compensation for the moral damage caused by their exclusion from the 2010 elections and to cover the legal costs incurred during the submission of the complaint. The Committee called for the repeal of Article XXIII, paragraph 6, of the Fundamental Law, as well as Article 26, paragraph 2, and transitional provisions of the legislation, as they contravene Articles 12 and 29 of the UNCRPD. Furthermore, the Committee stressed the need to enact legislation guaranteeing the right to vote for all persons with disabilities without subjecting them to capacity assessments. Such laws, it recommended, should include provisions for reasonable accommodation and support to ensure that individuals with disabilities can exercise their political rights independently and effectively. Finally, the Committee highlighted the necessity of making voting procedures, facilities, and materials accessible and easy to use for persons with disabilities.⁵⁴

In *Rékasi v. Hungary*⁵⁵, the Committee addressed a complaint from a Hungarian citizen who alleged that her rights under Article 12 of the UNCRPD were violated when her guardian entered into a life insurance contract on her behalf without her consent. The Committee concluded that Hungary had failed to ensure adequate safeguards to respect the complainant's autonomy and will, recommending legal reforms to transition from substitute to supported decision-making systems.

In *O.B. v. Ukraine*⁵⁶, the complainant, a Ukrainian national with 'group II' disability, alleged a violation of Article 28 of the UNCRPD (adequate standard of living and social protection) due to the denial of social assistance based on income thresholds. The Committee found the case inadmissible due to insufficient substantiation.

54 Grobbelaar-Du Plessis, 2020.

55 *Rékasi v. Hungary*, Committee on the Rights of Persons with Disabilities (2021) [Online]. Available at: <https://juris.ohchr.org/> (Accessed: 22 December 2024).

56 *O.B. v. Ukraine*, Committee on the Rights of Persons with Disabilities (2024) [Online]. Available at: <https://juris.ohchr.org/> (Accessed: 22 December 2024).

3. Implementation of the UNCRPD in BiH

Persons with disabilities represent one of the most vulnerable groups in society, frequently experiencing social stigma, discrimination, and marginalisation. Even in countries with a strong tradition of upholding human rights, individuals with disabilities continue to face significant discrimination, social exclusion and inequitable treatment. They generally have lower income and educational attainment, are more likely to be unemployed, live in precarious housing, and experience poorer health outcomes compared to individuals without disabilities.⁵⁷ These challenges are further exacerbated in countries in transition, such as BiH, where ongoing social, political, and economic changes often intensify the aforementioned vulnerabilities.

BiH ratified the UNCRPD and its Optional Protocol on 12 March 2010, without any reservations or statements. The Convention entered into force on 11 April 2010, on the thirtieth day after the instrument of ratification was deposited. By ratifying the UNCRPD, BiH committed itself to the implementation of the principles and obligations set out in the Convention, ensuring that persons with disabilities enjoy the same rights and freedoms as other citizens.

The implementation of the UNCRPD's provisions in BiH is largely influenced by the country's state structure. BiH is a complex state, often described in the literature as a federation with distinct confederal elements. It consists of two entities (federal units): the Republic of Srpska (RS), which is a unitary entity, and the Federation of Bosnia and Herzegovina (FBiH), which is organised as a federation comprising ten cantons.⁵⁸ The third subnational unit in BiH is the Brčko District (BD) of BiH, a special administrative unit of local self-government, as defined in Article 1.1 of the BD Statute, which possesses extensive legislative autonomy. Given that many competencies relevant to the effective realisation and protection of the rights of persons with disabilities fall under the jurisdiction of the entities (work and employment, education, social and health protection, etc.), the implementation of the Convention's provisions in BiH is the responsibility of various levels of the government (BiH, as well as entity and BD governments).⁵⁹

As an affirmation of their commitment to the UNCRPD's principles, entity governments adopted strategies designed to improve the position of persons with disabilities. In 2010, the Strategy for Improvement of the Social Position of Persons with Disabilities in the RS (2010–2015) was adopted. In October 2011, the strategy was presented to the Equal Opportunities Council of the RS National Assembly. In line with the strategy's goals (Goal 1.2) to ensure effective coordination and implementation of

57 Davy et al., 2022, p. 10.

58 Some authors argue that BiH is an example of an asymmetric federation ('a mildly asymmetrical constitutional system'. (Sahadžić and Woelk, 2023, p. 371).

59 In the FBiH, certain responsibilities, such as social and health protection, are the joint competencies of the FBiH and its cantons, whereas others, such as education, fall exclusively under the jurisdiction of the cantons. (See: Arts. III 2 and III 4 of the FBiH Constitution).

strategic measures, the establishment of an Office for Persons with Disabilities was recommended. Subsequently, in October 2011, the RS Government adopted a resolution instructing the Ministry of Health and Social Protection, as well as the Ministry of Labour, War Veterans, and Disability Protection, to develop a project for the establishment of the aforementioned office. Similarly, the Government of the FBiH adopted the Strategy for the Equalisation of Opportunities for Persons with Disabilities in the FBiH (2011–2015). The implementation and monitoring of the FBiH strategy are supported by the establishment of the Office for Disability Issues within the Government of the FBiH.⁶⁰

To facilitate activities related to advocacy, promotion, and enhancement of the implementation of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, the Ministry of Human Rights and Refugees of BiH prepared the Decision on the establishment of the Council for Persons with Disabilities of BiH, which was adopted at the 135th session of the Council of Ministers of BiH on 19 October 2010. The decision provides for the creation of the BiH Council for Persons with Disabilities to ensure collaboration with the relevant entity authorities and associations of persons with disabilities. Representatives of organisations of persons with disabilities from across Bosnia and Herzegovina, including the RS, the FBiH, and the BD, are equally represented in the composition of the Council.⁶¹ Additionally, in line with the Rulebook on Internal Organisation and Systematisation, the Human Rights Ombudsman of BiH established the Department for the Protection of the Rights of Persons with Disabilities as a distinct organisational unit aimed at promoting and more effectively safeguarding the rights of this demographic group.⁶²

However, the scientific literature dedicated to the status of persons with disabilities in BiH point out to frequent violations of human rights of this category of the population, while improvements required for the adequate attainment of these rights have been described as unsatisfactory.⁶³ As a result, persons with disabilities often have difficulty exercising their rights, including the rights outlined in Article 5 of the Convention, which address equality and non-discrimination, as well as the right to equal access to the built environment, transportation, information and communication (Article 9), and the right to work and employment (Article 27). The obstacles to the full realisation of the right to education for persons with disabilities will also be pointed out below, as well as the legal framework of their participation in public life.

3.1. Equality and Non-Discrimination of Persons with Disabilities in BiH

The right to equality and non-discrimination represents a fundamental principle of international human rights law, embodying the core idea that all human beings are equal and, irrespective of their status or group membership, are entitled to a set of

60 Council of Ministers of Bosnia and Herzegovina, 2013, pp. 4–5.

61 Parliamentary Assembly of Bosnia and Herzegovina, 2011, p. 6.

62 Institution of the Human Rights Ombudsman of BiH, 2010, p. 5.

63 Gadzo-Sasic, 2023, p. 45.

rights.⁶⁴ The UNCRPD, as recognised in Articles 1 and 3, emphasises equality and non-discrimination as its ‘leitmotif’, reinforcing the aforementioned principles through multiple provisions.⁶⁵ It affirms that discrimination based on disability violates the inherent dignity of individuals, and recognises persons with disabilities as equally entitled to rights protection (Paragraph h of the Preamble). The UNCRPD also affirms the concept of equality of opportunity for persons with disabilities, requiring positive measures beyond equal treatment, and provides in Article 2 that denying reasonable accommodation is a form of discrimination, applicable across all contexts, not limited to employment matters.⁶⁶

Article 5 of the UNCRPD establishes comprehensive obligations to States Parties to promote the equality of persons with disabilities and eliminate all forms of disability-based discrimination. According to Article 5(1), States Parties acknowledge that all individuals are equal before and under the law, with the right to equal protection and benefit of the law without any form of discrimination. Article 5(2) stipulates that they should prohibit all discrimination based on disability and ensure that persons with disabilities receive equal and effective legal protection against discrimination in all its forms. Additionally, to advance equality and eradicate discrimination, Article 5(3) requires States Parties to take appropriate measures to ensure the provision of reasonable accommodation. Because formal equality implies that the state should not favour any particular group and that individuals should be treated solely based on their merits, regardless of group affiliation, Article 5(4) establishes an exceptional basis for such preferences to achieve substantive equality.⁶⁷ As stated in Article 5(4), specific measures necessary to accelerate or achieve de facto equality for persons with disabilities shall not be regarded as discrimination under the provisions of the UNCRPD.⁶⁸

The Constitution of BiH guarantees the highest standards of internationally recognised human rights. Under Article II(4) of the Constitution, all persons in BiH are entitled to enjoy all rights and freedoms set forth in Article II of the BiH Constitution or under the international agreements listed in Annex I to the Constitution. These rights and freedoms are guaranteed without discrimination based on sex, race, colour, language, religion, political or other opinions, national or social origin, affiliation with a

64 Cera, 2017, p. 158.

65 As emphasised by the Committee on the Rights of Persons with Disabilities: ‘Equality and non-discrimination are at the heart of the Convention and run like a golden thread through all its substantive articles via the phrase ‘on an equal basis with others’’. (Draft General Comment No. 6/ the draft comment on Article 5 of the CRPD, cited in Corsi, 2018, p. 156).

66 Ibid.

67 Corsi, 2018, p. 167.

68 As noted by the Committee on the Rights of Persons with Disabilities, measures that involve adopting or maintaining certain advantages in favour of underrepresented or marginalised groups – such as outreach and support programmes, resource allocation or reallocation, targeted recruitment, hiring and promotion, and quota systems – are permissible under the CRPD when they aim to accelerate or achieve substantive equality. (Draft Comment (n 11) para 29, cited in Ibid., pp. 167–168).

national minority, property, birth, or any other ground (non-discrimination clause). The rights and freedoms enshrined in the European Convention on Human Rights (ECHR) and its protocols are directly applicable in BiH and take precedence over all other domestic legislation. Since Protocol No. 12 to the ECHR guarantees protection against discrimination with respect to all human rights recognised by the state's legal order, individuals are safeguarded against discrimination in the enjoyment of any right acknowledged by the legal framework of the state.⁶⁹

The primary mechanism for protecting persons with disabilities from discrimination in BiH is the Law on Prohibition of Discrimination in BiH⁷⁰. This law establishes a framework for ensuring equal rights and opportunities for all individuals in Bosnia and Herzegovina and regulates the system for protection against discrimination. Article 2(1) of the Law defines discrimination as any differential treatment, including exclusion, limitation, or preferential treatment, based on actual or presumed grounds such as race, skin colour, language, religion, ethnic affiliation, disability, age, national or social origin, association with a national minority, political or other beliefs, financial status, union membership or other associations, education, social status, gender, sexual orientation, or any other circumstance. Such treatment, whether intended or resulting in the prevention or restriction of equal recognition, enjoyment, or exercise of rights and freedoms in all areas of public life, is considered discriminatory.⁷¹ The prohibition of discrimination applies to all public bodies, as well as to all natural and legal persons in both the public and private sectors, across all domains, particularly in employment, membership in professional organisations, education, training, housing, healthcare, social protection, access to goods and services designated for the public, public spaces, and the conduct of economic activities and public services (Article 2(2)).

The Law on the Prohibition of Discrimination outlines exceptions to the principle of equal treatment. Among these exceptions, measures and actions relating to persons with disabilities are not considered discriminatory if they involve unfavourable differentiation or differential treatment, provided they are based on objective and reasonable justification, serve a legitimate aim, and maintain reasonable proportionality

69 According to art. II(7) of the BiH Constitution, BiH will remain or become a contracting party to the international agreements listed in Annex I to the Constitution. Annex 1 to the BiH Constitution, entitled "Additional Human Rights Agreements to be applied in Bosnia and Herzegovina", lists 15 international human rights instruments. The position adopted by the BiH Constitutional Court is that the human rights contained in the international human rights instruments listed in Annex I have the character of constitutional rights and that applicants can refer to them, demanding their legal protection. In its decision in case U 9/09, the Court held that the International Covenant on Civil and Political Rights is part of the BiH Constitution and that the Court is, therefore, competent to decide whether the rights provided for in this Covenant have been violated by some act adopted by the BiH authorities. (Marković, 2021, pp. 156–157).

70 *Official Gazette of BiH*, no. 59/2009 and 66/2016.

71 The original version of the law did not explicitly include disability as a basis for discrimination. However, with the 2016 amendments, disability was incorporated as a recognised ground for discriminatory practices.

between the means employed and the intended goals (Article 5). As stated above, such exceptions are consistent with the UNCRPD.

The Law also establishes fines for misdemeanors provided by the Law. Protective measures of seizure of objects and prevention in carrying out a certain professional activities, business activities or duties can also be imposed for offences provided by the Law. According to Article 22(2), protective measures of seizure of goods shall be mandatory if misdemeanor is committed through the use of these goods, specifically when the goods were used with the intent of committing a minor offence or created as a result of the misdemeanors committed.

In all laws in the areas of health, social and veteran-disability protection, education, culture, sports, etc., there are general provisions prohibiting discrimination on the grounds of disability, as well as sanctions for violating them. On the other hand, the representatives of the organisations consider that the application of these provisions is superficial and inconsistent, and that in practice they encounter numerous forms of discrimination in all segments of society.⁷²

Reports on the implementation of the UNCRPD in BiH, submitted to the Committee on the Rights of Persons with Disabilities, have identified several relevant steps towards eliminating elements of discrimination in BiH. As part of ongoing efforts to eliminate discrimination against persons with disabilities in the sphere of social protection, measures have been implemented to provide economic support, promote social integration, and advance the rights, needs, and opportunities of persons with disabilities. Specifically, the Law on the Basics of Social Protection, Protection of Civilian Victims of War, and Protection of Families with Children in the Federation of Bosnia and Herzegovina includes penal provisions for violations of its non-discriminatory regulations.⁷³ In the RS, an analysis was conducted to assess the compliance of all relevant legislation with provisions prohibiting discrimination on the grounds of disability, including multiple and cross-sectoral discrimination. These provisions prohibit discrimination based on disability, encompassing factors such as physical and mental health, as well as other characteristics not directly related to the nature of the employment relationship.⁷⁴

Individuals with disabilities may seek protection of their rights against discrimination through the Human Rights Ombudsman of BiH or the RS Ombudsman for Children.

3.2. Application of Article 12 of the UNCRPD in BiH

One of the unresolved issues in the implementation of the UNCRPD in BiH concerns the application of Article 12 of the Convention. The relevant entity laws, as well as the BD legislation, still provide for the legal institutions of full and partial deprivation of

72 Council of Ministers of BiH, 2020, p. 7.

73 Council of Ministers of BiH, 2012, p. 11.

74 The Second and Third Report on Implementation of the United Nation's Convention on the Rights of Persons with Disabilities in BiH, p. 7.

legal capacity. The RS Family Law, the FBiH Family Law, and the Family Law of BD establish the institution of guardianship as a protective measure for adults who are unable or incapable of caring for themselves, their rights, or their interests.⁷⁵ The surrogate decision-making model remains predominant in the healthcare sector in BiH, which is governed by the legislation of the entities and the BD. According to Article 42 of the RS Health Protection Law⁷⁶, the consent to medical treatment for a person deprived of his/her legal capacity is given by his/her legal representative, either orally or in writing. Written consent is mandatory for invasive diagnostic procedures, surgical interventions, and medical procedures involving a person with mental health impairments, and must be provided by the patient, the parent or guardian of a child, or the legal representative of a person deprived of legal capacity. According to the FBiH Law on the Rights, Obligations, and Responsibilities of Patients⁷⁷, when a patient is a minor or has been deprived of his or her legal capacity, a medical intervention may be carried out only with the consent and notification of the patient's parent, legal representative, or guardian (Article 22.1). The surrogate decision making model is also prevalent in the field of medical research.⁷⁸

3.3. Right to Work and Employment of Persons with Disabilities in BiH

Work is considered a 'crucial good'⁷⁹, valued not only because productive labour generates essential goods for both individuals and those under their care, but also for its role in developing a sense of membership to the community. Employment 'inspires a sense of achievement, self-esteem, as well as the esteem of the others'.⁸⁰ The opportunity for self-realisation through work, achieved by engaging with its physical and intellectual challenges, highlights the need for the right to work to encompass a positive aspect. Employment should be valued not only for the material benefits it provides or as a means of avoiding welfare dependency, but for its intrinsic worth as a source of personal fulfilment and development.⁸¹ For individuals with disabilities, both of these aspects hold significant importance. The right to work not only enables them to obtain the resources necessary to meet their material needs, but also serves as a vital means of social integration and fostering a sense of self-respect.

Despite the critical importance of attaining the right to work for persons with disabilities, their position in the labour force remains deeply concerning. Although a substantial proportion of individuals experiencing disabilities are capable of work and participation in the labour market, their participation rates remain low in many countries (a challenge that is particularly pronounced in transitional economies, where overall employment rates tend to be relatively low). Research indicates that the

75 Miković, 2023, p. 76.

76 *Official Gazette of the Republic of Srpska*, No. 57/2022.

77 *Official Gazette of the Federation of Bosnia and Herzegovina*, No. 40/2010.

78 Milinković, 2024.

79 Mantouvalou, 2015, p. 1.

80 *Ibid.*, p. 2.

81 Collins, 2015, p. 35.

employment rate of persons with disabilities is lower than that of individuals without disabilities. A study conducted by the Organisation for Economic Co-operation and Development (OECD) indicates that the employment rate for persons with disabilities in OECD countries is 44 percent, compared to 75 percent for individuals without disabilities.⁸² Furthermore, when individuals with disabilities are employed, they often find themselves in low-paying jobs, occupying lower occupational positions, with limited opportunities for professional advancement and poor working conditions.⁸³ The barriers that persons with disabilities encounter in realising their right to work arise from both environmental causes and from their own impairment.⁸⁴ Environmental barriers include the lack of physical, communicative, and emotional accessibility to essential employment requisites, such as job interviews, workplace infrastructure, and social interactions with colleagues. Additionally, social and economic obstacles further hinder employment opportunities. Social barriers are often linked to negative attitudes, stigma, and stereotypes that persist within society.⁸⁵ Persons with disabilities are frequently perceived as unfit for the demands of the labour market and are incapable of performing the required tasks. Furthermore, the labour market often fails to recognise the broader contributions that employing persons with disabilities can offer, beyond mere productivity (which include the optimisation of human resources, the promotion of human dignity and social cohesion, and the accommodation of the growing number of individuals with disabilities within the working-age population).⁸⁶

In response to the need to promote equality of persons with disabilities and to enable them to realise their potential in accessing the labour market, the right to work was established in Article 27 of the CRPD. According to Article 27, States Parties acknowledge ‘the right of persons with disabilities to work, on an equal basis with others’. As it is stated in the same Article, this right encompasses ‘the opportunity to gain a living by work freely chosen or accepted in a labour market and work

82 Albin, 2015, p. 65.

83 *Ibid.*, pp. 65–66.

84 *Ibid.*, p. 66.

85 *Ibid.*

86 A comprehensive study conducted by the World Health Organization (WHO) in 2011 identified four primary barriers that persons with disabilities encounter when seeking to enter the labour market: limited access, misconceptions about disabilities, discrimination, and the overly protective nature of certain labour laws. (*Ibid.*, p. 66)

environment that is open, inclusive and accessible to persons with disabilities'.⁸⁷ The BiH Law on the Prohibition of Discrimination disallows discrimination, among other things, in the field of employment (Article 2(2)).

One of the primary types of measures employed to support persons with disabilities in securing employment are quota systems. These systems were first introduced after World War I (by the end of 1923, Austria, France, Germany, Italy and Poland adopted quota systems requiring employers to employ disabled war veterans).⁸⁸ After World War II, many other European countries adopted similar quota systems, largely in response to high unemployment rates among individuals with disabilities and the ineffectiveness of voluntary approaches. They were eventually expanded to include disabled civilians.⁸⁹

All quota systems call for employers to hire a specified minimum percentage of employees with disabilities. However, significant variations exist between these systems, particularly regarding whether compliance is mandatory or voluntary, as well as the type and efficacy of sanctions imposed when employers fail to meet the requirement. Waddington divides quota systems in Europe into three basic models: 1. legislative recommendation with no sanction (where employers are not obliged to employ a set percentage of workers with disabilities, but it is recommended that they do so), 2. legislative obligation without effective sanctions, and 3. legislative obligation with sanctions.⁹⁰

In the RS, the quota system has been established by the Law on Professional Rehabilitation, Training and Employment of Disabled Persons,⁹¹ adopted in 2012. According to Article 2, paragraph 1 of the Law, a disabled person is a person with a physical, sensory or mental impairment, including mental retardation, which results in a permanent or temporary reduction in their ability to work and meet personal needs in everyday life, lasting for at least 12 months. As an exception to paragraph 1, a person with a disability whose work performance remains within expected limits may also be considered disabled if, based on an assessment of the reduction in their

87 Art. 27 further stipulates that States Parties must safeguard and promote the realisation of the right to work, including individuals who acquire a disability during employment, by taking appropriate measures, including through legislation. These measures include: a) prohibiting discrimination on the basis of disability, b) ensuring equal rights for persons with disabilities to just and favourable working conditions, c) guaranteeing their labour and trade union rights, d) providing effective access to general technical and vocational guidance programmes, placement services, and training, e) promoting employment opportunities and career advancement, f) fostering opportunities for self-employment and entrepreneurship, g) employing persons with disabilities in the public sector, h) encouraging the employment of persons with disabilities in the private sector through appropriate policies and measures, i) ensuring reasonable accommodations in the workplace, j) facilitating the acquisition of work experience in the open market, and k) supporting vocational and professional rehabilitation, job retention, and return-to-work programmes.

88 O'Reilly, 2007, p. 90.

89 Ibid.

90 Waddington, 1996, cited in O'Riley, 2007, pp. 91–92.

91 *Official Gazette of the Republic of Srpska*, Nos. 37/2012 and 82/2015.

actual and estimated general capacities, it is deemed necessary to protect their physical, sensory, and mental well-being (Article 1, paragraph 3).

According to Article 21, paragraph 1 of the Law, a disabled person has the right to employment on the labour market under general or special conditions. The right to employment under general conditions is realised through the RS Employment Agency, employment agencies, or independently, in accordance with the conditions established by regulations governing employment mediation without the need for job or workplace adjustments.

Paragraph 3 of the same article stipulates that persons with disabilities, defined in Article 2 of the Law, who have a minimum of 40% disability, persons with at least 70% physical impairment, and those with mild to moderate mental retardation, have the right to employment under special conditions. The employment of persons with disabilities under special conditions is regarded as a mandatory requirement for republican administrative bodies, local self-government authorities, judicial institutions, public organizations and funds, as well as public enterprises not specifically established for the employment of disabled persons, in accordance with the provisions of this law.

Article 26 of the law establishes a mandatory employment quota for persons with disabilities in organisations and institutions where such an employment obligation exists. Authorities and other legal persons referred to in Article 25, paragraph 1 of this law are obliged to have at least one disabled employee for every 16 employees at the appropriate workplace, according to their own choice, under appropriate working conditions.

According to Article 27, paragraph 1 of the Law, employers who are not legally obligated to hire disabled persons may still employ such individuals in suitable positions in accordance with this law, thereby becoming eligible for certain incentives and benefits. Employers referenced in paragraph 1 of this article, who do not meet the required number of disabled employees as stipulated in Article 26, paragraph 1 of this law, are required to pay a special contribution.

The Law on Professional Rehabilitation, Training and Employment of Disabled Persons⁹² of the FBiH stipulates that persons with disabilities are employed and work on the labour market under general and special conditions. Under general conditions, persons with disabilities are employed on the open labour market, in state bodies, judicial bodies, local government bodies, public services, institutions, funds, public companies, companies and other legal entities that were not established for the employment of persons with disabilities in accordance with the Law (Article 15(2)). Under special conditions, persons with disabilities may be employed in institutions or companies specifically established for the purpose of their employment. Employment under special conditions, as defined by this Law, also includes employment within organisations for persons with disabilities as well as self-employment, such as starting a trade, engaging in independent activities, or pursuing agricultural work as the

92 *Official Gazette of the Federation of Bosnia and Herzegovina*, No. 9/2010.

primary occupation (Article 15, paragraph 4 and 5). Persons with disabilities with at least 60% impairment, those with a physical impairment of at least 70% resulting in reduced working capacity as defined by Article 3 of the Law, and individuals with mild or moderate intellectual disabilities are entitled to employment under special conditions (Article 15(6)).

When employing persons with disabilities under general conditions, the entities specified in Article 15(2) of this Law are required to employ individuals with disabilities in proportion to their total workforce.⁹³

The BD Assembly has not yet adopted a law governing professional rehabilitation, training and employment of persons with disabilities.

3.4. The Right of Persons with Disabilities to Education in BiH

According to Article 24 of the UNCRPD, States Parties recognise the right of persons with disabilities to education and commit to establishing an inclusive education system at all levels, as well as providing lifelong learning opportunities, directed at: a) fostering the full development of human potential, dignity, and self-worth, while strengthening respect for human rights, fundamental freedoms, and human diversity; b) promoting the development of the personality, talents, creativity, and mental and physical abilities of persons with disabilities to their fullest potential; and c) enabling effective participation of persons with disabilities in a free society. Article 24(2) of the Convention requires States Parties to ensure that persons with disabilities are not excluded from the general education system on the basis of disability and that children with disabilities have access to free and compulsory primary education, as well as secondary education, without discrimination. It further mandates that persons with disabilities be provided access to inclusive, quality, and free primary and secondary education on an equal basis with others within their local communities. States Parties are also obligated to provide reasonable accommodations to meet individual needs and to offer the necessary support within the general education system to ensure effective education for persons with disabilities. This includes individualised support measures aimed at maximising both academic and social development, consistent with the objective of full inclusion.

Article 24 provides not only that children with disabilities should not be discriminated against but also that they should be able to participate in general education.⁹⁴ In BiH, the entity, cantonal, and Brčko District authorities have adopted strategies

93 Specifically, the requirements were set as follows: by 31 December 2009, at least one person with a disability for every 39 employees; by 31 December 2010, at least one for every 32 employees; by 31 December 2011, at least one for every 24 employees; by 31 December 2012, at least one for every 19 employees; and by 31 December 2013, at least one for every 16 employees. Entities that fail to meet this obligation must calculate and pay a sum equivalent to 25% of the average salary in the FBiH for each person with a disability they were required to employ, to the Fund for Promoting Rehabilitation and Employment of Persons with Disabilities.

94 De Beco, 2014, p. 264.

aimed at improving the inclusion of children with disabilities in the education system. However, the effectiveness of these strategies has varied in practice.

In the past, courts in BiH have addressed cases involving violations of the right to education for persons with disabilities, finding breaches of the Law on the Prohibition of Discrimination. In the first known case under the BiH Law on the Prohibition of Discrimination, the Municipal Court in Mostar recognised disability as a prohibited ground for discrimination.⁹⁵ The court upheld the plaintiff's claim, ruling that the Ministry had discriminated against a minor by failing to ensure equal treatment in the educational process, specifically by not taking necessary measures for the inclusion of a minor with disability. Similarly, in another case, the court acknowledged disability as a basis for discrimination when the defendants did not implement legally required measures to facilitate the attendance of a student with special needs, including ensuring school accessibility without architectural barriers and providing classroom assistants. In case No. 43 0 P 077313 12 P, the Municipal Court in Zenica found that the Zenica-Doboj Canton and the elementary school had discriminated against a minor with special needs by failing to ensure accessibility to the school without architectural barriers, thereby violating the right to equal participation in education.⁹⁶

To enhance the inclusion of children with disabilities in the educational system in the RS, the RS Ministry of Education and Culture, in collaboration with the Republic Pedagogical Institute, is implementing inclusive education in schools.⁹⁷ According to the law governing primary education and upbringing, students with disabilities receive education in regular schools – either in standard, combined, or special classes – or in schools specifically for children with disabilities. Since the 2010/2011 school year, the Ministry has funded assistants designated for students with autism or combined impairments involving autism, as well as for students with physical disabilities, including those with limited mobility or who are immobile. Students with other disabilities are assigned assistants based on the availability of funds allocated in the budget. These assistants provide support with mobility, hygiene, communication, social inclusion, and other needs, based on recommendations from teachers or the school's professional service.⁹⁸ However, the number of personal assistants is still insufficient to meet the demand for their participation in the educational process. The commitment to enhancing inclusive education is emphasised in the Strategy for Improving the Social Position of Persons with Disabilities in the Republic of Srpska

95 Decision in case no. P 58 0 P 056658 (06.07.2010), Municipal Court in Mostar, cited in Kadribašić, 2017, p. 13.

96 *Ibid.*, pp. 13–14.

97 The obligation to facilitate inclusive education for children with disabilities, along with the provision of appropriate support for these students, is established by the RS Law on Primary Education and Upbringing (*Official Gazette of the Republic of Srpska*, No. 81/2002), and the RS Law on Secondary Education and Upbringing (*Official Gazette of the Republic of Srpska*, No. 41/2018, 92/2020, 55/2023).

98 The Second and Third Report on Implementation of the United Nation's Convention on the Rights of Persons with Disabilities in BiH, 2020, p. 28.

(2017–2026), adopted by the Ministry of Health and Social Welfare. This strategy outlines key educational goals, including improving inclusive and special education, promoting lifelong learning for persons with disabilities, advancing the professional development of educators and professionals working with children with disabilities, and providing adapted textbooks, literature, and teaching aids for children and youth with disabilities. The RS Education Development Strategy (2016–2021) also outlines goals for enhancing the education of children with disabilities, including creating conditions for their inclusion in institutional preschool education, ensuring comprehensive participation in compulsory nine-year primary education through continuous analysis and improvement of service quality, and supporting the inclusion of children with disabilities in secondary education.⁹⁹

In the FBiH, the Strategy for Advancement of Rights and Status of Persons with Disabilities (2016–2021) set forth activities aimed at improving accessibility in inclusive education. Specific objectives include enhancing environmental accessibility by removing architectural and communication barriers (Specific Objective 2) and ensuring the equal participation of persons with disabilities in all areas of life, particularly in education, cultural, sporting, public, and political activities (Specific Objective 3). Inclusive education in the cantons of FBiH is implemented in compliance with various bylaws. While some cantonal ministries have adopted strategies for inclusive education, the Second and Third Report on Implementation of the United Nation’s Convention on the Rights of Persons with Disabilities in BiH indicates that these strategies have not been adopted in all cantons, and several cantons still lack specific budget allocations for inclusive education. Architectural accessibility of the school environment in the FBiH varies across cantons, with some showing better accessibility than others. However, the situation is progressively improving, with ongoing efforts being made to enhance accessibility.¹⁰⁰

3.5. The Right to Participate in Political and Public Life

The right to political participation is an internationally recognised human right.¹⁰¹ The UNCRPD also provides for the right of persons with disabilities to engage in

⁹⁹ Ibid.

¹⁰⁰ Ibid., pp. 26–27.

¹⁰¹ The first human rights instrument addressing political participation is the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948. Art. 21 of the Declaration asserts that “[e]veryone has the right to take part in the government of his country” and that the will of the people “shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”. The primary treaty affirming the right to political participation is the International Covenant on Civil and Political Rights (ICCPR), which establishes binding legal obligations for States Parties. Art. 25 of the ICCPR provides that every citizen has the right and opportunity, without discrimination or unreasonable restrictions, to vote and to be elected in genuine periodic elections conducted by universal and equal suffrage and held by secret ballot, ensuring the free expression of the electors’ will. By extending rights to “every citizen”, the ICCPR’s protections encompass persons with disabilities. Waterstone, 2011, pp. 373–374.

political and public life. Article 29 of the UNCRPD stipulates that States Parties are obligated to guarantee that persons with disabilities enjoy political rights and opportunities on an equal basis with others. To achieve this, they must ensure that individuals with disabilities can fully and effectively participate in political and public life, either directly or through freely chosen representatives, including the right to vote and be elected. This entails making voting procedures, facilities, and materials accessible, appropriate, and easy to understand and use; protecting the right to vote by secret ballot in elections and referendums without intimidation; and enabling persons with disabilities to stand for election, hold office, and perform public functions at all levels of government. States must also facilitate the use of assistive and new technologies where applicable, guarantee the free expression of the will of persons with disabilities as electors, and, where necessary, provide assistance in voting by a person of their choice upon request. Additionally, States Parties must promote an inclusive environment where persons with disabilities can fully participate in public affairs without discrimination, fostering their involvement in public life. This includes encouraging participation in non-governmental organisations and associations related to public and political life, as well as in the activities and administration of political parties. Furthermore, states should support the formation and participation of organisations representing persons with disabilities at the international, national, regional, and local levels.

The right to participate in elections in BiH is regulated by the Election Law of BiH, which does not restrict persons with disabilities from voting or from being elected. Individuals with disabilities who require assistance or a mobile voting team are provided with the necessary support to facilitate their voting process. According to Article 5.19(1) of the BiH Election Law: 'Upon the request of voters who are blind, illiterate or persons with disability, the President of the Polling Station Committee shall approve the procedure wherein another person, selected by the voter concerned, may assist the voter in signing the excerpt from the Central Voters Register, and casting his or her ballot'.¹⁰² The Rulebook on Methods for Implementation of Elections in BiH also stipulates that persons with disabilities may register and receive assistance in a manner most conducive to their needs.¹⁰³ According to Article 5.1(2) of the BiH Election Law, the Municipal Election Commission shall designate polling stations no later than sixty-five days prior to election day, considering the accessibility of polling stations for voters with disabilities as well as the technical requirements necessary for the operation of the election technology during the conduct of elections. If a Polling Station is equipped with election technologies that enable individuals with disabilities to vote independently, assistance from another person shall be excluded to ensure the secrecy of the vote (Article 5.19.5).

During the pre-election campaign, information is disseminated to all citizens through electronic media, sign language interpreters, print media, and other

102 Bosnia and Herzegovina, n.d.a.

103 Bosnia and Herzegovina, n.d.b.

accessible formats.¹⁰⁴ The Report on the Implementation of the United Nations Convention on the Rights of Persons with Disabilities in BiH (2012) notes that the RS and the FBiH Strategies for the Improvement of the Social Position of Persons with Disabilities have recognised the necessity of promoting the active participation of representatives of persons with disabilities in political parties, political life, and decision-making processes at all levels. Specifically, organisations representing persons with disabilities are encouraged to engage in public debates concerning documents of significance to the citizens.¹⁰⁵ However, as highlighted in the Report, while there is no specific legislation prohibiting individuals with disabilities from participating in political life, there are also no measures in place to actively encourage their involvement in political and public affairs.

According to the Second and Third Report on the Implementation of the United Nation's Convention on the Rights of Persons with Disabilities in BiH, covering the period from the beginning of 2013 to the end of 2019, several individuals with disabilities participated in the electoral process in the RS, with one individual (an amputee) obtaining a mandate in the RS National Assembly.¹⁰⁶

4. Conclusion

Persons with disabilities represent one of the most vulnerable groups in society, frequently experiencing social stigma, discrimination, and marginalisation. Even in countries with a strong tradition of upholding human rights, individuals with disabilities continue to face discrimination, social exclusion and inequitable treatment. They tend to have lower income and educational attainment, higher rates of unemployment, precarious housing conditions, and poorer health outcomes compared to persons without disabilities. These challenges are further exacerbated in countries in transition, where ongoing social, political, and economic changes often intensify these vulnerabilities.

Although the countries examined in this study have ratified the UNCRPD, and most of them have also ratified its Optional Protocol, the process of implementing the Convention and establishing a system that enables the full and effective enjoyment of all human rights and fundamental freedoms by persons with disabilities, on an equal basis with others, is progressing at an uneven pace (as evidenced by the selected case studies). While the implementation of certain provisions of the UNCRPD is impeded by objective difficulties characteristic of transitional economies, such as high unemployment and limited financial resources, the application of specific articles, notably Article 12, gives rise to complex ethical dilemmas. These dilemmas

104 Report on the Implementation of the United Nations Convention on the Rights of Persons with Disabilities in BiH, pp. 49–50.

105 *Ibid.*, p. 44.

106 The Second and Third Report on the Implementation of the United Nation's Convention on the Rights of Persons with Disabilities in BiH, p. 35.

concern the appropriate balancing of competing ethical values: namely, the principles of autonomy, self-determination, and human dignity, on the one hand, and the requirement of the protection of persons with disabilities, often interpreted through the ‘best interests’ standard, on the other.

Several shared problems are evident across the countries under review. Substitute decision-making regimes remain deeply embedded: plenary and partial guardianship continue to be applied in Hungary and Serbia, while in the Czech Republic, despite the abolition of plenary guardianship, substitute decision-making continues to dominate, with supported decision-making mechanisms still underdeveloped. In the field of employment, all countries under assessment have introduced quota systems or related measures intended to promote the labour market participation of persons with disabilities. Yet, their impact remains limited due to weak enforcement, inadequate monitoring, insufficient provision of reasonable accommodation, and persistent stigma among employers. The right to inclusive education has also seen uneven progress. While all these countries have undertaken steps toward educational inclusion, systemic barriers continue to obstruct implementation. These include insufficient teacher training, lack of resources for individualised support, complex administrative requirements, and entrenched social preferences. Finally, political participation by persons with disabilities remains constrained, both formally through legal restrictions and informally through practical barriers.

Similar challenges are evident in BiH. The ratification of the UNCRPD and its Optional Protocol marked an important step toward the development of a more comprehensive framework for the protection of the rights of persons with disabilities in BiH, leading to legislative changes across various levels of government. Although the adopted legal provisions include measures intended to improve the position of persons with disabilities, their implementation has often been slow and unsatisfactory, resulting in a disparity between the legal framework and practical outcomes. Despite notable progress, substantial systemic obstacles continue to impede the full realisation of the rights of persons with disabilities, including the domains of education, employment, political participation, and the exercise of legal capacity. These challenges reflect not only gaps in legislative implementation but also deeper structural and societal barriers that hinder the effective translation of legal requirements into practice. It is therefore essential for authorities at all levels of government to continue their efforts while consistently raising public awareness about the importance of respecting the rights of persons with disabilities. The lack of financial resources is not necessarily the primary obstacle to improving their position; rather, continuous engagement is required from not only government actors but also all members of society, including persons with disabilities themselves, which necessitates adequate support for associations representing people with disabilities.

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