

What Worries Youth in Enlargement Countries:

**Human Rights and Youth
in the Western Balkans and Turkey
vol. 2**



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Introduction

The European Union accession process is a long and complex path. It offers opportunities for advancing various areas of policy which relate to human rights and most aspects of a country's legal and administrative system. However, many of these processes are out of reach for the general public, as they often require an informed understanding of the EU's mechanisms. In societies governed by the same leaders for decades, young people in particular feel excluded. The complexity of EU institutions only add up to this notion. If youth from Member States themselves often feel excluded from EU institutions, that is even more the case in accession countries, where young people rarely have the opportunity to travel to Brussels or Strasbourg. Additionally, formal education only teaches very basic theoretical foundations about the EU, if at all.

Therefore, Civil Rights Defenders believes it is crucial to train young activists and leaders to make them aware of these mechanisms, and of how to make use of the possibilities to influence the process and engage constructively with EU and national institutions.

We have decided for the second year in a row to engage in providing a voice for youth to tackle human rights violations that they think concern them the most and promote these issues by engaging in advocacy. For these reasons, we have devised a programme that would encompass both methods of policy-paper writing as well as advocacy activities for youth. In order to achieve this, seven young people from Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia and Turkey have underwent a training in policy paper writing, provided by Adnan Cerimagić from the European Stability Initiative; and on EU human rights advocacy, provided by Civil Rights Defenders' Brussels Programme Officer, Tommaso Nodari, with the contribution of CRD's Advocacy Trainee Lorena Diz Conde. After choosing their topics, and under Mr. Cerimagić's mentorship, the youth wrote their policy papers in the course of 6 months.

The methodology of these papers had specific guidelines on the format and ways to approach their topics, but it largely differed and reflected the needs of specific issues. For some topics, only desktop analysis was needed, while other required interviews and extensive field research. Some of the authors have written about their own activist experience, while others referred to more systematic issues requiring long-term efforts.

The policy papers will be presented in early 2021 at a roundtable aiming to be hosted and to target members of the European Parliament and other institutions in Brussels. The papers and the roundtable will discuss youth policy and issues concerning young people from the Western Balkans in the framework of the European integration process.

In this publication you will be able to read seven papers written by young activists throughout 2020, on the following topics:

- Challenges of the LGBTI+ Cause in Albania: From the Lack of Implementation of the Law to Violence and Rising Immigration
- Protecting Rivers and the Right to Peaceful Assembly in Bosnia and Herzegovina
- A Way Out of the Miseducation of Youth: Time to Revisit Kosovo's Textbooks
- Affirmative Action in Montenegro: Time to Open the Universities for Roma Students
- Youth on the Margins: Right to Education for Youth with Disabilities in North Macedonia
- Women and Girls with Disabilities in Closed Institutions in Serbia
- Government-Appointed Local Authority Trustees in Turkey: The (Non-)Application of the Right to Vote and to Be Elected

Challenges of the LGBTI+ Cause in Albania: From the Lack of Implementation to Violence and Rising Immigration

Kevin Jasini

Introduction

The Law on Protection Against Discrimination, approved by the Albanian Parliament in February 2010, was the first legal initiative to provide protection for LGBTI+ people in Albania. With this law, members of the LGBTI+ community were given equal treatment and protection from discrimination on the grounds of sexual orientation and gender identity. The most recent amendments to the Law on Protection from Discrimination of October 2020 provide for protection from discrimination also based on HIV status and sexual characteristics and recognise multiple/intersectional grounds for discrimination.

The law was expected to be a starting point for more progressive legal changes, as well as improvements of everyday lives of the LGBTI+ community. The things, however, have stalled during the past decade. Many young LGBTI+ persons are still struggling to see their future in the country, while some are forced to ask for asylum in the EU countries as a solution.

In recent years, Albania has taken some important reforms to advance its EU integration process, resulting in member states agreeing to start the accession talks with Albania in March 2020. In light of

that step, this moment is ideal for Albanian authorities to move forward on anti-discrimination policies and make steps that would improve the conditions of the LGBTI+ community. This paper sketches some of the main issues and offers concrete proposals to address them.

LGBTI+ Rights Only on Paper, Despite Institutional Commitment to EU Integration

In September 2019, while addressing the 74th Session of the UN General Assembly, the Albanian Prime Minister, Edi Rama, mentioned the connection between the objectives of the 2030 Agenda for Sustainable Development of the United Nations and Albania's objectives on its path to EU integration. Prime minister Rama stated:

“Among the most important milestones of this agenda are the action plans for Roma, Egyptians, LGBTI, and people with disabilities, for whom there are concrete plans that are being implemented which will guarantee the rights of these groups that often happen to be unfairly and unjustly marginalised.”¹

¹ WebTV UN, Albania - Prime Minister Addresses General Debate, 74th Session, 27 September 2019, min. 20:25. <http://webtv.un.org/watch/albania-prime-minister-addresses-general-debate-74th-session/6090088472001/>

In his statement, the Prime Minister was referring to the 2016-2020 National Action Plan for LGBTI People. This document, approved by his government in 2016, defined the key directions for legislation and policy development, safety and protection of rights, and access to services for LGBTI+ people in Albania.

Among the many objectives of the National Action Plan, the most relevant, in terms of creating a better and safer environment for LGBTI+ people, aim to raise awareness among civil servants, employers and doctors on the rights of the LGBTI+ community and their legal protection; to establish easily accessible statistical data and a reporting system on discrimination cases in the relevant areas; to reduce discrimination against LGBTI+ in education by revising curricula at all levels of education and training of educational staff; and to improve access to health care services and housing programmes.

Civil society organisations in the country have been continuously warning that LGBTI+ people in Albania are still subject to discrimination, violence, and hate speech. They have been calling for better implementation of the anti-discrimination law and the introduction of new laws, in particular to address gender recognition and same-sex partnership. In their assessment of the situation, LGBTI+ organisations are not alone. In October 2020, the country report of the European Commission concluded that the National Action Plan, mentioned in his speech by the Prime Minister Rama, “did not produce visible results, partially due to the lack of financial resources.”²

Two weeks after the Prime Minister’s speech at the General Assembly of the United Nations, a transgender woman and activist was attacked physically by five unidentified men in the square in front of the Albanian Parliament.³

The transgender woman is the 36 years old Anxhela H., one of the first women living openly as transgender in the country, who has also been one of the few voices on transgender and sex worker rights in Albania for the past decade. The perpetrators could not be identified by the police authorities and, since there is no database to register hate crimes against LGBTI+ people in Albania, the attack did not show up in any relevant institutional reports, creating a false picture that there are zero hate crimes in Albania against LGBTI+ people, even when they happen in broad daylight. The lack of a database on such hate crimes has also been flagged by many international organisations.⁴

The attack sparked nation-wide reactions. The President of the Republic, Ilir Meta, condemned the attack urging “the law enforcement authorities to take appropriate measures to investigate this cowardly attack and bring those responsible for it to justice.”⁵

Activists called for “the authorities to find the perpetrators of this heinous crime and to treat this case with utmost seriousness” adding that “this is not the first time that Anxhela and other members of the trans community are victimised by transphobes and homophobes who feel invincible in the face of government indifference.”⁶

2 European Commission, Albania 2020 Report, 6 October 2020.
https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

3 ERA LGBTI, Homeless trans woman brutally attacked in Tirana, 13 November 2019.
<https://www.lgbti-era.org/news/homeless-trans-woman-brutally-attacked-tirana>

4 For more information, please view recommendations on the ECRi report on Albania / ILGA Europe Enlargement Review on Albania 2019 / Human Rights Defenders in the Balkans by Civil Rights Defenders

5 Ilir Meta on Twitter. <https://twitter.com/ilirmetazyrtar/status/1194582247954882561>

6 Historia Ime, Press Release on the latest attack on the Albanian trans activist Anxhela, 13 November 2019.
<https://www.historia-ime.com/english/press-release-on-the-latest-attack-on-the-trans-activist-anxhela>



There was no official statement from the Prime Minister’s Office or the Tirana Municipality regarding the attack, and the case is still under investigation by the prosecution office.

Anxhela has been homeless for 30 years and subject to violent attacks many times. Like many other homeless people, she applied for social housing, but did not get it. After the brutal attack in the middle of the day and the reactions of international and Albanian NGOs, the institutions expedited her request and she finally received social housing.

Anxhela’s story caught public attention and, after the attack, the authorities

really took into consideration her housing request, but there is still impunity in her case and a dozen other similar stories that go unnoticed or unreported. To give an insight into the current situation, in 2018, there were 421 documented cases of discrimination against LGBTI+ individuals in Albania reported to NGOs, whereas of all these cases, only in five of them have violence and discrimination been reported to the authorities.⁷

In both 2019 and 2020 enlargement reports, the European Commission stated that “more efforts are needed to protect LGBTI persons from discrimination when it comes to access to health care, education, justice, employment and housing”

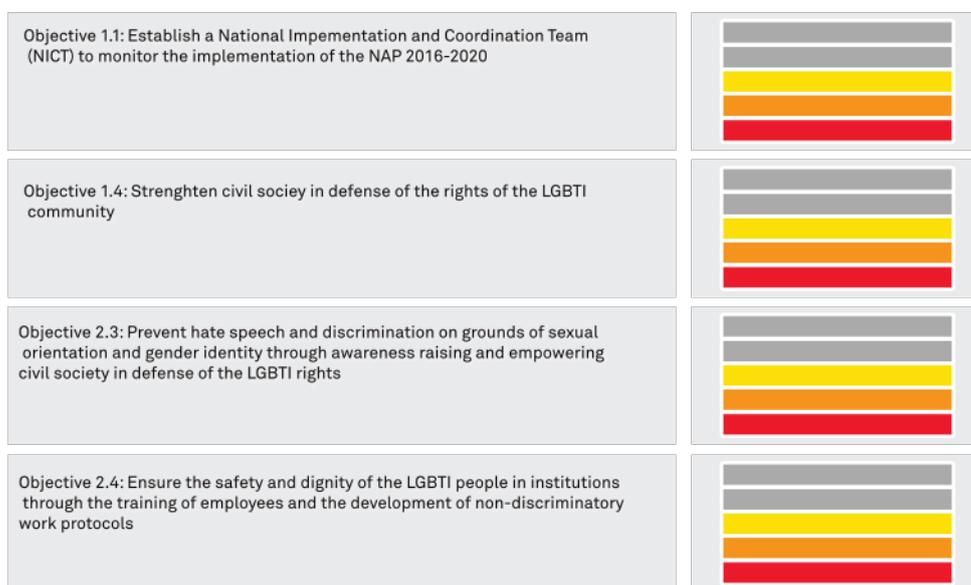
⁷ Aleanca LGBT. Pro LGBT, Streha. Report on situation of LGBTI community during 2018. <https://drive.google.com/file/d/19WbEP8E-hEyrY4rXTDZcFWwZ5qORgjVN/view>

adding that in 2018 “10 members of the transgender community sought asylum abroad due to severe discrimination.”⁸

In 2019, Albanian LGBTI+ organisations reported 30 documented cases of LGBTI+ community members who have been asking for asylum in the European Union, among which 10 were self-identifying as transgender, 6 as lesbians and 14 as gay.⁹

The number of Albanian asylum seekers in the EU countries has increased over the years. Just in 2019, over 21,000 Albanian citizens requested asylum in one of the EU (28) countries according to data gathered by Eurostat.¹⁰ Among them are members of the LGBTI+ community.

To illustrate the struggles that push LGBTI+ individuals to ask for asylum abroad, two LGBTI+ individuals from Albania, both in their early 20s, received a refugee status in France in 2015 and 2016, respectively, among the cases that were granted asylum in the EU countries during the past years. Their application was processed by the authorities within one year, as they were both victims of physical and psychological violence in Albania, which started after they came out to their families. The Albanian Police had documented the violence they were subjected to due to their sexual orientation and gender identity, but neither was provided with legal protection by the Albanian authorities. They continued to receive threats and be subjects of violence so the risk of staying in Albania was high.



Source: Alternative Report: Monitoring of the National Action Plan for LGBTI People in the Republic of Albania 2016-2020

8 European Commission, Albania 2019 Report, 29 May 2019. <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-albania-report.pdf>; European Commission, Albania 2020 Report, 6 October 2020. https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

9 Aleanca LGBT, Pro LGBT and Streha, Report on the Situation of LGBTI Community during 2018 (Albania). 10 May 2019. <https://www.historia-ime.com/english/the-annual-report-of-lgbti-organizations-in-albania/>

10 Eurostat, Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded), 30 June 2020. Eurostat

As the number of cases of threats, and physical and verbal violence that are reported by LGBTI+ organisations continues to rise, Albanian institutions continue to not address them. This has led to lack of trust of LGBTI+ Albanian individuals towards the institutions.

Poor Results of the Institutions in Fighting Hate and Discrimination

The results of the implementation of the National Action Plan did not meet the expectations of activists and LGBTI+ organisations. LGBTI+ organisations have had dozens of roundtables during the past 4 years, including back and forth reporting on the implementation of the National Action Plan, but there have been no actual changes in the legislative and policy framework, nor a concrete mid-term strategy to tackle the issues and discrimination that LGBTI+ people still face in Albania today. The implementation of the National Action Plan for LGBTI+ People in Albania was considered by government officials to be a great progress, but has produced relatively poor results.

A monitoring of the National Action Plan has been carried out by Aleanca LGBT organisation throughout the implementation period. Measuring the fulfilment of the 14 overall objectives on a scale from 0 to 5, the average score for all objectives was 1.6. Only four of them were given score 3.

Best scored were the objectives regarding: Establishing a National Implementation and Coordination Team (NICT) to monitor the implementation of NAP 2016-2020; Strengthening civil society in defence of the rights of the LGBTI community; Preventing hate speech and discrimination on grounds of sexual orientation and gender identity through awareness raising and empowering civil society in defence of LGBTI rights; Ensuring the safety and dignity of LGBTI people in institutions through the training of employees and the development of non-discriminatory work protocols.¹¹

Civil society organisations that primarily focus on LGBTI+ are struggling to create safer environments for the LGBTI+ community, as they are mostly left to deal by themselves with an overwhelming number of violence, threat, and discrimination cases.

Based on a study conducted by the LGBTI Shelter organisation in Albania, that looked into not only LGBTIs but also other marginalised communities such as the Roma and Egyptian community, disadvantaged women, and people with disabilities, 65.8 percent of the respondents admitted to having received differential treatment from public institutions in one form or another, 63.2 percent of them are not aware that there is a Law on Protection Against Discrimination, and 74.1 percent of respondents stated that they want to leave Albania as asylum seekers.¹² The data were gathered during and published by the end of 2019, three years into implementation of the Action Plan.

11 The 14 objectives were divided between 3 Strategic Goals. Regarding the level of implementation: Two of the objectives scored 0, five of them scored 1, three objectives scored 2 and four of them scored 3, with none reaching the maximum score of 5. Aleanca LGBT, Alternative Report: Monitoring of the National Action Plan for LGBTI People in the Republic of Albania 2016-2020, p.20-21, 2019.

12 Streha LGBT, Perceptime mbi integritimin në BE dhe zbatimin e kuadrit ligjor për të drejtat e njeriut, 30 April 2020.

https://issuu.com/strehalgbt/docs/studimi_streha-final

As a result of the work of civil society organisations and international support, there has been an initiative to propose a law on gender recognition. It was drafted in 2018 by experts, with the support of international donors. The approval of the law on gender recognition, submitted to the Parliament in 2018, would ensure transgender people the right to change their gender marker in official documents. It is to be highlighted that since it was submitted, in 2018, it was never included in the official agenda of the Parliament, therefore its approval was never discussed in the legislative procedure.¹³

Local and international organisations have also been supporting the introduction and approval of a law on same-sex partnership. Recently, the United Nations Human Rights Council recommended to Albania to recognise same-sex partnerships as part of the Universal Periodic Review. In their answer to that recommendation, the Albanian representatives stated that Albania is currently not planning (for the next 4 years) proposals to include these amendments to the Family Code.¹⁴

There have been several attempts by civil society and international organisations to introduce new laws or amend the current ones. An example could be the already drafted law on gender recognition, which has not yet been discussed in the parliamentary committees and was submitted for approval in 2018. There seems to be no institutional will to start discussing such changes that would really improve the living conditions of LGBTI+ people in Albania. To date, there has not been any institutional discussion on the revision of the National Action Plan on LGBTI People for the next period.

13 Pink Embassy, [Pink Embassy submits to the Albanian Parliament the Draft Law on Gender Recognition](#), 16 May 2018.

14 Era LGBTI, UPR Outcome of Albania, 26 September 2019.

Conclusions and Recommendations

In conclusion, regarding the institutional approach of Albania, the low score achieved by the National Action Plan implementation shows lack of will and resources when it comes to addressing LGBTI+ issues. Violence, threats and discrimination are widespread and present. NGOs lack institutional support and, year after year, the organisations are losing interest in starting a national discussion about LGBTI+ topics. All of the above contributes to the concerning reality for LGBTI+ people in Albania, where even 10 years after the introduction of the Anti-Discrimination Law, the majority of them do not dare to live openly as LGBTI+.

- Albanian institutions, together with civil society organisations and other stakeholders, should maximise their efforts on raising awareness about the legal mechanisms available for LGBTI+ people and create a practical monitoring mechanism on the implementation of current laws.
 - EU institutions and their representatives in Brussels and Tirana, policy-makers and officials involved in decision-making should encourage and
- push harder for changes and introduction of currently lacking laws on gender recognition and same-sex partnership, as well as proper implementation of the legal framework in place.
- The National Action Plan for LGBTI people in Albania must be extended and enough funding should be allocated for its implementation.
 - The available draft law on gender recognition should be included in the official agenda of parliamentary committees to start the discussion on its approval.
 - The State Police and Prosecution Office should create a database to record data on bias motivated hate crimes based on sexual orientation and gender identity.
 - State institutions, the police authorities and prosecution offices should increase efforts on collaborating with activists, NGOs and members of the community, to increase the levels of trust of community members.
 - An official protection mechanism should be created for human rights defenders at risk, particularly those working with the LGBTI+ community, who face serious threats in their everyday work.

Protecting Rivers and the Rights to Peaceful Assembly in Bosnia and Herzegovina

Sonja Kosanović

Introduction

There are 108 small hydropower plants currently operating in Bosnia and Herzegovina.¹ Additionally, 338 small hydropower plants are planned to be put into operation, although it has not been specified when.² For years, groups of activists have been protesting against new hydropower plants. However, instead of facilitating their right to peaceful assembly and association, the state often denied it. Their struggle is marked by threats, lawsuits and even physical violence, coming from both the state and private individuals.³ And they have no one to complain to. Their lives and property are in danger for trying to save the environment.

Small hydropower plants operate on water, which is a sustainable source of energy. The damage they cause, however, is bigger than the benefits they provide.⁴ Small hydropower plants are known to drain riverbeds and ruin entire ecosystems, resulting in death of fish and overall

violation of biodiversity of the rivers in which they are built, affecting mainly small, local communities. This is one of the main reasons why some NGOs, such as BankWatch, RiverWatch and EuroNatur, have published several reports that emphasise the importance of ceasing the development of small hydropower plants and instead turning to even more sustainable sources of energy that do not damage the environment.⁵

Another problem in Bosnia and Herzegovina is that the construction of small hydropower plants is not the result of strategic needs for electricity, but rather of the intention to satisfy investors – who are mostly well connected with the authorities and political party circles.⁶ 104 small hydropower plants, as many as were in operation in 2019, produced 497.99 GWh, which is only 3.1 percent of the total electricity produced in Bosnia and Herzegovina.⁷ This clearly shows that electricity in this country does not depend on small hydropower plants, and that the narrowing space for freedom of assembly

1 DW, "Zašto tolike nove hidroelektrane u BiH?", 1 March 2019. <https://www.dw.com/hr/za%25%A1to-tolike-nove-hidroelektrane-u-bih/a-47739194>

2 Ibid.

3 DW, "Bitka za bosanskohercegovačke rijeke", 20 June 2018. <https://www.dw.com/hr/bitka-za-bosanskohercegova%C4%8Dke-rijeke/a-44301536>; CRD, "Statement Condemning Police Violence in Bosnia and Herzegovina", 8 November 2017. <https://crd.org/2017/11/08/statement-condemning-police-violence-in-bosnia-and-herzegovina/>

4 Bank Watch Network, "Broken Rivers: The impacts of European-financed small hydropower plants on pristine Balkan landscapes", December 2017. <https://bankwatch.org/wp-content/uploads/2017/12/broken-rivers-bankwatch-study-on-hydropower-in-the-balkans-merged.pdf>

5 Bank Watch Network, "Hydropower pressure on European Rivers: The story in numbers", 2019. https://balkanrivers.net/sites/default/files/European%20Hydropower%20report%202019_w.pdf Bank Watch Network, "Hidroelektrane na Zapadnom Balkanu Ko plac a, a ko zara uje?", September 2019. <https://bankwatch.org/wp-content/uploads/2019/09/who-pays-who-profits-RS.pdf>

6 Vode Bosne i Hercegovine, "Male hidroelektrane u Bosni i Hercegovini", 9 June 2020. <https://voda.ekoakcija.org/bs/sadrzaj/male-hidroelektrane-u-bosni-i-hercegovini>

7 Ibid.

and participation in decision-making processes of local activists is triggered by something other than a real need to increase electricity production.

Energy Community's Position on Small Hydropower Plants in Bosnia and Herzegovina

In the run up to the November 2020 local elections in Bosnia and Herzegovina, members of parliament in one of the two country's entities, the Federation of Bosnia and Herzegovina, adopted a Declaration on River Protection and a Conclusion on the ban on further construction of small hydropower plants. Members of parliament in the Republic of Srpska, the other entity, however, failed to do so and their rivers remain institutionally unprotected.

The Declaration adopted in the Federation of Bosnia and Herzegovina stipulated a 3 month deadline for the Conclusion to be integrated in the law. This deadline has passed. Nothing was done about the issue of small hydropower plants and it is safe to say that this was just another populist move by the Federation of Bosnia and Herzegovina's Government which had no real effect. This Declaration was publicly supported by the director of the Energy Community (EnC) Secretariat, Janez Kopač. He did, however, note that the implementation of this decision is the responsibility of local and cantonal governments.⁸ In addition, the Declaration did not specify what would happen with projects that are currently under development. Kopač also emphasised that the construction of small hydropower plants changes the ecological balance greatly, but that quality environmental assessment study measures could be

undertaken to mitigate the harmful effects.

The problem in Bosnia and Herzegovina, however, is that these environmental impact assessments have, in many cases, been very poorly done and that the measures envisaged by them have not always been implemented in practice.⁹ Another issue is that there are no public discussions in local communities on this topic, and when there do happen, they are usually well hidden by the local authorities.¹⁰ Citizens are practically not provided with the time and space to express their opinions on the matter, which makes these projects, by all means, illegitimate. This is why citizens are taking action across the country to save the rivers of Bosnia and Herzegovina. They mobilise and protest to save the rivers, because not only do small hydropower plants cause ecological damage – in Bosnia and Herzegovina, specifically, they are operating without proper previous assessment and without adequate measures, which amplifies the damage that local ecosystems are suffering.

European Commission's Strategy and Opinion on Hydropower Plants and Protests in Bosnia and Herzegovina and the Western Balkans

In its 2020 Opinion, the European Commission stated that:

“On water quality, the country still lacks a consistent and harmonised countrywide strategy and investment plans on water management that would include implementing legislation and monitoring. There is no water policy for Bosnia and Herzegovina.”¹¹

8 Era LGBTI, UPR Outcome of Albania, 26 September 2019.

9 Ibid.

10 Mondo, “Mala hidroelektrana-za prirodu velika rana” 15 June 2016, <https://mondo.ba/Info/Drustvo/a811161/Posjeta-hidroelektrani-Divic-u-Kotor-Varosi.html>

11 Bosnia and Herzegovina 2020 Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 6 October 2020, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf

It also stated that:

“Regarding the growing development of hydropower investments, Bosnia and Herzegovina as a matter of urgency has to better enforce SEA, EIA, nature protection and water-related provisions of the EU acquis in order to adequately address growing environmental concerns.”¹²

This was followed by another comment saying that:

“The planning for and investments in renewable energy, including hydro, wind and solar power plants, requires compliance with the EU’s environmental legislation, including SEA, EIA and the Birds and Habitats Directives”, which clearly suggests that this compliance is not yet achieved.¹³

In October 2020, the European Commission adopted the Economic and Investment Plan for the Western Balkans and Guidelines for the Implementation of the Green Agenda for the Western Balkans, that address climate, change among other issues. The first document reads:

“The increased use of renewable energy sources should be supported, in line with the

region’s potential and climate change adaptation plans. This can include environmentally sound investments in hydro, solar, wind and geothermal sources.”¹⁴

The Green Agenda for the Western Balkans is a document which focuses solely on climate change adaptation for the Western Balkans and regarding water; it reads:

“A unique challenge to the region’s rivers is also a steep increase in hydropower capacity across the region as much as fourfold between 2015 and 2017, having significant environmental and social impacts, both at the country and at the wider regional level. Transboundary water cooperation is often a politically sensitive issue, especially where water bodies show receding water levels due to climate change and over-abstraction or deterioration of water quality downstream of the rivers. The main task ahead is the implementation of the water related legislation, which requires more resources for investments in water infrastructure and in the governance structure for sustainable water management (monitoring and reporting, planning, coordination across relevant sectors, impact assessment capacity, etc.)”¹⁵

12 Ibid.

13 Ibid.

14 European Commission, An Economic and Investment Plan for the Western Balkans, 6 October 2020, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/communication_on_wb_economic_and_investment_plan_october_2020_en.pdf

15 European Commission, Guidelines for the Implementation of the Green Agenda for the Western Balkans, 6 October 2020, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/green_agenda_for_the_western_balkans_en.pdf

These documents show that EU recognises the issues that Bosnia and Herzegovina is facing regarding hydropower and stresses other sources of energy into which investments have not been made.

It has been almost three months since these documents were published alongside European Commission's Opinion, and so far, Bosnia and Herzegovina has not done much to address this issue. The only ones who actually raise concern and keep this topic relevant are environmental NGOs and activists.

What they are trying to point out is that, despite them being a part of EU's sustainability plan, small hydropower plants make up only a small piece of it, while there are other, more acceptable solutions for transition into more sustainable sources of energy, such as wind and biomass.

Namely, the EU sustainability plan has been extended to non-EU countries, as they need to fulfil certain criteria in the domain of using sustainable sources of energy if they aspire to become an EU member. These criteria are formulated as quotas of additional renewable energy they must produce and there are no specifics as to how this can be achieved.

Local politicians have, however, used this to their advantage, as they present small hydropower plants as something that Europe requires of Bosnia and Herzegovina, as a condition for future EU membership. Although this country has great potential for using other sustainable

sources of energy, such as wind and solar, disproportionate amounts of subsidies are granted to small hydropower plants. On this basis, considerable funds have been reallocated – ultimately paid by the citizens for incentives to the owners of small hydropower plants. These are state subsidies that go to investors willing to build small hydropower plants.

To build a proper small hydropower plant, there are steps that need to be taken and assessments that need to be made. Some of these steps include acquiring a permit for construction, energy licence, location permit, but also conducting an environmental impact assessment.

Considering that all these investors are well connected with the authorities, in fact, it is the authorities who provided them with the appropriate legal framework, this has become a fertile ground for corruption (corruption and organised crime are particular problems that European Commission has been pointing out for years now, both in their 2019 Opinion and their 2020 Report).¹⁶

The investors are getting permits for small hydropower plants that are full of errors and proper environmental assessments are not being conducted – all of this leads to the construction of small hydropower plants that pose an even greater threat not only to the environment, but also to the homes of people who live in the area.¹⁷ Therefore, this is not purely an environmental issue – it is a social issue as well, one that environmental activists

16 Al Jazeera Balkans, "Male hidroelektrane kao politički, ekonomski i socijalni problem", 11 November 2018, <http://balkans.aljazeera.net/vijesti/male-hidroelektrane-kao-politicki-ekonomski-i-socijalni-problem>
Deutsche Welle, "Zašto tolike nove hidroelektrane u BiH?", 1 March 2019, <https://www.dw.com/hr/za%C5%A1to-tolike-nove-hidroelektrane-u-bih/a-47739194>; Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union, 29 May 2019, <http://europa.ba/wp-content/uploads/2019/05/20190529-bosnia-and-herzegovina-opinion.pdf>
Bosnia and Herzegovina 2020 Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 6 October 2020, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf

17 Radio Slobodna Evropa, "Borba protiv hidroelektrana u dvorištu", 28 May 2019, <https://www.slobodnaevropa.org/a/29968366.html>

have been fighting against. But their space for raising awareness is shrinking and their freedom of assembly is affected, as activists come mainly from small local communities where they do not have access to the media, institutions or human rights organisations.¹⁸ This prevents them from exercising their rights fully, but it also affects the quality of their advocacy. If they are threatened, if their freedom to assembly is jeopardised, they will not be able to continue this fight – one that is important, not only for them, but for the whole country and, ultimately, the sustainability plan.



The Battle for the Rivers

The battle for the rivers of Bosnia and Herzegovina has been fought by citizens for years. But this battle was not only for rivers, but also for their fundamental freedom – the freedom of assembly.

Freedom of assembly is one of fundamental human rights, a political right and a civil liberty. It is guaranteed by the Constitution, but also many international documents ratified by Bosnia and Herzegovina. However, this country has been struggling with providing this freedom for its citizens in its full capacity. This is an issue that has been pointed out several times by the European Commission that stated in its 2019 Opinion that “An enabling environment for civil society is not yet fully in place, including on freedom of assembly and association. The authorities have to develop regular cooperation and consultations with civil society organisations” and then stressed in its latest 2020 Opinion that “No progress was made in addressing the Opinion key priority 11 on ensuring an enabling environment for civil society, notably by upholding European standards on freedom of association and freedom of assembly.”¹⁹

Citizens of Bosnia and Herzegovina started this battle unaware that it was going to be a battle for their fundamental human rights. They were brought together spontaneously, united in their intent to defend rivers that belong to everyone.

¹⁸ Ena Bavčić, “Monitoring the Right to Free Assembly”, 2018, https://ecnl.org/sites/default/files/files/BosniaHerzegovina_Monitoring-assembly-report-2018.pdf

¹⁹ Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union, 29 May 2019, <http://europa.ba/wp-content/uploads/2019/05/20190529-bosnia-and-herzegovina-opinion.pdf>; Bosnia and Herzegovina 2020 Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 6 October 2020, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf

Among them is Robert, a 46 year old passionate activist from Fojnica, who participated in the protest for the Željeznica River, one of the bigger protests against small hydropower plants that was happening in Bosnia and Herzegovina over the years of 2009, 2012 and 2013.²⁰

Fojnica is a little town in central Bosnia and Herzegovina known for its hydropower potential. There are three rivers flowing through this town: Fojnica, Željeznica and Dragača. The area of the entire municipality is rich in water resources, which is what attracted the investors in the first place.

Robert was born and raised in the town, he knows its roads and its people. Growing up on the shores of its rivers, he spent his childhood and youth surrounded by them, surrounded by nature. He met his wife there and his children were born there. He could never have imagined that one day he would have to protect the rivers from his local authorities, the ones he was supposed to trust the most. This scenario became a reality on a cold morning in 2009. Robert was returning home when he noticed an excavator near a river. After his initial confusion and shock, he realised he had to act quickly if he wanted to stop the upcoming disaster. He had seen what a small hydropower plant did to rivers in other parts of Bosnia and Herzegovina and he was not going to let that happen to the Željeznica River in his hometown.

Being a respected man in Fojnica, known for selflessly helping others, it did not take long before he gathered a large group of nearly 100 people, all of them sharing the same sentiment towards the small hydropower plant in construction. Little did they know this was only the beginning of what was going to become a long and painful battle.

Soon after they started gathering, the activists started experiencing pressure from all around. Police started conducting hearings; activists were randomly taken into custody and interrogated by police officers. Many of the activists were women and young adults, and many of them had had no previous encounters with police, which made the pressure even more gruesome.

But this was not the end of their troubles; winter was approaching at full speed and giving up was not an option, so Robert and other activists made an improvised shack in which they organised 24 hour-sit-in protests and took turns in watching over the river. Some nights were so cold even Robert was not sure he would be able to get through it. But he knew that surrender meant defeat and defeat meant the destruction of the river. Everyone did, so every night they stayed in the shack, freezing, but not giving up. This story quickly began to draw media attention and got a lot of coverage, not only in domestic media, but in the foreign press too.²¹ The public was intrigued by the persistence of the people of Fojnica, and they wanted to know more. This encouraged the people of Fojnica to be even braver in their mission, knowing they had moral support from all over Europe.

This sent a clear signal to the investors and local authorities that the people of Fojnica did not plan to go down without a fight. Considering this was slowing down the process of construction, local authorities decided to intensify the pressure. They cut the bus lines from Fojnica to the place where Robert and other activists were gathering, in an attempt to stop them from continuing with their activism. But this just brought people closer together,

20 Interview conducted with Robert Oroz by Sonja Kosanović on 30th of July, 2020

21 Patagonia, "The Brave Women of Bosnia", September 2018. <https://www.patagonia.com/stories/the-brave-women-of-bosnia/story-71727.html>
Bank Watch Network, "A tale of two communities successfully resisting the Balkan hydropower tsunami".
<https://bankwatch.org/story/a-tale-of-two-communities-successfully-resisting-the-balkan-hydropower-tsunami>

they formed a tight community which was based on true friendship and care for each other, and they organised their own means of transportation. At this point, it was clear that the activists were not going to allow the investors and corrupted authorities to destroy their natural heritage, so the authorities came up with another plan. Activists started receiving threats that they would lose their jobs if they continued to protest.

This meant authorities were aiming low, as this was not an environmental issue anymore – it was becoming a human rights issue. They knew, as well as Robert and other activists, that losing their jobs would be the fastest way to demoralise them from protests. But Robert was determined to keep the protests going, and so were the others. They kept gathering and preventing excavators from approaching the river. They kept defending the river with their bodies, ready to be taken into custody, ready to lose their jobs, but even then, they did not expect what was coming.

After more than 300 days of continuous watch, after being heard and identified by the police so many times, after all the threats, the peak of their struggle happened when a security guard physically assaulted several women. Robert remembers the day well as this was also the day activists tried to put up a protection fence to prevent the excavators and other machines from approaching the construction site. While they were working on the fence, a security guard approached two women, shouting, and when they stood up to him, he grabbed them by their necks and pushed them away. Robert went to the police station with the victims of the assault to report what happened, but the whole case was, as he says, covered up and the security guard

was not prosecuted, which was yet another showcase of how brutally mistreated and unprotected these activists are.

Robert tried talking to various institutions, from the Church Cardinal to ministers, but his letters and appeals went unanswered. The message was clear – activists had no safety net to fall back to. Over the course of 325 days of continuous sit-ins, more than 1100 activists had gone through the canyon of the Željeznica River, passionately protecting it, and they eventually formed an organisation to deal with this issue, which has become the biggest environmental organisation in this country.

Robert himself not only participated in the protests against the small hydropower plant on the Željeznica River, he also helped organise many others, such as the famous protest against small hydropower plants in Kruščica, for which the women who protested got the German EuroNatur award, and protests on the rivers in Višegrad, Sokolac and others.

Almost all of these protests were marked by severe violation of people's freedom of assembly, the importance of which the EU and the OSCE have stressed countless times.

Freedom of assembly, as it stands in the Guidelines on Freedom of Peaceful Assembly, complements and intersects with other civil and political rights. The right to freedom of expression is of particular relevance given the expressive nature of the assemblies that impact public opinion. Freedom of assembly also interrelates with the right to freedom of association, the right to participate in public affairs, and the right to vote.²²

22 OSCE Office for Democratic Institutions and Human Rights, Guidelines on Freedom of Peaceful Assembly, 8 July 2019, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)017-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)017-e)

The Guidelines go further in explaining that any restrictions on the right to freedom of peaceful assembly, whether set out in law or applied in practice, must be both necessary in a democratic society to achieve a legitimate aim and proportionate to such aim.²³ Law enforcement agencies should not use force at assemblies unless strictly unavoidable. Force should only be applied to the minimum extent necessary, adhering to the principles of restraint, proportionality, and minimisation of damage and the preservation of life.²⁴

Law enforcement should as far as possible avoid the use of containment or mass arrests of participants at an assembly. Such indiscriminate measures may amount to an arbitrary deprivation of liberty under international human rights law.²⁵

This should be kept in mind when one reads about the protests against small hydropower plants, where those protests were dispersed violently, where people were arrested and interrogated, and their personal belongings ruined.²⁶

One thing is clear – the authorities Bosnia and Herzegovina have not provided their citizens with the ability to exercise their freedom of assembly. And it is time to change that.

23 Ibid.

24 Ibid.

25 Ibid.

26 Ena Bavčić, “Monitoring the Right to Free Assembly”, 2018, https://ecnl.org/sites/default/files/files/BosniaHerzegovina_Monitoring-assembly-report-2018.pdf

Conclusion and Policy Recommendations

At the moment, environmental activists are not getting legal protection in Bosnia and Herzegovina. There is also no support system for them as their basic civil rights are not protected. It is time to change this.

- The EU needs assert the importance of exercising the right to free assembly of local activists, and to recognise the importance of environmental activism in Bosnia and Herzegovina. In other countries, similar activism was often the key to transiting to more sustainable sources of energy, and that is one of the conditions this country has to fulfil in its accession process to the EU.
- The EU should support strengthening of Bosnia and Herzegovina's legal system, with a specific focus on the protection of environmental activists in order to make the judicial authorities more independent for them to provide solid protection for all without discrimination. This can be done through various projects in which the public would be acquainted with environmental activism, because although this term is known in the public, its true meaning and importance are largely not. The great damage small hydropower plants cause to nature is even less widely known.

- The authorities of Bosnia and Herzegovina should be encouraged to support this kind of activism and to revise their legal system to make sure they provide protection for activists allowing them to express their opinions and conduct their actions freely, without living in fear of losing their jobs, scholarships or homes. The EU should serve as an example, it should provide funds for free legal aid for environmental activists. This would be a good start towards a more democratic society in which people can express their concerns for the environment and fight for a healthier one without fear of being ignored, snubbed or threatened without any protection.
- Also, activists should be more represented in the media. The EU could contribute here by supporting a platform through which they could reach the public. This can be done through various TV shows about environmental protection, or just as part of news reports in which activists could share the news from this area.

The environment in Bosnia and Herzegovina needs to be protected. To do so, activists need protection themselves. It is only when we can practice our fundamental rights that we can take action to protect things around us. Then and only then we can call ourselves a democratic society.

A Way Out of the Miseducation of Youth: Time to Revisit Kosovo's Textbooks

Trina Binaku

A Society Stuck in Stereotypes

The third decade of the twenty-first century finds Kosovo as a place where different socioeconomic communities face daily discrimination and human rights are frequently violated. Kosovo still remains a country where homophobia is normalised and very much present in the public and private discourse. In 2015, a global market research and a consulting firm ISPOS conducted a research on LGBT issues in the Western Balkans. Kosovo came out first among the Western Balkans countries when it comes to homophobia and homophobic stereotypes. The report noted:

“only 3 percent of Kosovars would understand and support their child if they were to find out their child is gay – whereas 97 percent of those questioned, answered negatively when asked about socializing or accepting someone of this community.”¹

Alarming statistics can be found in relation to the wellbeing of women in Kosovo as well. Being a woman in Kosovo, according to a

research done by Kosovo's Women Network (hereinafter KWN), means probably being unemployed. Only 13 percent of all women are employed, compared to 47 percent of men.² Estimates suggest that more than one-third of workers are employed in the informal economy, putting certain groups, women, the LGBTI+ community, Roma, Ashkali and Egyptian communities and other non-majority groups, like young people and children, at even higher risk of discrimination and oppression on the hands of both the institutions and the general society.

A significant amount of energy and resources have been invested, mostly by international and national non-governmental organisations, to transform Kosovo's post-war society and institutions into being more inclusive so that discrimination based on gender, sex, ethnicity, ability, age or sexual orientation is not accepted. Therefore, why do the citizens of Kosovo still struggle with sexism, homophobia, nationalism and hatred towards “the others”? One of the reasons is the formal education system. Apart from an overall fragile system, where, for example, the current Minister is suspected of plagiarism, textbooks that young people use in Kosovo legitimise discrimination as a social norm.³

1 ISPOS, “LGBT Public Opinion Poll”, 2015.

<https://www.lgbti-era.org/sites/default/files/pdfdocs/LGBT%20Poll%202015%20Western%20Balkans%20NDI%20.pdf>

2 Kosovo Women's Network, “Kosovo Gender Analysis”, 2018. <https://womensnetwork.org/publications/kosovo-gender-analysis/>

3 ORCA, “Arsimi ne rrezik si kurre me pare”, 2020. <http://orca-ks.org/sq/arsimi-ne-rrezik-si-kurre-me-pare/>

The two examples examined more closely in this paper show how the education system is failing to educate and prepare young people in Kosovo for the third decade of the twenty-first century and its European future. The textbooks used in classrooms all around Kosovo are discriminatory and contain language that promotes and legitimises sexism, homophobia, racism, nationalism and other forms of discrimination. Furthermore, these textbooks are filled with subjective information misrepresented as solid facts. Kosovo's youth deserves better. This paper proposes steps needed to change this and advocates for a stronger role of the European Union and its member states in the reforms of the education system.

Discriminatory Textbooks

Most of the textbooks, especially those that are currently being used in high schools, are not in line with the principles of equality and non-discrimination and, as such, should be changed and adapted to embrace and promote diversity rather than emphasise the differences in our society and use these differences as means for discrimination.

Most of these textbooks contain discriminatory language on the basis of ethnicity, gender, sexual orientation, socioeconomic status, age, religion or other political and personal identities. Discrimination is presented in forms of exclusion of narratives of certain groups, enforced gender stereotypes and a conservative perception of what is considered a family and other forms of discriminatory content.

The Youth Initiative for Human Rights noted in their analysis of pre-university textbooks:

”over 100 formulations containing discriminatory and exclusive language have been found. The categorisation of findings based on discrimination or exclusion reveals that textbooks are primarily loaded with discriminatory language in terms of ethnicity, gender, sexual orientation and gender identity, as well as social exclusion. Likewise, there is no lack of discriminatory language in terms of disability, economic and social status and of the use of violent language.”⁴



Something very present in these high-school textbooks is discrimination and gender stereotyping. Through textbooks young people are taught that women are inferior biological beings. This is how Psychology 11 textbook, the only psychology book used in the official curricula, addresses menstrual cycle:

4 Youth Initiative for Human Rights – Kosovo, “Discriminatory Language in School Textbooks: An Analysis Of Upper Secondary Level School Textbooks In Kosovo”, 2015, p. 9.

“we know that the menstrual cycle can affect the mathematical and verbal performance of women. This suggests that performance differences in math and verbal scores between women and men are related to their sex. ... the two brains are wired differently: the male brain to do and female brain to talk.”

“... the differentiated male brain finds it easier to face many tasks, such as talking while building something.”⁵

Psychology textbooks in the upper grades of secondary schools in Kosovo are filled with language that discriminates women, promotes sexism and portrays women as the inferior sex especially when it comes to “manly” things such as math. This phrase can be a reason for a young girl not to pursue her professional career in math or math-related sciences because she is taught that, due to her biology, she will be unable to do her job.

The effect of this content is mirrored in the labour market in Kosovo and the informal gender segregation that is in place. According to the Kosovo Gender Analysis, more women work in health institutions than men, as working in health institutions falls in line with the stereotypical gender role of women being the only caretakers. According to this analysis, “education, healthcare and trade sectors tend to employ women (48 percent of all employed women). On the other hand, we have the construction and trade sector employing mostly men, with 48 percent of all employed men in these sectors. Moreover,

according to KWN’s analysis, 80 percent of women of working age are inactive in the labour force, compared to 34 percent of men. This report also noted that:

“Men tend to be inactive because they are attending school, education or training (37%). This is the second most prevalent reason for inactivity among women; the most common reason for women’s inactivity appears to be care responsibilities at home, primarily childcare (32%). In comparison, only 1% of men attribute inactivity to their childcare responsibilities.”

Apart from having discriminatory language about women in textbooks, Kosovo youth is also exposed to alarming texts when they study history. To illustrate, grade 10 history textbook notes:

“Only during the months of NATO air bombing, the Serbian army killed about 15,000 Albanians...”⁶

This is not true and is easily disputed, also because the textbook does include a footnote to show the source of this information. According to the Humanitarian Law Center, a regional non-governmental organisation that has done thorough research on the crimes and killings during the war in Kosovo and has a full database of all reported victims during the 1999 war, around 10,000 Albanians were killed during that period, and in total there were 13,535 victims not 15,000 as presented in history

5 Nushi, Pajazit & Juniku, Neki & Bërçulli, Dashamir. “Psychology 11”, 2014, p. 80.

6 Bajraktari, Jusuf, Rexhepi, Fehmi and Demaj, Frashër. “History 10”, p. 207.



books in “historical facts”.⁷ This is not only inaccurate, but it purposefully portrays Albanians as the sole victims during the most recent war in Kosovo, which incites nationalistic and one-sided narratives among young people in Kosovo and does not include victims from non-Albanian communities.

Such content is making the process of dealing with the past in Kosovo more difficult. While there have been different initiatives and tireless work of civil society organisations since the end of the war to bring justice to victims and survivors of crimes, the content of these textbooks has a negative effect on transitional justice and dealing with the past process in Kosovo.

Moreover, one cannot find footnotes in these textbooks that show what the specific “fact” is based on. This makes all scientific and historical “facts” present

in school textbooks unreliable and not in line with the academic rules on publishing. In a country where education is a priority, it should not have been allowed for such school textbooks to be printed and distributed amongst young people for such a long time.

Who is in Charge and Was Anything Done So Far?

When going through these formulations in official school textbooks, one has to wonder: is there any law that regulates what the state of Kosovo allows to be published in official textbooks? There is and it is called the Law on Publishing School Textbooks, Educational Teaching

⁷ Humanitarian Law Center, “Kosovo Memory Book.” <http://www.kosovomemorybook.org/>

Resources, Reading Materials and Pedagogical Documentation. Adopted in 2006, this Law reads:

“The school textbooks, educational teaching resources, reading materials and pedagogical documentation are not allowed if they make propaganda against Kosovo, violate human rights and gender equality, or incite political, national, and religious hatred.”⁸ (Article 3.2)

Even the Constitution of the Republic of Kosovo, in its Article 3, reads:

“The exercise of public authority in the Republic of Kosovo shall be based upon the principles of equality of all individuals before the law and with full respect for internationally recognised fundamental human rights and freedoms, as well as protection of the rights of and participation by all Communities and their members.”⁹

Evidently, the Law and the Constitution are not being implemented. In 2015, the Ministry of Education initiated a textbook review commission to change and adapt school textbooks, but with no results. With the chaotic political situation where for the last three years Kosovo has changed government three times, this process has been set aside. In the meantime, public authorities in Kosovo continue to legitimise human right abuses by educating young

people with textbooks that explicitly promote discrimination and hatred. This breach of the Constitution, paired with a system of education that does not promote any kind of critical thinking, has created a situation where political, social and economic rights of certain marginalised groups are to some extent non-existent. Furthermore, this issue is also important in any attempt to move the dialogue between Kosovo and Serbia forward. And this is something its Constitution is demanding from Kosovo institutions. Different ethnic communities in Kosovo cannot reconcile if they are taught to hate each other in schools.

8 Law No. 02/L-67 on Publishing School Textbooks, Educational Teaching Resources, Reading Materials and Pedagogical Documentation <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2437>

9 Constitution of the Republic of Kosovo <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

Conclusions and Recommendations

Solving this issue requires immediate action, as pointed out by the work of civil society organisations and other individuals in Kosovo who share the belief that a society cannot be fully equal and democratic if its education fails to provide a space where equality is a virtue and discrimination is not accepted. This society cannot thrive and become more equal if it lacks the ground for that equality to be built. And that ground is an inclusive, up to date, modern human rights-based education system. The non-formal education that the European Union supports in Kosovo through different grants and donations will not be fully successful if formal education promotes the exact opposite values. To achieve this:

- The European Commission should include in its annual report recommendations for international human rights standards to be applied in textbooks of the education system in Kosovo, as well as share good practices and knowledge with Kosovo authorities and prioritise quality education as a human right in their policies in Kosovo;
- The European Union should demand reforms in the education system when supporting the Ministry of Education in Kosovo with grants;
- Civil society organisations should strengthen their advocacy for reforms in the education system and conduct more research on the issue;
- The Ministry of Education should develop a guide for publishers and textbook authors where standards for textbook writing are clearly set. This guide should include all the misconstructions that were identified in previous books, as well as specify that all textbooks should be careful when dealing with subjects that are related to human rights issues. This guide should also include good practices of textbook writing around the world;
- The Ministry should create a diverse review committee where all school textbooks are analysed. This committee should include scientists, gender experts, civil society activists and other experts. Only after the approval of this committee should textbooks be distributed to students;
- Furthermore, the Ministry should test textbooks and how they are perceived and welcomed by the wider public, especially by young people in focus groups with high school students. It should also de-monopolise and depoliticise contracting publishing houses to ensure high quality school textbooks.

Affirmative Action in Montenegro: Time to Open Universities for Roma Students

Elvis Beriša

Introduction

The Western Balkans are home to approximately ten to twelve million Roma living in Europe.¹ According to the 2011 census, 8,305 Roma and Egyptians lived in Montenegro; more than half of them (4,673) in the country's capital of Podgorica.² However, other estimates made by civil society organisations, put the real number of Roma in Montenegro at 10,000. Elsewhere in the world, and also in Montenegro, Roma have gone through a long history of poverty and unjustified exclusion.

Roma are officially recognised as a national minority in Montenegro. Their rights were set out in the 2007 Constitution, which grants them full equality and respect for their identity.³ The Constitution goes as far to guarantee proportional representation in public services, state authorities and local self-government to members of minority peoples and other national communities, including Roma. Unfortunately, this remains at a declarative level, because Roma do not enjoy the same rights as other

citizens of Montenegro.

Of all state administration employees, only 6 percent are Roma. Unlike other minorities, they are completely excluded from political bodies. Their education is poor and the gap between Roma and non-Roma students is persistently increasing, expected to grow even larger with the digitalisation of teaching and learning. Only six educated Roma men and women are currently employed in decision-making bodies in the entire state, but only one has the actual opportunity to influence and directly improve the living standards of the Roma community.

On many of these points, any progress depends on Roma youth receiving better education. To improve their situation, Roma in Montenegro need a higher percentage of high school and university attendance. This paper will give an overview of the shortcomings and strengths of the current system through the eyes of two young Roma and look into ways in which the European Union could help them and the Roma community in Montenegro.

1 DW, "Najveća manjina u Evropi", 17 September 2010. <https://www.dw.com/sr/najveća-manjina-u-evropi/a-17092910>

2 Statistical Office of Montenegro, "Stanovništvo Crne Gore prema polu, tipu naselja, nacionalnoj, odnosno etničkoj pripadnosti, vjeroispovijesti i maternjem jeziku po opštinama u Crnoj Gori", 12 July 2011. [https://www.monstat.org/userfiles/file/popis2011/saopstenje/saopstenje\(1\).pdf](https://www.monstat.org/userfiles/file/popis2011/saopstenje/saopstenje(1).pdf)

3 Constitution of Montenegro, Official Gazette of Montenegro, 1/2007, 38/2013 - Amendments I-XVI), 2013. <https://www.paragraf.me/propisi-crnegore/ustav-crne-gore.html>

Root of the Problem

In 2016, the Government of Montenegro adopted the Strategy for Social Inclusion of Roma and Egyptians in Montenegro, setting out goals to be achieved by 2020. One of the goals was to increase the number of Roma enrolled in higher education. As noted in the Strategy:

“2.1.6. Increasing the enrolment rate of members of the Roma and Egyptian populations in higher education institutions, with special emphasis on Roma and Egyptian women.”⁴

To achieve this, the Strategy foresaw that, through the principle of affirmative action, quotas would be set for the enrolment of a certain number of members of the Roma and Egyptian populations each academic year at higher education institutions throughout Montenegro. Additionally, the Strategy foresaw that every year there would be a budget dedicated to scholarships for students of the Roma and Egyptian populations, as well as accommodation in student dormitories.

What happened in reality is that during this period neither of the two measures were implemented and the number of Roma students receiving higher education decreased. At the beginning of the Strategy's implementation, in 2016, the number of Roma university students was 20, in comparison to an average of 20,000

students enrolled at the public University of Montenegro⁵. By 2020, that number decreased to only 13 Roma students. In the 2019/2020 academic year, 5 students were enrolled in the first year at a state university and 2 students at a private university.⁶

In July 2020, the Ministry of Human and Minority Rights announced that 6 students enrolled in this academic year.⁷ However, only one of the three affirmative action applications was successful, while two applications were firmly rejected and the applicants were called several times to pick up their documents. The only explanation they were given was that the capacity had been reached and that they could not be enrolled applying the principle of affirmative action because the Law on Higher Education does not grant Roma individuals entitlement to affirmative action, as is case with persons with disabilities.

Many Roma candidates apply for universities, but most often they do not rank high enough to get in or be awarded a scholarship. Like other students that do not rank high enough, they too are offered a place to study under the condition that they pay fees. Since Roma students are often in a less privileged financial situation, they end up unable to enrol.

In the 2020/2021 academic year, Violeta Hajrizaj, a 21-year-old Roma student, from the centre of the Roma settlement in Podgorica, applied simultaneously for a private and a state faculty, hoping that she could at least be awarded a scholarship.

4 Government of Montenegro, “2016-2020 Strategy for Social Inclusion of Roma and Egyptians in Montenegro”, March 2016, p. 31. file:///C:/Users/Berik%20A1a/Downloads/Strategija%20za%20sociojalnu%20inkluziju%20Roma%20i%20Egip%20C4%87ana%202016-2020%20i%20AP%20za%202016.pdf

5 http://unimediterran.net/fajlovi/Strategija_razvoja_visokog_obrazovanja_u_CG_2016-2020.pdf

6 Government of Montenegro, “2019 Report on the Implementation of the 2016-2020 Strategy for Social Inclusion of Roma and Egyptians”, March 2020, p. 47. <https://mmp.gov.me/biblioteka/izvjestaji> University of Donja Gorica (UDG), <https://www.udg.edu.me/>, University of Montenegro (UCG), www.ucg.ac.me.

7 Ministry of Human and Minority Rights, “Univerzitet Crne Gore je sredina bez diskriminacije”, 23 July 2020. <https://mmp.gov.me/vijesti/229695/UNIVERZITET-CRNE-GORE-JE.html?fbclid=IwAR239pOSQ9ayV69bKt9FTgAaHbraJ5xgJJ01B0Rel9wclLI6YteKCHy202k>



Unfortunately, she was rejected by the state faculty. The private faculty accepted her application but asked her to cover her own expenses. After her scholarship application was rejected both by the Ministry of Human and Minority Rights and the Ministry of Education, she turned down the offer, with a heavy heart, since she could not afford it on her own or with the help of her family.

The most obvious reason for the decline in the number of enrolments is the inefficient, unclear, and sporadic application of affirmative action, which stems from the vague legal framework of the Higher Education Law and the Inclusion Strategy. The Strategy only mentions affirmative action, and nominally determines and advises its use:

“The principle of prohibition of discrimination and equality before the law, were basic preconditions for the enjoyment of all human and minority rights, but are insufficient for ensuring the *de facto*

equality of the minority with the majority. Therefore, both international legal standards and national legislation provide for the institute of recognition of additional sets of rights to members of minorities, which is called affirmative action - preferential treatment - positive discrimination, as provided by Article 8 of the Constitution of Montenegro, which stipulates that regulations and the introduction of special measures will not be considered discrimination which are aimed at creating conditions for achieving national, gender and overall equality and protection of persons who are on an unequal position on any basis.”⁸

In addition, the Strategy mentions affirmative action in two more places, for enrolment in secondary schools and universities. The first problem is that this broad formulation does not precisely define the obligations of the educational institutions, leaving it instead to the regulation of the Law on Higher Education. The second problem is that the Law on Higher Education does not include Roma and Egyptians at all and it mentions affirmative action only with respect to persons with disabilities.⁹ A more precise definition in the Strategy would call for an amendment of the Law on Higher Education to include Roma and Egyptians in such a way that leaves no room for interpretation of the principle of affirmative action.

8 Princip zabrane diskriminacije i jednakosti pred zakonom, osnovni su preduslovi za uživanje svih ljudskih i manjinskih prava, ali nijesu dovoljni za obezbjeđenje faktičke jednakopravnosti manjine sa većinom. Zbog toga i međunarodnopravni standardi i nacionalno zakonodavstvo predviđaju institut priznavanja dodatnog seta prava pripadnicima manjina, koji se naziva afirmativna akcija - preferencijalni tretman – pozitivna diskriminacija, kao što je predviđeno članom 8 Ustava Crne Gore u kom se predviđa da se neće smatrati diskriminacijom propisi i uvođenje posebnih mjera koji su usmjereni na stvaranje uslova za ostvarivanje nacionalno, rodne i ukupne ravnopravnosti i zaštite lica koja su na bilo kom osnovu u nejednakom položaju. (2016-2020 Strategy for Social Inclusion of Roma and Egyptians)

9 Government of Montenegro, Law on Higher Education. <https://www.paragraf.me/propisi-crnogore/zakon-o-visokom-obrazovanju.html>

Violeta is a persistent young woman, driven by a curious spirit and a desire to overcome the established circumstances of her peers, who have long since left the process of education. She got involved in journalism and has been working for the RomaNet portal for a year now, successful in changing the image of the entire Roma community.¹⁰ No one in her family has graduated from university and she is eager to end that cycle. Unfortunately, she cannot rely on the financial support of her parents or her Roma community. The Montenegrin education system is not helping her either. She has already applied twice, once in 2019 and again in 2020, to study at the Faculty of Political Sciences, Department of Journalism. Both times, her application was rejected. In her own words, she felt discouraged by the student service, which told her it would not be worth applying since all the positions had been filled by better candidates.

Had the strategic document, adopted by the government in 2016 and foreseeing the institute of affirmative action, been implemented, Violeta would have been admitted to her studies already in 2019. The university would have been obliged to accept her application, but also make her learning materials available free of charge.

This year, the non-governmental organisation Phiren Amenca, working on Roma issues and based in Podgorica, wrote to the Ministry of Human and Minority Rights of Montenegro and the University of Podgorica, demanding they allow Violeta to enrol in journalism studies on the basis of affirmative action. The Ministry issued a recommendation to the University to enrol Violeta, however, their recommendation is not binding. To facilitate Roma inclusion in higher education, the University in Podgorica should enable increased enrolment of young people from the Roma

community. In personal conversation with Violeta, on the prospect of her enrolment this year, she said:

“There were promises that I would be enrolled, but I have not been yet. However, that does not mean I do not hope to be part of the student team one day. As I have been working as a journalist for a year now, I have some experience and knowledge that I hope will recommend me.”

In 2019, Benjamin Šalja applied to study at the Faculty of Electrical Engineering (Department of Applied Computing). The University rejected him, giving his bad grades as a reason. In 2020, with the support of the non-governmental organisation Phiren Amenca, Benjamin finally enrolled at the University. In a conversation with Benjamin, he revealed that he will be the first one in his family to go to University and he was not hiding his excitement:

“I am proud to have been accepted this year and to be able to say that I am a student of the Faculty of Electrical Engineering. I am a positive example for my community.”

In order to make it easier for other Roma, like Benjamin, to become part of higher education, affirmative action needs to be a rule and not an exception applied irregularly. This will encourage young Roma and increase the number of applications by the Roma communities' members, resulting in an increased number of educated Roma that will have a beneficial effect on the entire state system.

¹⁰ RomaNet, the first Roma media portal in Montenegro, <https://romanet.me/>

Conclusion and Recommendations

Affirmative action nominally exists in law, but due to its vagueness, educational institutions do not apply it regularly to Roma and Egyptians. Rejections of applications are justified by the fact that the Law on Higher Education does not explicitly state that affirmative action must be applied to individuals from the Roma and Egyptian communities. When an application passes, it is due to a discretionary act of benevolence by the dean or rector, not a binding rule that educational institutions have to observe in accordance with the law.

As young Roma and Egyptians leave secondary, predominantly vocational, schools with mostly poor performances, they often do not meet the criteria for enrolment at colleges. Discouraging those who see their professional life through the prism of broader education leads to absolute demotivation and giving up further attempts. A clear message is sent that they are not ready enough, that they do not have the support of the system and that they need to invest their energy into something else.

It is time for practice to take a different form and for positive discrimination to make positive changes. The Roma youth want to pursue higher education and

help take their community out of the vicious circle of multidimensional poverty. Now more than ever, the state needs to recognise the improper use of affirmative action, improve conditions of applying and make a long-term investment in the prosperity of the Roma communities.

- Since Universities do not find themselves bound by strategic documents adopted by the Government of Montenegro, the Parliament of Montenegro (together with the Government) need to introduce changes to the Law on Higher Education. These changes should specifically stipulate the application of affirmative action to students from the Roma communities in a way that Articles 93 and 99 of the Law on Higher Education do for persons with disabilities.
- The European Union and its Member States should expect and demand that the Government of Montenegro enable and empower more Roma students to access higher education.
- Revise the Strategy to avoid vague language, and clearly list all minority groups that are beneficiaries of affirmative action, such as Roma and Egyptians.

Youth on the Margins: Right to Education for Youth with Disabilities in North Macedonia

Ardita Vejseli

“I am Cako”

Aleksandar Matovski Cako was born in 1991 in Skopje. In 2006, he finished primary, and then four years later secondary education. In 2019 he graduated from Pedagogical Faculty of the public university in Skopje.¹ During his studies, Cako took part in several Erasmus+ youth exchanges across the EU. The Erasmus experience had an immense impact on his life not only because he met new friends but also because he widened his horizons. In North Macedonia, Cako is well-known for his human rights activism. He advocates/champions issues related to inclusion of people with disabilities with several non-governmental organisations.² As of the beginning of this year, he has been working for the City of Skopje as a representative for the social, child and health sector. Cako is a man with many interests. In February 2020, he published a collection of poems he has been writing for ten years. He also has a brown belt in karate and is an active member of a dance club. Once a month, he hosts a radio show and, from time to time, he contributes as a journalist to local newspapers. As a human rights activist for people with disabilities,

he also had the opportunity of speaking at the UN headquarters. When he was three months old, Cako was diagnosed with Down syndrome.

Cako encountered discrimination throughout his life. People either viewed him differently or were sceptical about his achievements.

“People would doubt my professional or even love life, because they could not grasp the idea that a young person with disability, or more specifically a person with Down syndrome can actually lead a life just as any other person would.”³

But among young people with disabilities in North Macedonia, Cako is an exception, since not everyone has or is provided with the support and opportunity that Cako had. When asked about how he managed to achieve so much, Cako pays great tribute to the significant support of people such as family, teachers, and friends. During our conversation, Cako said “not everyone has

1 RadioMof, Aleksandar Matovski Cako graduated from the Pedagogical Faculty [Александар Матовски Цако дипломираше на Педагошкиот факултет], 27 September 2019,

<https://www.radiomof.mk/aleksandar-matovski-cako-diplomirashe-na-pedagoshkiot-fakultet/>

2 Interview with Aleksandar Matovski Cako, June 2020.

3 [Луѓето не можеа да сфатат дека младо лице со попреченост, со Даунов синдром, може да има професионален живот па дури и љубовен живот исто како и другите млади] Ibid.

the opportunities I had.”⁴ This is a powerful reminder of the importance of education and of having a supportive environment.

This paper presents findings of the analysis of the educational legal framework for youth with disabilities in North Macedonia, alongside with the factual everyday situation they face due to inaccessibility to educational institutions. The paper advocates, specifically, for further improvements in accessibility, through infrastructural means as well as adequate learning material, based on the findings of the factual situation.

Emerging Laws and Policies

To provide youth with disabilities with proper mechanisms to exercise their right to education, it is important to develop a conceptual framework for a rights-based approach to education, which is going to improve the education legislation and policy in a country. Such a conceptual framework should be based on three main rights: right to access education, right to quality education and respect for the rights within education.⁵ Firstly, the right to access education contributes to removing barriers including physical, mobility, communication and attitudinal barriers to education faced by youth with disabilities; supporting parents for them to support their children’s access to education; and ensuring access to and availability of inclusive education, supported by the necessary resources, measures and adaptations within schools to accommodate different needs. Secondly, the right to quality education

raises investment in and support for teachers to enable them to teach in inclusive environments; rights-based learning in which assessment processes are sensitive to the situation of children with disabilities, including their language and culture. Finally, respect for the rights within education contributes to increasing the respect for identity by recognising, for example, the right of children with visual impairments to embrace their culture and language through provisions for learning in sign language.⁶

Having in mind the conceptual framework, two clusters of sources stand out of primary importance – international law and national law and policies. Within the frame of the former, the Convention on the Rights of Persons with Disabilities (CRPD) and the European Convention for the Protection of Human Rights and Fundamental Freedoms are highly relevant. Within the frame of the latter, there are three key formal education laws and the Anti-Discrimination Law.

The Convention on the Rights of Persons with Disabilities (CRPD) is the main international treaty which specifically provides detailed provisions on the rights of people with disabilities and it has been ratified by North Macedonia. Article 9 of the Convention specifically tackles the issue of accessibility and affirms that states should undertake appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications and to other facilities and services open or provided to the public. Article 24 of the Convention specifically tackles the issue of education, and affirms the right of people with disabilities to inclusive education without discrimination, obliging

4 Ibid.

5 UNICEF, Regional Office for Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS), “The Right of Children with Disabilities to Education: A Rights-Based Approach to Inclusive Education”, page 30, Geneva, 2012
https://www.unicef.org/disabilities/files/UNICEF_Right_to_Education_Children_Disabilities_En_Web.pdf

6 Ibid, pages 31-32.

states to undertake measures for the equal participation of people with disabilities in education, and to ensure the education system is accessible, and that all support measures they need within education are being provided.

The European Convention for the Protection of Human Rights and Fundamental Freedoms, an important convention on protecting human rights, has also been ratified by North Macedonia. Article 14 of the Convention tackles anti-discrimination and Article 2 of Protocol 1 addresses the right to education. However, the country does not have a proper track record when it comes to cases involving youth with disabilities before the European Court of Human Rights in Strasbourg. One such case is that of *L.R. v. North Macedonia*.⁷

At the national level, North Macedonia has inclusive laws on primary and secondary education. It has also drafted a National Education Strategy. According to these laws, North Macedonia's education includes youth with disabilities in the regular education programme.⁸ It aims not only to give youth with disabilities the opportunity of quality education, but also to break the stigma among youth, leading to less discrimination and exclusion. Also, the legal framework is developed with the aim of full harmonisation with the CRPD.

The 2019 Law on Primary Education, as amended, has a number of provisions that foresee the inclusion of youth with

disabilities in the education process.⁹ It incorporates disability as a ground for discrimination, which ensures formal equality. It includes articles on the regulation of inclusive education for youth with disabilities in regular primary schools; the drafting of individual education plans; prescribing the forms of support for students with disabilities to be provided, such as teaching assistants, personal assistants, inclusive teams in primary schools, and assistive technology.¹⁰ Yet, this comprehensive law has also been criticised, for example, because it uses the term "reasonable adaptation" when referring to the organisation of the education process and satisfying the individual needs of pupils/students. This leaves room for educational institutions to adapt the provision as it suits their procedures, thus not distinguishing between reasonable accommodation and accessibility.¹¹

The 2020 Anti-Discrimination Law¹² outlaws discrimination on the grounds of disability, ethnicity and age in the field of education. It also prohibits both multiple and intersectional discrimination and recognises lack of provision of reasonable accommodation as a ground for discrimination.

The 2018-2025 Education Strategy aims at improving and adapting the educational infrastructure, curricula and textbooks for students with special educational needs, as well as ensuring the competences

7 For more see: European Court of Human Rights, Case of *L.R. v. North Macedonia* (Application no. 38067/15) Judgement, Strasbourg, 2020 <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-200433%22%5D%7D>

8 It should be noted that segments of inclusive education can also be found in other laws, by-laws, and strategies that regulate the education system and educational institutions.

9 Law on Primary Education, Official Gazette of the Republic of North Macedonia, No. 161/2019, 05.08.2019 [Закон за основно образование, Службен весник на Република Северна Македонија, бр. 161/2019], <http://www.slvesnik.com.mk/Issues/dc070a58a138483aa68da4517a10ac1e.pdf>

10 An individual education plan represents a special document, drafted by a teacher, that plans additional support in the education and upbringing of certain students, in accordance with their capabilities.

11 European Union Agency for Fundamental Rights, Aleksandra Bogdanovska, Ali Musliu, Biljana Kotevska, Elena Kočoska, Gordana Bužaravska, Magdalena Lembovska, Nesime Salioska, Simonida Kacarska, Vigjilence Abazi, "Franet National contribution to the Fundamental Rights Report 2020 – North Macedonia", page 32, 2020, https://fra.europa.eu/sites/default/files/fra_uploads/north-macedonia-frr2020_en.pdf#page31

12 Law on the Prevention and Protection against Discrimination [Закон за спречување и заштита од дискриминација], Official Gazette of the Republic of North Macedonia No.258/2020.

of teachers and professional services working with students from these groups.¹³ The goals of the strategy are also defined in a way to allow adjustment and consistent implementation of the concept of inclusive and multicultural education, improvement of the educational infrastructure, in order to provide greater inclusiveness, availability, digitalisation and providing full coverage of all educational needs for people with disability in the education system.¹⁴

While the laws and strategies currently in place seem to be improving, their implementation is very slow. The programmes and curricula in schools do not take into consideration the learning particularities of youth with disabilities, therefore they are not being developed as per legal provisions.¹⁵ The implementation, especially of the Convention on the Rights of Persons with Disabilities, is slow and there are still gaps in the harmonisation of the national legislation with the provisions of the aforementioned Convention. Also, there is a need for the recommendations from international working bodies to be implemented.¹⁶ The UN Committee on the Rights of Persons with Disabilities has mentioned, among other concerns, the lack of support, resources and qualified training of teachers and auxiliary staff to foster inclusion. It has also tackled the need for revision of the Law on Primary Education to include disability as a ground for discrimination and prohibit denial of reasonable accommodation as a form of disability-based discrimination.¹⁷ So far, as

mentioned above, only the Law on Primary Education has incorporated disability as a ground for discrimination, however, denial of reasonable accommodation is not mentioned as a form of discrimination. This leaves room for further harmonisation with the CRPD as per the recommendations of international working bodies.

Questionable Reality

According to the Friedrich Ebert Stiftung's Youth Study, young people in North Macedonia think that youth with disabilities should have equal rights but perceive them as one of the most discriminated groups in society.¹⁸ This perception comes not from the legal or governmental documents, but from the everyday reality on the ground, in particular when it comes to the lack of proper education and overall accessible facilities and materials to meet the needs of youth with disabilities. Due to inaccessible facilities and schools failing to implement legislative solutions, programmes not specifically tailored for the needs of youth with disabilities, lack of training for teachers, and difficulties the parents face during their child's educational years, youth with disabilities cannot fully exercise their right to education.

Due to the vast spectrum of disabilities, barriers are different for each individual. For example, youth with physical disabilities often face barriers different to

13 Ministry of Education of the Republic of North Macedonia, 2018-2025 Education Strategy [Стратегија за образованието 2018 – 2025], 2018, <http://mon.gov.mk/page/?id=2048>

14 Ajshe Ajrulaj, Snezhana Trpevska, Zhaneta Chonteva, Research on the current state of inclusion of children with special educational needs in primary education in Republic of North Macedonia [Истражување на актуелната состојба на инклузија на децата со посебни образовни потреби во основното образование во Република Северна Македонија], December 2018, <https://www.bro.gov.mk/wp-content/uploads/2020/02/Aktuelna-sostojba-na-inkluzija-na-deca-so-posebni-obrazovni-MK.pdf>

15 Interview with a special educator in Skopje, June 2020.

16 The harmonisation of national legislation with the Convention on the Rights of Persons with Disabilities and other recommendations of international working bodies are also requested in the 2020 European Commission Country Report for North Macedonia. For more, see: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/north_macedonia_report_2020.pdf

17 United Nations Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the former Yugoslav Republic of Macedonia CRPD/C/MKD/1, 29.10.2018, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx>

18 Friedrich Ebert Stiftung, "Youth Study for North Macedonia 2018/2019", March 2020, <http://library.fes.de/pdf-files/id-moe/15266.pdf>



those of youth with intellectual disabilities. This situation is even more complex in cases where the disability is compounded or intersects with other elements, such as ethnicity – an important ground for discrimination in North Macedonia’s context, resulting in additional limitations for youth with disabilities from different ethnicities, such as not being able to study in their own mother tongue.¹⁹ The Ministry of Education and Science does not keep records on the type of disability of the students enrolled in regular primary schools, leaving schools to determine, using their own methodology, the special

educational needs.²⁰ The lack of data highlights the need to enhance the capacities of the aforementioned Ministry to identify and monitor the needs of youth with disabilities who are enrolled in education.

Accessibility is one of the key issues that youth with disabilities face. Infrastructural accessibility is the number one problem when it comes to youth with physical disabilities. Wheelchair ramps are missing, and families with children with disabilities often have to personally cover the costs of adjusting school toilets or making other reconstructions in schools for them to be accessible to their children. In some cases, accessible ramps, toilets or even indoor facilities are not provided even in special schools.²¹ On the other hand, young people with intellectual disabilities and sensory disabilities face even greater barriers. There is a general lack of properly-trained educational staff and appropriate educational materials. In addition, the situation is further aggravated for youth belonging to non-majority ethnic minorities, since they do not have access to the needed education in their mother tongues. For example, there is a lack of speech therapists and professionals who can teach in the Albanian language, and a shortage both of books in Braille and professionals teaching in the Albanian sign language, which makes it harder for Albanian youth with disabilities to learn in their own mother tongue. This is also the case for other ethnicities in the country.²² This clearly illustrates how youth with disabilities may face multiple discrimination.

19 As North Macedonia has two official state languages, the Macedonian language and the Albanian language, educational institutions provide education in both languages. Albanian students in North Macedonia, until secondary education and, in many cases, the university, follow their studies in their mother tongue. However, the situation differs for some categories of youth with disabilities as there are no options for them to follow education in their mother tongue. This also is the case for the Roma, Serbian and Turkish students.

20 Helsinki Committee for Human Rights of the Republic of Macedonia, Elena Kochoska, Zvonko Shavreski, Vesna Jovanova, Vladimir Lazovski, “Analysis of the situation of people with physical disabilities in the Republic of Macedonia, pages 32-39, 2017, <https://mhc.org.mk/wp-content/uploads/2017/11/Analysis-of-the-situation-of-people-with-physical-disabilities-in-the-Republic-of-Macedonia.pdf>

21 Ibid.

22 Interview with a special educator in Skopje, June 2020; Interview with a representative from PolioPlus – Movement against disability in Skopje, June 2020.

Furthermore, parents of youth with disabilities face difficulties as well.²³ A research done by the Macedonian Helsinki Committee showed that some parents are not satisfied with inclusive education. They believe that there is no real inclusion in the country and that it is up to the parents and their personal resources to enrol their children in education. Also, parents of children with disabilities agree that there is a lack of special education and speech therapists in schools, as well as textbooks for secondary vocational education of people with disabilities, and that there are not enough lessons for them to gain skills and know-how in special education.²⁴

Thirdly, professional staff is not sufficiently trained and sometimes special educators are wrongly perceived. In many cases, special educators work in different schools at the same time, making it impossible for them to focus on each child individually.²⁵ A research done by UNICEF and the Ombudsman of North Macedonia, showed that teachers do not have the appropriate knowledge and skills to work with students with disabilities or for the individualisation of the teaching process. What is especially difficult for them is the development and implementation of individual education plans and assessing students who study according to individual educational plans.²⁶ Special educators face problems when implementing the teaching programmes. Some teaching programmes foreseen

in laws are the same for both students with disabilities and students without disabilities. However, these shared programmes do not provide adequate education for youth with disabilities, as the pace of studying might not be appropriate for them; such programmes rarely take into consideration the specific needs of youth with disabilities.²⁷

The reality on the ground regarding teaching assistants, personal assistants, inclusive teams in primary schools, and assistive technology is difficult. According to a report published by the Office of the Ombudsman of the Republic of North Macedonia, in the first three months of the implementation of the Law on Primary Education, in the schools in the City of Skopje, only 26 percent of the required teaching assistants and 73 percent of the required personal assistants were provided.²⁸ Also, many of the teaching assistants, personal assistant or inclusive teams are mainly financed through UNDP projects dedicated to inclusive education, which means that the municipalities and the state allocate little money to schools which have enrolled students with disabilities. At the start of the 2019/2020 school year, the funds provided by UNDP were dispersed into a number of municipalities, leaving some municipalities that were mainly dependent on UNDP with less funds for teaching and personal assistants.²⁹

23 From the existing data and studies, almost every research addressed the perspective of parents of youth with disabilities and the access of their children to education system, as these factors are important to evaluate, when necessary, what difficulties they face as well.

24 Helsinki Committee for Human Rights of the Republic of Macedonia, Doc. Dr. Natasha Stojanovska-Trajkovska, Prof. Dr. Sofija Georgievska, Doc. Dr Aleksandra Karovska Ristovska, Doc. Dr Biljana Karovska Andonovska, Doc. Dr Olivera Rashich-Canevska, "Analysis of the situation of people with intellectual and combined disabilities in the Republic of Macedonia" 2017, pages 14-19, https://mhc.org.mk/wp-content/uploads/2017/11/Analiza_intelektualna_ANG__3_.pdf

25 Helsinki Committee for Human Rights of the Republic of Macedonia, Elena Kochoska, Zvonko Shavreski, Vesna Jovanova, Vladimir Lazovski, "Analysis of the situation of people with physical disabilities in the Republic of Macedonia, pages 32-39, 2017, <https://mhc.org.mk/wp-content/uploads/2017/11/Analysis-of-the-situation-of-people-with-physical-disabilities-in-the-Republic-of-Macedonia.pdf>

26 UNICEF MK, Inclusion of children and young people with disabilities in the regular secondary education, <https://www.unicef.org/northmacedonia/media/4276/file>

27 Interview with a special educator in Skopje, June 2020.

28 Ombudsman of the Republic of North Macedonia, Annual Report on the degree of ensuring, respecting, advancing and protecting human rights [Годишен Извештај За Степенот На Обезбедувањето, Почитување, Унапредување и Заштита На Човековите Слободи и Права], March 2020, <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2019/GI-2019.pdf>

29 Сакам да кажам, Municipalities did not provide enough money for assistants for children with disabilities, they hope for foreign assistance [Општините не предвиделе доволно пари за асистенти на децата со попреченост, се надеваат на странска помош], 23.09.2019,

In conclusion, drawing on the above sections, the country has an obligation to undertake all necessary adjustments to the educational and learning environments in order to make them accessible and inclusive. However, this is lacking in practice.

Conclusions and Policy Recommendations

WCako's incredible story shows how youth with disabilities, if given the proper tools, means and opportunity to find their place in society, can flourish. Such support now goes beyond family and friends, and is largely stipulated by national legal documents. However, their implementation is still at an early stage. It must accelerate if all youth with disabilities are to have opportunities and prospects to flourish like Cako has. The European Commission's country reports have addressed the need for reforms in the area of education. In order to achieve this, institutional efforts and strong political will are needed. In addition, various steps must be undertaken to ensure accessibility and professional teams, as well as tailored curricula and materials for all youth with disabilities enrolled in the educational system.

- The EU needs to specifically address the issue of education for youth with disabilities in its reports and give specific recommendations to the country in the direction of tailoring action plans and providing specific state funding on improving the fulfilment of needs of youth with disabilities in educational institutions.
- Serious steps must be taken to fully implement the provisions of

the Convention of the Rights of Persons with Disability and the recommendations of international working bodies as the key international standards that specifically address the needs of people with disabilities.

- Great importance should be placed on the training of teaching staff. For that reason, projects and funds for further education of teachers, special educators and assistants should be allocated. This could be done through the programmes of UNICEF, as a beneficiary of EU funds, but also through organisations of people with disabilities and the Ministry of Education and Science in North Macedonia, as well as the Ministry of Labour and Social Policy. However, the allocation of funds should also be monitored by the EU and relevant, qualified experts.
- Specific funds should be allocated for the reconstruction of facilities in all schools in order to bring them up to the CRPD's accessibility standard for all types of disabilities.
- Funds should be allocated for the re-writing of educational materials in Braille, in all constitutionally recognised languages, as well as audio books in the aforementioned languages.
- Erasmus+ programme should continue to support youth exchanges and calls for funding organisations should specifically stipulate the inclusion of youth with disabilities in projects, as well as mainstreaming of the topic of disability.

Women and Girls with Disabilities in Closed Institutions in Serbia

Valentina Lepojević

Introduction

The rights of some 23,000 persons living in closed institutions across Serbia are widely violated.¹ They are at risk of neglect, abuse, and violence. Among them, women and girls with disabilities are in particular danger, due to intersectional discrimination on the grounds of gender, disability, and place of living. It is deep-rooted stereotypes and prejudices that make them more vulnerable and marginalised.² The position of women and girls with disabilities living in closed institutions in Serbia is worse than the position of men with disabilities and other women of their age group.³ Furthermore, their protection from rights violations and violence in institutions is insufficiently defined by Serbian legislation and public policies. When creating policies for improving the situation of persons with disabilities, as well as policies on gender equality or the prevention of violence against women, women with disabilities, especially women with mental disabilities

(intellectual and psychosocial disabilities), are often left out.⁴

Dignity, autonomy and independence, and the full and effective participation and inclusion in society of persons with disabilities are the foundations of the right to live independently and be included in the community.⁵ Thus, it is necessary to carry out the process of deinstitutionalisation and abolish guardianship regimes based on the deprivation of legal capacity.

This paper draws its data and conclusions from different sources: international contacts and reports, national legislation, publications of CSOs, and experts in the field. The most important reference in this paper is the UN Convention on the Rights of Persons with Disabilities (hereinafter CRPD), and other relevant documents of the CRPD, especially the General Comment on article 19: *Living independently and being included in the community*, as well as Chapter 19 - Social policy and employment according to which, it is necessary to carry out a social reform in Serbia under the process of European integration.⁶ Further,

1 Closed institution refers to any residential care: social welfare institutions for placement of children and youth, institutions for children with disabilities, institutions for placement of adults and the elderly, institutions for adults with disabilities, adults with intellectual and psychosocial disabilities.

2 UN, WomenWatch, "Women with Disabilities", <https://www.un.org/womenwatch/enable/>

3 Mental Disability Rights Initiative MDRI-S, Kosana Beker, Tijana Milosevic, "Violence against women with disabilities in residential institutions", 2017. (edition in the Serbian language)

4 Mental Disability Rights Initiative MDRI-S, Biljana Janjic, Dragana Ciric Milovanovic, "Here the walls have ears too: testimonies of women with mental disabilities about gender-based violence in residential institutions", 2017, <https://www.mdri-s.org/wp-content/uploads/2018/02/Publikacija-engleski.pdf>

5 CRPD, General comment on article 19: Living independently and being included in the community, CRPD/C/18/1, August 2017.

6 Ibid.; Screening report Serbia, "Chapter 19 - Social policy and employment", January 2016.

https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/serbia/screening-reports/screening_report_ch_19_serbia.pdf

testimonies of women with mental disabilities about gender-based violence in closed institutions are a valuable asset to this paper, and the credits go to the advocacy organisation Mental Disability Rights Initiative of Serbia (MDRI-Serbia) which published in 2017 the results of group and individual interviews with women with disabilities (ages 25-60) with history of institutionalisation or living in an institution at that moment.⁷

Life in Serbia's Closed Institutions

Life in closed institutions is characterised by a lack of privacy, inability to make decisions, social exclusion and isolation, and exposure to a high risk of violence, abuse, and neglect.⁸ As of July 2020, 14,512 people are beneficiaries of the 74 institutions established by the state, and 8,617 people are beneficiaries of 229 private institutions.⁹

Closed institutions in Serbia are characterised by a large number of beneficiaries in a small space.¹⁰ Many institutions have over 300, and some up to 900 beneficiaries, and in a few of them, the number of beneficiaries exceeds their capacities.¹¹ Conditions in institutions are not dignifying: rooms are crowded, with three, four, and up to eight beds, and in some institutions, beneficiaries are not

separated according to their age, sex, gender and/or disability.¹²

According to the testimonies of women with mental disabilities who are beneficiaries of closed institutions, published by the Disability Rights Initiative MDRI-S in 2017, they are expected to strictly follow day-to-day routines and schedule of activities: sleeping and waking up at a given hour, eating, participating in daily activities, and leisure time, if organised. They usually stay locked in their rooms or other premises without the opportunity to freely leave the institution or even their room. Hygiene habits, followed by the lack of privacy make their life demeaning: bathrooms and toilets are for common use, often with no doors at all or with doors that cannot be closed or locked. Showering is oftentimes performed in groups, sometimes only once or twice a week (e.g. for women who need more intensive support, based on the degree of disability). They do not own their clothes or private things and there are no places and cabinets for private belongings.¹³

Even though these conditions also affect men, women are more in distress: they do not have their own hygiene products, sanitary pads are part of the monthly distribution, and women must ask employees when they run out or even use diapers instead of sanitary pads.¹⁴ The inability to perform proper menstrual hygiene puts women's and girls' health, well-being, mobility, and dignity in a vulnerable position, and

7 Mental Disability Rights Initiative MDRI-S, Biljana Janjic, Dragana Ciric Milovanovic, "Here the walls have ears too: testimonies of women with mental disabilities about gender-based violence in residential institutions", 2017, <https://www.mdri-s.org/wp-content/uploads/2018/02/Publikacija-ingleski.pdf>

8 Ibid.

9 Ministry of Labour, Employment, Veteran and Social Affairs of the Republic of Serbia, "Social welfare institutions for the accommodation of beneficiaries and social welfare organisations for accommodations of beneficiaries", July 2020.

10 Mental Disability Rights Initiative MDRI-S, Dragana Ciric Milovanovic, Milan M. Markovic, "Torture and ill-treatment in the context of persons with disabilities", 2013. (edition in the Serbian language)

11 The Republic of Serbia Protector of Citizens, "National preventive mechanism 2017 report", 2018. https://npm.lis.rs/attachments/article/372/NPM_eng_final.pdf

12 The Republic of Serbia Protector of Citizens, "Reports", https://npm.lis.rs/index.php?option=com_content&view=category&layout=blog&id=23&Itemid=14; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/40/59/Add.1, January 2019.

13 Mental Disability Rights Initiative MDRI-S, Biljana Janjic, Dragana Ciric Milovanovic, "Here the walls have ears too: testimonies of women with mental disabilities about gender-based violence in residential institutions", 2017, <https://www.mdri-s.org/wp-content/uploads/2018/02/Publikacija-ingleski.pdf>

14 Ibid.

at risk of reproductive tract infections, mental health issues, early and unwanted pregnancy, and gender-based violence.¹⁵ As stated in previously mentioned testimonies, one woman said:

“Here, a person cannot satisfy basic physiological needs when he/she wants, but when there is a scheduled time for that.”¹⁶

Furthermore, women with disabilities, mostly women with mental disabilities, are exposed to violence by other beneficiaries and employees. As a result of isolation from the rest of society, they are at a higher risk of sexual violence (harassment and abuse), which they generally choose not to report because of absence of adequate reactions or lack of information whom to contact for support, followed by fear and feeling of helplessness. When they report violence and abuse, they face barriers to access justice, as there is a lack of adequate procedural safeguards, which can lead to doubts about the credibility of their statements and the rejection of their complaints.¹⁷

The COVID-19 pandemic has further reinforced the need for deinstitutionalisation: the risk of the virus spreading in institutions is high, and there is a lack of external oversight, aggravated by the use of emergency powers for health reasons, which is problematic because, in a situation of rigorous quarantine, the risk of violence in a closed institution is more

acute.¹⁸ During the lockdown, the Ministry of Labour, Employment, Veteran, and Social Affairs of Serbia introduced strict measures: the prohibition on visits and movement in social welfare. Beneficiaries were also forbidden to leave their rooms. However, placement in closed institutions is still possible with a negative coronavirus test and going into isolation within the premises of the institution.¹⁹



Real-Life Consequences of Deprivation of Legal Capacity/Guardianship

The issue of deprivation of legal capacity is inseparable from institutionalisation

15 UNICEF, “Guidance on Menstrual Health and Hygiene”, 2019. <https://www.unicef.org/wash/files/UNICEF-Guidance-menstrual-health-hygiene-2019.pdf>

16 Quote from: Mental Disability Rights Initiative MDRI-S, Biljana Janjic, Dragana Ciric Milovanovic, “Here the walls have ears too: testimonies of women with mental disabilities about gender-based violence in residential institutions”, 2017, <https://www.mdri-s.org/wp-content/uploads/2018/02/Publikacija-ingleski.pdf>

17 Mental Disability Rights Initiative MDRI-S, Biljana Janjic, Dragana Ciric Milovanovic, “Here the walls have ears too: testimonies of women with mental disabilities about gender-based violence in residential institutions”, 2017, <https://www.mdri-s.org/wp-content/uploads/2018/02/Publikacija-ingleski.pdf>

18 UN rights expert, Ms. Catalina Devandas, “COVID-19: Who is protecting the people with disabilities?”, March 2020. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25725&LangID=E>

19 Decisions of the Ministry of Labour, Employment, Veteran and Social Affairs of the Republic of Serbia regarding the epidemiological situation caused by SARS-CoV-2 virus are available in Serbian <https://www.minrzs.gov.rs/sites/default/files/vanredno-stanje/Pregled%20akata%20V18%20zavrsena.pdf>

because people living in closed institutions are mostly deprived of legal capacity.²⁰ Throughout history, persons with disabilities have been exposed to a widely accepted practice of discriminatory attitudes affecting their position in society, and that behaviour is deeply rooted in practices of courts in proceedings and lead to the deprivation of legal capacity.²¹

The practice of deprivation of legal capacity is widespread in Serbia.²² In most cases, the existence of a disability, in the form of a medical diagnosis, is a reason for the deprivation of legal capacity.²³ The legal framework of the Republic of Serbia defines the possibility of total and partial deprivation of legal capacity.²⁴ Total deprivation (plenary guardianship) means that the legal capacity of a person is equal to the legal capacity of a younger minor (child below the age of 14), and in the case of partial deprivation (partial guardianship), legal capacity is as of an older minor (child between the age of 14 and 18).²⁵ Also, there are other legal actions to impose plenary or partial guardianship over adults with disabilities.²⁶ In other words, a system that allows deprivation of legal capacity strips a person of basic rights and puts her/him

under the guardianship of another person/ institution, which leads to the person's loss of individual autonomy and dignity, a situation known in old Rome as "civil death".²⁷ There is the possibility of restoring legal capacity, however, because of the situation that the existence of a disability is often the only reason for deprivation of legal capacity, which is unlikely to cease or disappear, court practice regarding this matter is relatively rare.²⁸

These conditions particularly affect women with disabilities in closed institutions, mostly women with mental disabilities, because in the case of legal capacity deprivation, their right to decision making in institutions is further aggravated. Consequences of deprivation of legal capacity are very serious, complex, and far-reaching: they cannot make decisions in their own name, choose where they want to live and with whom, dispose of property, marry, decide on pregnancy, vote, which further exposes them to stigmatisation and non-acceptance in society.²⁹ All of these decisions are in the power and at the will of their legal guardians, who are obligated to act in the best interest of the person deprived of legal capacity.

20 76.2% of adult beneficiaries in closed institutions were deprived of legal capacity, while in most cases there is no consent for institutionalisation for other beneficiaries. Mental Disability Rights Initiative MDRI-S, Dragana Ciric Milovanovic and others, "The hidden and forgotten – Segregation and neglect of children and adults with disabilities in Serbia", 2013. <https://www.mdri-s.org/wp-content/uploads/2013/10/the-hidden-and-forgotten-2013-12-17.pdf>

21 Mental Disability Rights Initiative MDRI-S, Kosana Beker, "Deprivation of legal capacity – Law and practice in the Republic of Serbia", 2014. (edition available in Serbian)

22 From January 2013 to January 2016, there were 5.280 cases in 56 basic courts in which decisions were made on someone's legal capacity, and in 90% of cases, persons were fully or partially deprived of their legal capacity. Mental Disability Rights Initiative MDRI-S, Kosana Beker, Tijana Milosevic, "Serbia Country Report on legal Capacity – Court practice and legislation in Serbia 2016", 2016. <http://www.mdri-s.org/wp-content/uploads/2013/10/2016-Country-report-Legal-Capacity-1.pdf>

23 Report of Nils Muiznieks, Commissioner for Human Rights of the Council of Europe following his visit to Serbia from 16 to 20 March 2015.

24 Family law of the Republic of Serbia and Law on Non-Contentious Proceedings.

25 Ibid.

26 For example, the Serbian law prescribes the possibility of extension of parental rights which means that parental rights can be extended before a child reaches the legal age of adulthood if a child, because of illness or difficulties in psychological or physical development, is incapable of taking care of and protecting his or her rights, or if he/she threatens his or her rights and interests with their own actions. Mental Disability Rights Initiative MDRI-S, Kosana Beker, Tijana Milosevic, "Serbia Country Report on legal Capacity – Court practice and legislation in Serbia 2016", 2016. <http://www.mdri-s.org/wp-content/uploads/2013/10/2016-Country-report-Legal-Capacity-1.pdf>

27 Initiative for Inclusion VelikiMali, Kosana Beker, "My right to make decisions – depriving persons with disabilities of their legal capacity: recommendations for harmonizing Serbia's national legislation and legal capacity system with the Convention on the Rights of Persons with Disabilities", 2014. <http://www.mdri-s.org/wp-content/uploads/2014/03/My-right-to-make-decisions-FINAL1.pdf>

28 In 2018, there were a total of 1,566 reconsideration proceedings regarding restoring of legal capacity in 108 municipalities in Serbia. This is a small number compared to how many people in Serbia are totally deprived of legal capacity (10,442) and how many are partially deprived (881). Mental Disability Rights Initiative MDRI-S, Ljiljana Plazinic, "Research findings on the practices of social work centers regarding deprivation of legal capacity", 2020. (edition available in Serbian); Mental Disability Rights Initiative MDRI-S, Kosana Beker, "Deprivation of legal capacity-Law and practice in the Republic of Serbia", 2014. (edition available in Serbian)

29 Mental Disability Rights Initiative MDRI-S, Kosana Beker, "Deprivation of legal capacity-Law and practice in the Republic of Serbia",

Guardians are usually a person's spouse, relative, foster parent, or state – social welfare department (centre for social work or directors of closed institutions).³⁰

Decisions on reproductive health are made by the staff in the institution with the consent of the guardian and without the consent of women or prior information on interventions and effects. Because of that, women and girls with disabilities are exposed to specific forms of gender-based violence, such as forced sterilisation, forced abortions, contraception without informed consent.³¹ As stated in the testimony of a woman, former beneficiary of the closed institution:

“They put an intrauterine device in me.³² They put it, they did not ask anything. They just asked me when they finished if I was OK, whether I wanted to vomit.”³³

The deprivation of legal capacity has no alternative in Serbian legislation or practice. Such an approach denies the individuality and diversity of a person with disabilities, and the different capabilities, characteristics, and potentials of a person. For example, some persons do not fully comprehend the value of money, and they

need assistance in some actions (e.g. selling or buying a house). Nonetheless, it does not automatically mean that the person cannot decide where he/she should live, who to vote for, or to have children or not.³⁴ According to the CRPD's General Comment no. 1 from 2014, persons with disabilities may choose one or more trusted support persons to assist them in exercising their legal capacity for certain types of decisions or may call on other forms of support, such as peer support, advocacy (including self-advocacy support), or assistance with communication.³⁵ Standards of this Convention apply to the EU because it has ratified CRPD in 2010.³⁶

Reforming the Social Welfare

In 2011, Serbia began a social welfare reform, aimed at developing integrated social protection through the development of services, pluralism of providers, and improving the quality of services and the quality of professional work. The idea was to move from a model that relies heavily on closed institutions to a model of community-based services for individuals and families, a process called deinstitutionalisation.³⁷

30 Initiative for Inclusion VelikiMali, Kosana Beker, ““My right to make decisions – depriving persons with disabilities of their legal capacity: recommendations for harmonizing Serbia's national legislation and legal capacity system with the Convention on the Rights of Persons with Disabilities””, 2014. <http://www.mdri-s.org/wp-content/uploads/2014/03/My-right-to-make-decisions-FINAL1.pdf>

31 Mental Disability Rights Initiative MDRI-S, Biljana Janjic, Dragana Ciric Milovanovic, “Here the walls have ears too: testimonies of women with mental disabilities about gender-based violence in residential institutions””, 2017, <https://www.mdri-s.org/wp-content/uploads/2018/02/Publikacija-engleski.pdf>

32 Intrauterine device is a device that is placed in a woman's uterus to prevent pregnancy. Planned Parenthood, “IUD””, <https://www.plannedparenthood.org/learn/birth-control/iud>

33 Quote from: Mental Disability Rights Initiative MDRI-S, Biljana Janjic, Dragana Ciric Milovanovic, “Here the walls have ears too: testimonies of women with mental disabilities about gender-based violence in residential institutions””, 2017, <https://www.mdri-s.org/wp-content/uploads/2018/02/Publikacija-engleski.pdf>

34 Initiative for Inclusion VelikiMali, Kosana Beker, ““My right to make decisions – depriving persons with disabilities of their legal capacity: recommendations for harmonizing Serbia's national legislation and legal capacity system with the Convention on the Rights of Persons with Disabilities””, 2014. <http://www.mdri-s.org/wp-content/uploads/2014/03/My-right-to-make-decisions-FINAL1.pdf>
The general principles of the UN Convention on the Rights of Persons with Disabilities are defined in Article 3 and, among others, they refer to respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons, non-discrimination, full, and effective participation and inclusion in society.
<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

35 CRPD, General comment No. 1 (2014), CRPD/C/GC/1

36 Several EU member states have reviewed their national legislative framework on legal capacity, e.g. Germany and Sweden abolished their guardianship systems and put other, less intrusive, forms in place. FRA - European Union Agency for Fundamental Rights, ““Legal capacity of persons with intellectual disabilities and persons with mental health problems””, February 2013. <https://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems.pdf>

37 Strategy for Improving the Position of Persons with Disabilities in the Republic of Serbia for the period from 2020 to 2024, March 2020.

Numerous difficulties accompany this process: since the beginning of the reform, the capacity of closed institutions have remained unchanged. Also, institutionalisation is usually the only available service, and because of that there are still waiting lists for placement in institutions, and community-based services (supported housing) that prevent entry and/or provide an exit from the institutions are not sufficiently developed.³⁸ The lack of services constitutes a failure of the state, which is not implementing the social welfare reform, although it declaratively advocates for it. It should be noted that the law claimed to protect persons with mental disabilities in Serbia, actually allows deprivation of liberty based on disability, placement in a psychiatric institution without consent, as well as forced placement of children and adults with mental disabilities in institutions.³⁹

The most concerning element is that many people living in supported housing have been re-institutionalised due to lack of financial support. In 2017, 34 people used the supported housing service, in 2018, 36 people, and in 2019 only 27.⁴⁰ In 2018, 3.5 million EUR were spent to raise the quality of life of beneficiaries in the institutions, however, what must be done is the reallocation of the funding into realizing the possibility of persons with disabilities to live independently in the community.⁴¹ As one woman, who spent over 20 years in institutions and now uses a supported housing service, said:

“... I feel as if I’m fully independent, and I don’t have any fear. Indeed, I dread of returning to the institution, but I would fight. God forbid I go back there. I would like that everyone leaves residential institutions. That there are no residential institutions.”⁴²

The process of deinstitutionalisation means a transition to independent living in the local community, access to all rights, equality before law, promotion of autonomy and inclusion for persons with disabilities, inclusion in programmes for protection against gender-based violence, empowering women, and strengthening self-advocacy initiatives.⁴³

We can see good practice in Croatia where, with the support of the European Social Fund, the personal assistance system was established (on a project basis) and has become available to many people with disabilities and groups not previously covered by this service - including with mental (intellectual and psychosocial) disabilities. Meanwhile in Serbia, the personal assistance service cannot be used by persons with mental disabilities due to the explicit restriction that these services are open to beneficiaries who can make decisions independently and who are socially, labour-wise, and politically active.⁴⁴

38 Ibid.

39 Law on the Protection of Persons with Mental Disabilities; Concluding observations on the initial report of Serbia, Convention on the Rights of Persons with Disabilities, CRPD/C/SRB/CO/1, May 2016.

40 Strategy for Improving the Position of Persons with Disabilities in the Republic of Serbia for the period from 2020 to 2024, March 2020; The Republic Institute for Social Protection, ““Adults in the social welfare system 2019””, 2020. (edition available in Serbian)

41 Strategy for Improving the Position of Persons with Disabilities in the Republic of Serbia for the period from 2020 to 2024, March 2020. CRPD, General comment on article 19: Living independently and being included in the community, CRPD/C/18/1, August 2017.

42 Quote from: Mental Disability Rights Initiative MDRI-S, Biljana Janjic, Dragana Ciric Milovanovic, “Here the walls have ears too: testimonies of women with mental disabilities about gender-based violence in residential institutions””, 2017, <https://www.mdri-s.org/wp-content/uploads/2018/02/Publikacija-ingleski.pdf>

43 FRA - European Union Agency for Fundamental Rights, ““From institutions to community living for persons with disabilities: perspectives from the ground””, 2018. https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-from-institutions-to-community-living-ground-perspectives_en.pdf; Mental Disability Rights Initiative MDRI-S, Biljana Janjic, Dragana Ciric Milovanovic, “Here the walls have ears too: testimonies of women with mental disabilities about gender-based violence in residential institutions””, 2017, <https://www.mdri-s.org/wp-content/uploads/2018/02/Publikacija-ingleski.pdf>

44 Mental Disability Rights Initiative MDRI-S, Ines Bulic Cojocariu, Lazar Stefanovic, ““Handbook of EU Funds””, 2020. (edition available in Serbian)

Altogether, the situation in Serbia is not in line with the recommendations of international human rights organisations (CRPD, UN Committee against Torture - CAT, UN Committee on the Elimination of Discrimination against Women - CEDAW, Group of Experts on Action against Violence against Women and Domestic Violence - GREVIO), that called on Serbia to change these conditions; Serbia's obligation to act on these recommendations lies in its ratification of the various international agreements.⁴⁵

The reform of social welfare is a necessary prerequisite in the process of European integration. In 2016, under *Chapter 19 - Social policy and employment*, the EU underlined that Serbia should take measures to prevent institutionalisation, as an effective deinstitutionalisation process necessitates the creation of sustainable and adequate alternative services. Furthermore, "due attention should be paid to the quality of foster care and small group homes."⁴⁶ The social welfare reform, which is developing community-support services and supporting the deinstitutionalisation process through IPA II funds is explicitly mentioned in the Strategy Paper for Serbia for the period 2014-2020. To enhance social inclusion, IPA II is directed at making social welfare more supportive of active inclusion and further development of community-based solutions in education, health, housing, and job creation for the integration of

the most disadvantaged groups.⁴⁷ In the latest report released in October 2020, the European Commission emphasised that there is a lack of funding in Serbia for developing community-based services and supporting licensed service providers and social services. This report also notes that women with disabilities in closed institutions are particularly vulnerable to gender-specific forms of violence - forced contraception, forced sterilisation, and forced abortion.⁴⁸

45 The UN Committee on the Rights of Persons with Disabilities (CRPD) and the UN Committee against Torture (CAT), have been pointing out for years that the process of deinstitutionalisation in the Republic of Serbia needs to be accelerated. (CRPD/C/SRB/CO/1, CAT/C/SRB/CO/1, CAT/C/SRB/CO/2); the UN Committee on the Elimination of Discrimination against Women (CEDAW) has called on Serbia to abolish the possibility of deprivation of legal capacity based on disability. (CEDAW/C/SRB/CO/4); Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) stated that Serbia should ensure respect and the promotion of informed and free consent of women, especially institutionalised women with disabilities. (Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), "GREVIO Baseline Evaluation Report Serbia", 2020. <https://rm.coe.int/grevio-report-on-serbia/16809987e3>); the UN Committee on the Rights of the Child (CRC) recommended that Serbia should ensure that institutionalisation be used only as a last resort. (CRC/C/SRB/CO/2-3)

46 Screening report Serbia, "Chapter 19 – Social policy and employment", January 2016.

https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/serbia/screening-reports/screening_report_ch_19_serbia.pdf

47 European Commission, "Commission implementing decision amending Commission Decision C(2014)5872 of 19.8.2014 adopting the Indicative Strategy Paper for Serbia for the period 2014-2020", August 2018. <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180817-revised-indicative-strategy-paper-2014-2020-for-serbia.pdf>

48 European Commission, "Serbia 2020 Report", Brussels 2020.

https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf

Conclusions and Recommendations

All persons with disabilities have an equal right to live independently and be included in the community, with the freedom to choose and control their lives.⁴⁹ To allow them to do so, the Republic of Serbia must apply the recommendations of the international human rights organisations: UN committees (CRPD, CAT, CEDAW, CRC) and of the GREVIO group. Also, it is essential to continue and accelerate the process of deinstitutionalisation in the context of the European integration process for Serbia, bearing in mind Chapter 19 (Social policy and employment), as well as the annual European Commission reports, which for years, have indicated that no progress has been made in local-level social care services or the deinstitutionalisation process, including the persistent lack of funds for its implementation.⁵⁰

Furthermore, EU expert support is needed to implement the deinstitutionalisation process in Serbia, for instance in implementing the good practice of EU member states regarding deinstitutionalisation strategies: the prohibition of admission of new beneficiaries and gradual deinstitutionalisation, with the strengthening of alternative forms of supported living.⁵¹ Also, it is important

to effectively monitor the allocation and spending of any such funds and to insist that EU funds (Instrument for Pre-Accession Assistance-IPA) are used for community-based services and accessible services to women and girls with disabilities, and not to strengthen and/or build new closed institutions.

The above reforms necessitate a change of the laws and the system that cannot be achieved without the support of the Government and the National Assembly of the Republic of Serbia, in order to:

- Abolish all forms of guardianship regimes based on deprivation of legal capacity, and replace them with supported decision-making alternatives which provide respect for a person's autonomy, will, and preference, in the line with CRPD;⁵²
- Implement the deinstitutionalisation process, following the good practice of EU member states: prohibition of admission of new beneficiaries and gradual deinstitutionalisation, with the strengthening of alternative forms of supported living;
- Invest in community-based services, licensed service providers, and social services, not in closed institutions.

49 CRPD, Article 19.

50 Screening report Serbia, "Chapter 19 – Social policy and employment", January 2016. https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/serbia/screening-reports/screening_report_ch_19_serbia.pdf; European Commission, Serbia 2019 Report, Brussels 2019. <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf>; European Commission, "Serbia 2020 Report", Brussels 2020. https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf

51 E.g. Scandinavian countries, Italy and Croatia. Initiative for Inclusion Veliki Mali, Kosana Beker, Dragana Ciric Milovanovic, Marijana Maric, "Deinstitutionalisation", 2010. (edition available in Serbian); Elsevier Masson SAS, Jan Tøssebro, "Scandinavian disability policy: From deinstitutionalisation to non-discrimination and beyond", Alter Volume 10, Issue 2, April–June 2016, Pages 111-123, <https://www.sciencedirect.com/science/article/pii/S1875067216300049#>

52 CRPD, General comment on article 19: Living independently and being included in the community, CRPD/C/18/1, August 2017; CRPD, General comment No. 1 (2014), CRPD/C/GC/1

Government-Appointed Local Authority Trustees in Turkey: The (Non-)Application of the Right to Vote and to Be Elected

Necdet Üstündağ

Introduction

In March 2014, voters in Turkey elected the mayors of 30 metropolitan municipalities, 1,008 district municipalities and 2,187 town municipalities. President Recep Tayyip Erdogan's AKP party won 1,452 mayors and 16,621 councillors, while the Kurdish party HDP, led by Selahattin Demirtas, won 102 mayors and 1,404 councillors. Two years later, the AKP-led Turkish government started to arbitrarily appoint trustees in the south-eastern cities of Turkey, historically the part of the country with the largest percentage of Kurdish residents. This is the story about officials elected in a Council of Europe and NATO member state, and a state recognised as an official candidate negotiating EU membership, who were dismissed from the positions they were democratically elected to.

Local governments have an important role in the democratic life of cities and regions throughout Europe. They are essential to ensure effective decision-making closest to the citizens and they maintain public trust in the local democratic processes across the world.

In Turkey, local governments are granted administrative and financial autonomy by the Constitution of Turkey.¹ But political intervention in local governments by law and trustee appointments have in recent years become, in some parts of Turkey, more of a rule than an exception, thus creating problems.

In legal terms, a trustee is a person assigned to manage certain private property or to perform a certain task. A trustee is someone who is usually appointed by the government after the government confiscates a private institution or company where irregularities are committed. A trustee is therefore one of the tutorship bodies assigned only to perform certain works or manage assets. However, in Turkey's case, the government intervention started to be used as a political elimination tool. This decision, "which is a manifestation of the logic of using force to obtain what cannot be achieved through elections, is not compatible with law and democratic values and is cheating of the will of the people."²

1 Union of Municipalities of Turkey, "In the Constitution".
<https://www.tbb.gov.tr/en/local-authorities/in-the-constitution/>

2 An explanation on Trustees - Bar of Associations and NGOs in Diyarbakir Turkey
<https://www.diyarbakirbarosu.org.tr/haberler/kayyum-atamalarina-iliskin-diyarbakirdaki-stklar-ile-ortak-basin-aciklamamiz>

The 2016 'Takeover' of Local Governments

It all started on 15 July 2016.³ Four days later, on 20 July 2016, in response to an attempted coup, President Erdogan announced a three-month state of emergency, which he later extended.⁴ During this two-year-long state of emergency, which ended on 19 July 2018, several Decrees with Force of Law were adopted.⁵ The President was authorised to make changes to laws with the approval of the Council of Ministers, without any need for involvement of the Parliament.

The Decree-Law number 674 was adopted on 15 August 2016 and it gave the government the authority to appoint trustees to local governments, which were then given the authority to seize movables in the municipalities and to dismiss their employees.

Based on this Decree Law, on 1 September 2016, a total of 28 elected local mayors were removed from office.⁶ They were replaced by trustees appointed by the government. Twenty-four of these elected local mayors were members of the pro-Kurdish party, HDP.⁷ They were removed under the charge of being members of, complicit in or somehow connected to terrorist organisations.⁸ Turkey's official news agency Anadolu Ajansı reported that 24 of the removed mayors were suspected of links with the outlawed Kurdistan Workers' Party (PKK).⁹

In reality, however, there was no evidence of any links between the mayors and PKK. A report published by the Venice Commission in 2016 pointed out that the move of appointing government trustees had raised concerns regarding the exercise of local democracy in Turkey.¹⁰

Table: The trustee appointments on 11 September 2016¹¹

	Elected	Appointed Trustees	Arrested	Imprisoned
Mayors	102	94	93	70
Municipal Council members	1404	-	500+	81

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- 3 Al Jazeera English, "Turkey's failed coup attempt: All you need to know", 15 July 2017. <https://www.aljazeera.com/news/2017/7/15/turkeys-failed-coup-attempt-all-you-need-to-know>
- 4 The Guardian, "Turkey coup attempt: Erdoğan declares three-month state of emergency", 21 July 2016. <https://www.theguardian.com/world/2016/jul/20/erdogan-bans-academics-from-travel-holds-first-post-coup-security-meeting-ankara-turkey>
- 5 BBC, "Turkey ends state of emergency after two years", 18 July 2018. <https://www.bbc.co.uk/news/world-europe-44881328>; Asylum Research Centre, "Turkey Country Report Volume 3", November 2017. <https://www.refworld.org/pdfid/5a1313bf4.pdf>
- 6 BBC Turkey, "28 belediye kayyum atandı", 11 September 2016. <https://www.bbc.com/turkce/haberler-turkiye-37332272>
- 7 The HDP appoints one male and one female as mayor to promote gender equality, calling them co-mayors, although only one is recognised by the central government.
- 8 BBC, "Turkey-PKK: Clashes as Turkey removes 28 elected mayors", 11 September 2016. <https://www.bbc.co.uk/news/world-europe-37333041>
- 9 Anadolu Agency, "KHK ile 28 belediye yeni görevlendirme", 11 September 2016. <https://www.aa.com.tr/tr/gunun-basliklari/khk-ile-28-belediye-yeni-gorevlendirme/644599>
- 10 Council of Europe, Venice Commission, "Turkey - Opinion on the Provisions of the Emergency Decree-Law N° 674 of 1 September 2016 which concern the exercise of Local Democracy, adopted by the Venice Commission at its 112th Plenary Session (Venice, 6-7 October 2017)", 9 October 2017. [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)021-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)021-e)
- 11 HDP – DBP, "Report on the Trustees". <https://www.hdp.org.tr/images/UserFiles/Documents/Editor/DBP%20Kayyum%20Raporu.pdf>

Another concern was related to the ECtHR case-law, since appointing a government trustee also constitutes a violation of the “Principle of legitimate expectation” which is a part of the right to vote and to be elected and is safeguarded by ECHR’s Article 3 of Protocol 1.¹²

By now it is clear that the main focus of these decisions was to purge the mainstream Kurdish political actors and that the State of Emergency following the failed coup in 2016 was used as an excuse.

Gültan Kisanak, a 59 year old mother is a well-known Kurdish politician and former journalist. Kisanak was also the mayor of a large city, Diyarbakir, from March 2014 to October 2016. Elected to her position as the first female mayor ever, Kisanak received 397,148 votes (55.11 percent of the votes cast). For the purpose of this paper, Kisanak was interviewed in the Kandira Prison.¹³ Kisanak said:

“I was elected as the co-mayor of the Diyarbakır Metropolitan Municipality in the 2014 local elections. I was detained on 25 October 2016, to be arrested subsequently, and was replaced by a civil servant to take office as the new mayor.

During my first two years of detention, my demands to attend the hearings concerning my case in person were constantly rejected. After two years, my demand to attend the hearing held on 1 February 2019 was accepted and I was able to attend and plead before the court for the very

first time. On the same day, I was sentenced to 14 years and three months of imprisonment, with the case now closed.

The decision of the district court was reversed by the Gaziantep Regional Court of Justice on 17 July 2019. A rehearing of the case has been ongoing at the Malatya 5th High Criminal Court for a year, yet I was brought to the hearing in person only once during that time. The accusations in the lawsuit filed against me concern legitimate political party activities that I was a part of as a member-of-parliament and mayor. It is depicted as a crime to participate in rallies, press releases and protest marches organised by the political party I am and was a member of.”

Kisanak’s story is just one of several hundred similar stories. It is time for Europe and the world to hear them and force the Turkish government to act upon them.

12 Council of Europe, “European Convention on Human Rights, Protocol number 1 - Right to free elections (Article 3)”, 2020. <https://www.coe.int/en/web/echr-toolkit/protocole-1>

13 Wikipedia, “Gültan Kisanak”, 2020. https://en.wikipedia.org/wiki/G%C3%BCltan_K%C4%B1%C5%9Fanak

The 2019 Local Non-Elections

The last local elections in Turkey took place on 31 March 2019. The HDP won in 3 metropolitan municipalities, 5 cities, 45 districts and 12 towns with a total number of 65 Mayors, 1230 Municipal Council members and 102 Provincial General Assembly Members.¹⁴ Instead of accepting the election results, the Turkish government continued its practice of appointing government trustees in Kurdish cities, but it worked with an aim to alter election results.

For instance, the Supreme Election Council of Turkey (SEC), in charge of implementing the elections, approved the candidacies of six HDP candidates. Once it was clear they were going to win their seats, the SEC, before the official announcement of the official election results, intervened and did not issue the election certificates. The SEC explained that this was the case because they were dismissed under the previous Decree Laws. The SEC then went on to appoint the candidates from the President Erdogan's AKP party, because they had received the second-highest number of votes.¹⁵

Where the newly elected Kurdish mayors were allowed to take over their positions,

they publicly disclosed the historical, ecological, cultural and economic plunders, and the assimilationist population policies pursued by the trustees in many provinces since 2016.

In the March 2019 local elections, Adnan Selçuk Mizrakli, a 57 year old Kurdish politician, was elected to the position of co-mayor of the Diyarbakir metropolitan municipality with 62.93 percent of the votes. Just a couple of months after the elections, Mizrakli was removed from office and a trustee was appointed to replace him. He was accused of being a member of a terrorist organisation. No concrete evidence was provided and on 9 March 2020 he was sentenced to 9 years and 4 months imprisonment.

In cities like Diyarbakir, which carry the metropolitan municipality status, there remains no elected representative that acts or speaks on behalf of those who voted and expressed their will. The policy of appointing trustees, used in 2016 and 2019, was directed exclusively against areas with a significant Kurdish population. Until today, it has not been used in other parts of the countries.

Vote rates and count of Municipal Council members of some municipalities where trustees were appointed in 2019.¹⁷

Table: The trustee appointments on 19 August 2019¹⁶

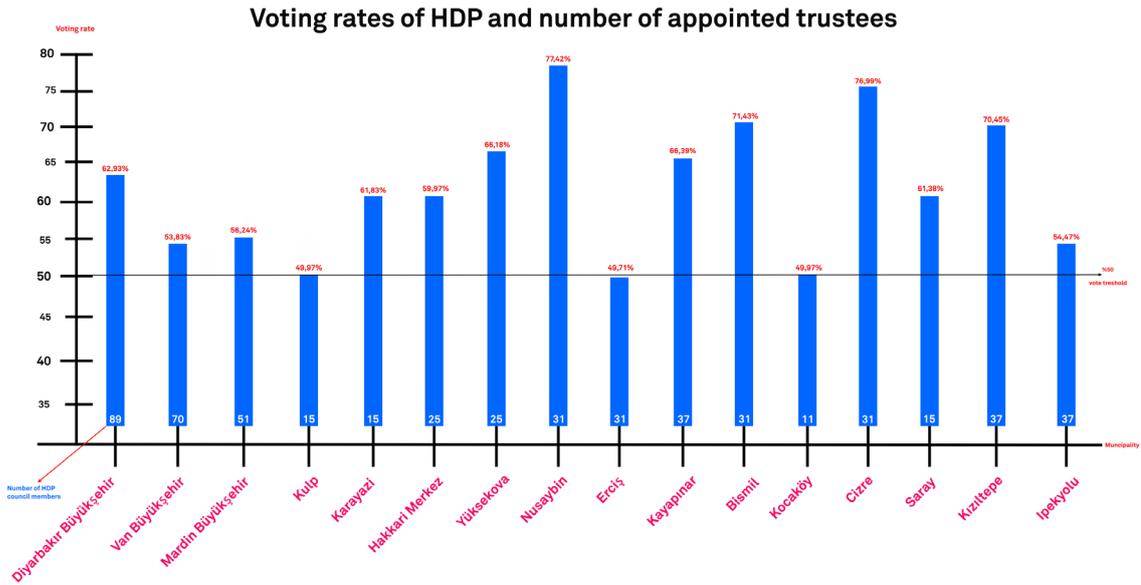
	Elected	Appointed Trustees	Arrested	Still behind bars
Mayors	65	57	37	17
Municipal Council members	1230	-	319	109

14 Wikipedia, "Turkish Local Elections 2019", accessed 2020. https://en.wikipedia.org/wiki/2019_Turkish_local_elections

15 Venice Commission, "Turkey – Opinion on the Replacement of Elected Candidates and Mayors", Chapter 9, 18 June 2020. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)011-e)

16 HDP, "The Trustee Regime in Turkey & Denial of the Right to Vote and the Right to Be Elected (31 March- 20 November 2019)", 2019. <https://www.hdp.org.tr/images/UserFiles/Documents/Editor/12%20Trustee%20report%202019.pdf>

17 Report on the trustee regime in Turkey - HDP <https://www.hdp.org.tr/Images/UserFiles/Documents/Editor/12%20Trustee%20report%202019.pdf>



Conclusions and Recommendations

The main purpose of this policy of trustee appointments was to purge mainstream Kurdish politicians and to annihilate the ecological, historical, social and political advances achieved in Kurdish provinces. President Erdogan and his government, without any concrete evidence, accused the HDP of having links with terrorist organisations, leading to prosecutions of thousands of its members and some leaders.¹⁸ These Kurdish politicians were stripped of any opportunity to defend themselves in front of free and fair judges.¹⁹

According to the Bar Association in Turkey “The removal of the election and the will of the people by an administrative decision is, to put it mildly, an administrative blow.”

As discussed above, several key cases like Demirtaş case that resulted in condemnation by ECtHR and violation of ECHR Article 18, show that basic human rights and liberties including right to personal liberties and security and right to a fair trial are strongly denied in practice in Turkey. It is recommended to Turkey to respect its international commitments, including ECHR, and in particular equity of arms and right to adversarial trial.²⁰

As a result of this policy, the right to vote and be elected of those belonging to the 15-million Kurdish population were violated. This is happening in a country that is a member of the Council of Europe and of NATO and that is negotiating its membership in the EU. For the sake of human rights and Europe itself, a strong reaction is required and overdue:

- The EU, in particular the European Parliament and the EU Member States, must recognise this issue and raise awareness not only regarding the massive violations of the right to vote and to be elected in Turkey, but also of the right to a free and fair trial.
- The relevant agencies of the EU should visit the municipalities governed by trustees and report on all the violations and harm caused to the citizens of these municipalities, including, in particular, those who belong to the Kurdish population and are being discriminated against. All available legal measures should be taken into account and used, such as those under the Council of Europe or the European Charter of Local Self-Government.

¹⁸ Reuters, “Turkey replaces four more Kurdish mayors over alleged terror links”, 16 November 2019.

<https://uk.reuters.com/article/uk-turkey-security-kurds/turkey-replaces-four-more-kurdish-mayors-over-alleged-terror-links-idUKKBN1XQ08H>

¹⁹ Ibid.

²⁰ Gunal Kursun - International Criminal Law and Genocide, Criminal Law Department of the Çukurova University in Adana

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