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UN COMMITTEE ON THE RIGHTS OF THE CHILD

SUBMISSION BY THE ASSOCIATION OF YOUTH WITH DISABILITIES OF MONTENEGRO

2021 DAY OF GENERAL DISCUSSION

CHILDREN'S RIGHTS AND ALTERNATIVE CARE

Dear colleagues from the UN Committee on the Rights of the Child, with this submission we would like to express readiness for our participation in the Day of General Discussion on the topic of Children's rights and alternative care.

In Montenegro, some but insufficient progress has been made on the rights of children with disabilities to live in the family and community, but certain segments of this issue continue to be of great concern.

Namely, **although significant progress has been made in the visibility and representation of the issue of children with disabilities, the traditional attitudes and attitudes towards the potentials, interests, wishes and desires of children with disabilities are often disputed.**

Due to the above, **the legal guarantees of the rights of children with disabilities in all key areas are defined in the medical model of approach to disability**, which treats the child as a matter of protection and care rather than as a subject of the right (rights' holders), and the one who participates in decisions making about his/her own life (through expressing opinions). Due to the above, **children with disabilities almost never participate in decision-making processes**, but often exclusively their parents or guardians do so. Guardianship as a "principle" of protection of the rights and interests of the child is too often used through various formal and informal (practical) institutes.

Law on Prohibition of Discrimination of Persons with Disabilities does not recognize multiple discrimination of girls with disabilities. In addition, **the Law recognizes discrimination of children with disabilities**

umhcg@t-com.me
office@umhcg.com

067801761
069385981

@UMHCG
@UMHCG
@umhcg_aydm

in only a few areas, in education, social protection and adequate living standard and family relations (However, the only provision relating to protection from discrimination against children in the areas of right to family relations is that which prohibits the denial or restriction of the right of a child with a disability to be cared for by his parents in the same or a similar situation in which that right is not denied or restricted to the child without disability). **Apart from the prohibition of discrimination, the Montenegrin Constitution prescribes special measures and actions aimed at creating the conditions for achieving national, gender and overall equality and protection of persons who are in an unequal position.** However, in the laws and practices, these measures are not guaranteed in relation to children with disabilities, or are defined as contravening the Constitution, i.e. they represent segregation and grouping of children with disabilities.

We are particularly concerned about the fact that a large number of children with disabilities are users of restricted and institutionalized support services: from daily-care centers to closed institutions and segregation and the grouping of children with disabilities (areas of social protection and also education). The facts and examples of providing support in a way that protects the dignity and self-esteem of children with disabilities are rare.

The Family Law **limits and forbids the enjoyment of the rights of children based on their “reasoning capacity”**. In practice, this causes wide interpretation by the institutions and decision-makers about “the best interest of a child”. In these cases, **the best interest of the child** is used as a reason for not taking (in)adequate action of the relevant authorities. Moreover, the state does not consult the parents, or legal guardians i.e. it does neither provide them a choice between different possibilities, nor does it give consequences of the decision (according to Article 3, p. 1 of the Convention).

The publicly available information and information that resulted from monitoring of the work of relevant institutions tells us that **children and youth with disabilities who are at risk of exploitation, violence and abuse are placed in the institutions of social and child protection based on decisions of Centers for social work, because of “the best interest of a child”**. It is not known if and how institutions implement **periodical reviews of the treatment provided to the child** and all other circumstances relevant to his or her placement (article 25). Due to this fact

many children long remain placed in such an environment, not only for the period when it is really the most appropriate and appropriate.

In addition, it is difficult to talk about independent monitoring and control of institutions that care about children with disabilities, as measures based on medical model of disability are still being implemented in these institutions. Additionally, these institutions never do an assessment of the necessary support to the child with disabilities and his/her family in order to include the child in the family and social life.

It is also worrying that **cases of violence in such institutions, which are not adequately processed by professionals, remain uninvestigated and unpunished.** In addition, **children are not provided with professional assistance for recovery from violence,** one such case ended with the family ceasing to use the services and the employees of the institution did not bear responsibility regardless of the Opinion and Findings of the Protector of Human Rights and Freedoms.

In Montenegro, the services provided by state are **unsustainable and include only a specific number of children with disabilities.** The state had planned to develop different services for children with disabilities at the local level, however, the **state Budget has not allocated resources to do so,** and local self-governments do not develop neither new support services, which are lacking now, nor services, which enable children with disabilities the full inclusion and independence after 18 years of age.

Also, there is no public information on the number of children with disabilities who have been abandoned, denied, abused or neglected, nor about the children being placed in any of the institutions, nor because of the “best interests of the child” by the institutions. However, some parents' experience tells us that after the birth of a child with disability, one of the parents (more often the father) left the family. Also, although it is defined as an explicit exception that children under the age of three are placed in institutions, there are cases when this is done (Children's Home Mladost in Bijela (Herceg Novi), and Small Group Community Bijelo Polje). The publicly available information and information that resulted from monitoring of the work of relevant institutions tell us that **children and youth with disabilities who are at risk of exploitation, violence and abuse are placed in the institutions of social and child protection on the basis of decisions of Centers for social work, because of “the best interest of a child” (Also, regarding articles 18, 20).**



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There are no official data on the number of children under the age of 18 who are placed in institutions, but only data on total numbers of children and youth with disabilities placed in Day Care centers.

During the implementation of measures restriction of the spread of new coronavirus, **parents of children placed in residential institutions were not allowed to visit their children and such practice lasted for a year and two months**, until the request of the Association of Youth with Disabilities in Montenegro to change such practice. Before the May 2021, having in mind that that the government in Montenegro was changed on August 30, 2020, our request sent several times to the previous government was not accepted earlier.

As stated, Montenegro is investing much more in the development of institutional accommodation for children with disabilities than in the development of other community life support services. The existing services are a type of institutionalization and are not intermediary services. Although reform of the social and child care system has been implemented for 15 years, full deinstitutionalization has not been implemented, and **there is no Strategy for deinstitutionalization and transition. The state continues to develop new institutionalized services and expansion of existing services in local communities**, like daily care centers for children and youth with disabilities until 27 years of age, who are placed together in the same space. **These services are not intermediary services, nor do they have an alternative, i.e. possibility for children with disabilities to choose** which service they will use, and none **of the services contributes** to their independence. Contrary, services have as their goal placement and care. These institutions provide a limited number of services for a limited number of children with disabilities, who are the only **ones staying during the day in such environments**, while on the other hand they do not have community services such as assistance in house, personal companion, professional support of special educators, speech therapists, psychologists, occupational therapists...

The providers of daily care centers provide two, four or eight-hour care, psychosocial and medical rehabilitation, educational work with the aim of acquiring skills necessary for everyday life, occupational treatment, socialization, individual and group work, education of parents for self-help, and assistance to their children, leisure activities and other services in accordance with the Statute and the law. These activities are necessary for the developmental needs of users, but the existence of a small number of

umhcg@t-com.me
office@umhcg.com

067801761
069385981

@UMHCG
@UMHCG
@umhcg_aydm

services for children with disabilities and their parents does not leave the possibility to choose what suits them best. We are concerned about the fact that the state in its documents emphasizes that these services contribute to the inclusion of children with disabilities. "Their aim is primarily to spend time in the common room, socialization of children with disabilities and their inclusion in the community."

In addition, besides staying in daily care centers, there are other services intended for children (foster care with additional and intensive care, supported housing ...). However, the state does not have separate data on how many children with disabilities are users of these services. Also, supported housing is a service currently used by former users of the Children's Home, but not by young people with disabilities who need support for integration into society and independent living.

The state has never **researched the needs of children with disabilities for different support services, nor does such need is addressed in strategic documents.** The current strategic documents in the area of social and child protection are **adopted without analysis of the impact and effect of previous strategies.**

The state even obliges families of children with disabilities **to participate in paying the costs of the service.** The Law on Social and Child Protection, which entered in force on 30th of June 2017, defines this obligation of the beneficiary of personal disability allowance and allowance for care and help of other persons (the monthly amount of these rights is 178,19 €). This is especially problematic because the state does not cover the cost of living caused by disability, nor does it provide the diversity of all necessary services. To do so, participation in the service used when they were selected was acceptable. However, conditioning to participate in costs when there is only one option, such as a daycare center is unacceptable.

Namely, living expenses and expenses related to disability are not covered under the system of social and child protection. The state has developed a Social Card, which contains only information about the beneficiaries of material allowances. However, neither a Social Card nor any other type of register contains data about the social and life status of children with disabilities, including disability-related expenses.

Today, children with disabilities undergo **several assessments before different Commissions and often they have decisions in which level of disability is differently defined.** Moreover, the assessment does not happen according to the human rights-based approach to disability as

stated in the UNCRPD. So, in order to fully include children with disabilities in the community, it is necessary to **work on the development of pluralism of services. There are no standards set for the majority of services prescribed by the Law**, while many other services needed for children and their families are not recognized by the law (for example: respite service, psychosocial support for parents). Also, financing of the services is not sustainable, because they are still provided through CSOs' projects, for a limited number of users and duration. It is necessary **to do an assessment of needs for services, set comprehensive standards for their provision, and provide a diversity of services and their sustainability**, in the end.

There are no special measures for children with disabilities on accessible clean water, food, clothes, and housing, especially for children belonging to national and ethnic minorities such as the Roma.

The state **needs to recognize and develop all adequate measures and programs for children with disabilities on the right to benefit from social security, social insurance, including covering of living costs related to disability and an adequate standard of living, and take the necessary measures to achieve the full realization of this right in accordance with CRC and CRPD**, as well as to develop different support services for children with disabilities and their families based on individual needs and interest of all children with disabilities in order to encourage equal opportunities and full inclusion of children with disability in family and in the community. Also, the **state needs to cover all costs of social security and protection for children with disabilities and provide accessible and free services for children which will contribute to their psychological and social development**.

Generally, in Montenegro, it is necessary to work on **raising awareness of disability**. An educated society will better accept children with disabilities and their families and facilitate their full social inclusion. It is also important to **have people with a high level of awareness on disability rights in the decision-making positions**, in order to have **decision-making processes based on human-rights based model of approach to disability**, instead of medical, functional, or charity model, which is dominantly the case now. In this way, it is needed to **align national legislation with the international standards**, and, even more important – implement it in practice. In this regard, organizations of PWDs which are experts in this field should be engaged, to give a priceless contribution.



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Montenegro must fully and without exception apply international standards, primarily CRC and CRPD, and as its Constitutional requires even when domestic legislation is not harmonized with these regulations, that they should be directly applicable. this applies equally to the application of regulations and case law. One of the key things that is important in this regard is the **proper understanding of the obligations prescribed by these documents**, as well as the **correct interpretation of key concepts such as alternative care, best interest, supported environment - in relation to restrictive environments, segregation, community life**, ect.

Thank you for this opportunity, attention and time. We remain open to any further questions and discussion regarding the topic.

Contact person:

Milica Marđokić

milica.mardjokicumhcg@gmail.com

umhcg@t-com.me
office@umhcg.com

067801761
069385981

@UMHCG
@UMHCG
@umhcg_aydm