



PSYCHIATRIC ASSOCIATION OF BOSNIA-HERZEGOVINA  
UDRUŽENJE/UDRUGA PSIHIJATARA U BOSNI I HERCEGOVINI  
УДРУЖЕЊЕ ПСИХИЈАТАРА У БОСНИ И ХЕРЦЕГОВИНИ

## **Mental Health Legislation in Bosnia and Herzegovina (B-H)**

Rights of mentally disabled persons and their accommodation in the institutions are determined by a number of international documents on human rights and by national legislation. Considering the rights of this category of citizens of BiH, it is important to have in mind relations between national legislation and international human rights standards. So, the Constitution of BiH declaratively contains the highest level of recognition for human rights, which is stipulated by Article II „Human Rights and Fundamental Liberties“. By this Article it is stressed that B-H Constitution is a far reaching document stipulating „the highest level of enjoyment of internationally recognized human rights and fundamental liberties“. Further, the Constitution stipulates that European Convention on Human Rights and Fundamental Freedoms (ECHR) and its Protocols are directly applied in B-H and that „they shall have priority above all other laws“, and basic human rights are listed in a separate paragraph. Exactly this fact was one of the bases for consideration of the position of mentally disabled persons in BiH.

### **2.1. International standards**

International documents protecting human rights are based that each human being has inherited, equal, inalienable and universal rights springing from dignity of all human beings. A state may establish mechanisms regulating exercise of these rights and freedoms, including ensuring of equality of all persons. The Constitution of BiH (December 0f 1995, adopted within Dayton Peace Agreement), Article II: Human Rights and Fundamental Liberties (paragraph 1)



PSYCHIATRIC ASSOCIATION OF BOSNIA-HERZEGOVINA  
UDRUŽENJE/UDRUGA PSIHIJATARA U BOSNI I HERCEGOVINI  
УДРУЖЕЊЕ ПСИХИЈАТАРА У БОСНИ И ХЕРЦЕГОВИНИ

Preamble of UN Universal Declaration on Human Rights adopted on 10,12.1948 stresses: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...", while Article 2 stipulates: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Apart from rights contained in Universal Declaration, UN adopted two legally binding documents: International Covenant on Civil and political Rights and International Covenant on Economic, Social and Cultural Rights. These two Covenants define rights and establish implementation mechanisms. So, speaking about social rights, it is necessary to draw attention at basic principle common for all UN human rights standards and that is that enjoyment of social rights in a state must be ensured without any discrimination. The right to social protection is determined by the following UN documents:

1. *International Covenant on Civil and political Rights (1966) (ICCPR),*
2. *International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR),*
3. *Convention on the Rights of a Child (1989) (CRC),*
4. *Convention on Prohibition of all Forms of Gender Discrimination (1979)(CEDAW)*
5. *Convention on Prohibition of all Forms of Racial Discrimination (1966) (CERD),*
6. *Convention on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatments or Punishments (1984) (CAT).*

All listed documents are ratified by BiH and have constitutional applicability, since they are integral part of BiH Constitution.

Lobbyist for rights in the area of social protection could call on mentioned instruments, since these documents are: **(a)** legally binding and **(b)** may request court protection of these rights. Where several international documents define or protect the same individual rights, an individual is entitled to protection according to: **(aa)** all existing (adopted) instruments and **(bb)** the most effective protective provisions, i.e. in accordance with document which ensures the highest level of protection.



PSYCHIATRIC ASSOCIATION OF BOSNIA-HERZEGOVINA  
UDRUŽENJE/UDRUGA PSIHIJATARA U BOSNI I HERCEGOVINI  
УДРУЖЕЊЕ ПСИХИЈАТАРА У БОСНИ И ХЕРЦЕГОВИНИ

A list of economic and social rights, according to international standards, is quite extensive, yet with the purpose to make state to understand all dimensions of its obligation to ensure rights of mentally disabled persons we shall quote some of the social rights enjoyment of which was subject of consideration by BiH Ombudsmen on the occasion of visits to mental health institutions:

1. Everyone is entitled to economic, social and cultural rights, enabling dignity and freedom, and individual development (UNDHR 22; CEDAW 11:1 e; CERD 5e; CRC 27).
2. Everyone is entitled to right to adequate standard of living, including food, clothing, apartment and health protection (ICESCR 11; CEDAW 14h; CERD 5e III, CRC 27:1).
3. Parents have primary responsibility to ensure that their child has adequate standard of living, and state is obligated to assist, since it is responsible for application of this right (CRC 27:2,3).
4. Everyone is entitled to right to social security (UNDHR 22; ICESCR 9; CEDAW 11:1 e, 14C, 13a; CERD 5e, IV; CRC 26).
5. Everyone is entitled to right to social services and security in the case of disease, age or other circumstances, including a child, too. (UNDHR 25; CEDAW 11:2 c; CERD 5e, IV; CRC 18:2, 3).

### **2.1.1. UN Universal Declaration on Human Rights**

#### ***Article 1***

· All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

#### ***Article 2***

· Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, skin color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non self governing or under any other limitation of sovereignty.



PSYCHIATRIC ASSOCIATION OF BOSNIA-HERZEGOVINA  
UDRUŽENJE/UDRUGA PSIHIJATARA U BOSNI I HERCEGOVINI  
УДРУЖЕЊЕ ПСИХИЈАТАРА У БОСНИ И ХЕРЦЕГОВИНИ

## **2.1.2. European Convention**

### **On Human Rights and Fundamental Freedoms**

#### ***Article 3***

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

(Annex I to the Constitution of B-H – Additional agreements on human rights that shall be applied in B-H)

#### ***Article 6, paragraph 1***

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

#### ***Article 8***

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.



PSYCHIATRIC ASSOCIATION OF BOSNIA-HERZEGOVINA  
UDRUŽENJE/UDRUGA PSIHIJATARA U BOSNI I HERCEGOVINI  
УДРУЖЕЊЕ ПСИХИЈАТАРА У БОСНИ И ХЕРЦЕГОВИНИ

### ***Article 13***

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

### ***Article 14***

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, skin color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

## **2.1.3. Protocol N° 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms**

### ***Article 1***

Every natural or legal person is entitled to the peaceful enjoyment of his possessions.

No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

### ***Article 2***

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.



PSYCHIATRIC ASSOCIATION OF BOSNIA-HERZEGOVINA  
UDRUŽENJE/UDRUGA PSIHIJATARA U BOSNI I HERCEGOVINI  
УДРУЖЕЊЕ ПСИХИЈАТАРА У БОСНИ И ХЕРЦЕГОВИНИ

#### **2.1.4. Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms**

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

#### **2.1.5. Convention of the Rights of Persons with Disabilities**

##### ***Article 1***

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

##### ***Article 5***

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.



PSYCHIATRIC ASSOCIATION OF BOSNIA-HERZEGOVINA  
UDRUŽENJE/UDRUGA PSIHIJATARA U BOSNI I HERCEGOVINI  
УДРУЖЕЊЕ ПСИХИЈАТАРА У БОСНИ И ХЕРЦЕГОВИНИ

## **2.1.6. UN Convention on the Rights of a Child**

### ***Article 3***

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or the individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall confirm the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

### ***Article 23***

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child,  
assistance extended in accordance  
with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.



PSYCHIATRIC ASSOCIATION OF BOSNIA-HERZEGOVINA  
UDRUŽENJE/UDRUGA PSIHIJATARA U BOSNI I HERCEGOVINI  
УДРУЖЕЊЕ ПСИХИЈАТАРА У БОСНИ И ХЕРЦЕГОВИНИ

- 4 States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

## 2.2. Relevant B-H provisions

Regarding status of disabled persons in B-H, there exist issues to what extent competent B-H organs through adopted legislation ensured enjoyment of the rights guaranteed by international standards and effective social protection of this category of the citizens, since competences are divided between different levels of the authorities. Social protection which meets social and cultural needs of the people is consisted of social benefits and services. Services are consisted of full supply in social protection institutions provided to users to meet their existential needs. All citizens are potential users of social protection regardless of their economic, family and social status, due to which consideration of enjoyment of the right to social protection by mentally disabled persons, as a small and particularly vulnerable category, and it can provide realistic indicator of the situation in this area. Social protection is organized as specialized social service in function of the society, however, all other services also deals with social protection (elements of social protection in: education, housing, health protection, social insurance, etc.). Funding is the key issue, which earlier came from contributions for social protection but in BiH today it is determined differently than before. Accordingly, key segment for assessment of enjoyment of the rights by mentally disabled persons can be found in the level of established social protection in B-H.





PSYCHIATRIC ASSOCIATION OF BOSNIA-HERZEGOVINA  
UDRUŽENJE/UDRUGA PSIHIJATARA U BOSNI I HERCEGOVINI  
УДРУЖЕЊЕ ПСИХИЈАТАРА У БОСНИ И ХЕРЦЕГОВИНИ

## **2.2.1. The Constitution of B-H**

### **Article II.**

#### **3. Enumeration of rights**

All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; These include:

- c. The right not to be held in slavery or servitude or to perform forced or compulsory labor.

#### **4. Non-Discrimination**

The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, skin color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status“.

## **2.2.2. Standard Rules on Equalization of Opportunities for Disabled Persons**

### **Rule 2 *Medical care***

1. Competent authorities of B-H, Entities and District Brčko should ensure the provision of effective medical care to persons with disabilities.
2. Competent authorities of B-H, Entities and District Brčko should work towards the provision of programs run by multidisciplinary teams of professionals for early detection, assessment and treatment of impairment. This could prevent, reduce or eliminate disabling effects. Such programs should ensure the full participation of persons with disabilities and their families at the individual level, and of organizations of persons with disabilities at the planning and evaluation level.



PSYCHIATRIC ASSOCIATION OF BOSNIA-HERZEGOVINA  
UDRUŽENJE/UDRUGA PSIHIJATARA U BOSNI I HERCEGOVINI  
УДРУЖЕЊЕ ПСИХИЈАТАРА У БОСНИ И ХЕРЦЕГОВИНИ

3. Local community workers should be trained to participate in areas such as early detection of impairments, the provision of primary assistance and referral to appropriate services.

**Rule 15 Legislation**

1 Competent authorities of B-H, Entities and District Brčko have a responsibility to create the legal bases for measures to achieve the objectives of full participation and equality for persons with disabilities.

2 B-H legislation, embodying the rights and obligations of citizens, should include the rights and obligations of persons with disabilities. States are under an obligation to enable persons with disabilities to exercise their rights, including their human, civil and political rights, on an equal basis with other citizens. States must ensure that organizations of persons with disabilities are involved in the development of national legislation concerning the rights of persons with disabilities, as well as in the ongoing evaluation of that legislation.

**2.2.3. The Law on Prohibition of Discrimination**

**Article 6**

1. „This law shall be subject of application by all public bodies at the State level, Entities and District Brčko of B-H, general institutions and bodies and legal entities with public responsibilities, including all natural and legal persons in all and particularly in the following spheres of life:

c) social protection, including social insurance, social benefits, social aid (housing subventions, youth subventions, etc.) and manner of actions towards users of social protection“.



PSYCHIATRIC ASSOCIATION OF BOSNIA-HERZEGOVINA  
UDRUŽENJE/UDRUGA PSIHIJATARA U BOSNI I HERCEGOVINI  
УДРУЖЕЊЕ ПСИХИЈАТАРА У БОСНИ И ХЕРЦЕГОВИНИ

## **2.3. Competence to act**

“Official Gazette of B-H”, N° 41/0314

Competence to act upon the issues of rights of mentally disabled persons is defined in several pieces of legislation, which is, from the aspect of obligatory compliance with Ombudsmen recommendation, of importance for present Report.

### **2.3.1. The Law on Ministries and Other Bodies of Administration of B-H**

#### ***Article 15***

The Ministry of Civil Affairs shall be responsible for:

- a) Citizenship, citizen registration and records, personal data protection, residency, registration, identity documents, travel documents and vehicle registration process. This Ministry shall be responsible for carrying out tasks and discharging duties which are within the competence of B-H and relate to defining basic principles, co-ordinating activities and harmonizing plans of the Entity authorities and defining a strategy at the international level in the fields of:
  - health and social care;
  - pensions;
  - science and education;
  - labor and employment;
  - culture and sport;
  - geodetic, geological and meteorological affairs.



PSYCHIATRIC ASSOCIATION OF BOSNIA-HERZEGOVINA  
UDRUŽENJE/UDRUGA PSIHIJATARA U BOSNI I HERCEGOVINI  
УДРУЖЕЊЕ ПСИХИЈАТАРА У БОСНИ И ХЕРЦЕГОВИНИ

### **2.3.2. The Law on Federation Ministries and Other Bodies of the Federation Administration**

#### ***Article 10***

“Official Gazette of B-H”, N° 59/09,

“Official Gazette of B-H”, N° 5/03, 42/03, 26/04, 42/04, 45/06 and 88/07,

“Official Gazette of FB-H”, N° 8/95, 3/96 and 9/96.

„Federation Ministry of Social Policy, Refugees and Displaced Persons,  
performs administrative, professional and other professional tasks determined by law  
applied on Federation competences in the area: social policy, displaced persons, work,  
pension and disability insurance.”

### **2.3.3. The Law on the Ministries of Republic of Srpska**

#### ***Article 11***

„Official Gazette of RS“, “Official Gazette of B-H”, N° 59/09,

“Official Gazette of B-H”, N° 5/03, 42/03, 26/04, 42/04, 45/06 and 88/07,

“Official Gazette of FB-H”, N° 8/95, 3/96, 9/96

70/02, 33/04, 118/05, 33/0615

“The Ministry of Health and Social Protection carries out administrative activities and  
other professional tasks related to: protection  
and improvement of citizens’ health and monitoring of health conditions and health  
needs of citizens; health protection system; organization of health protection under all  
conditions; professional training and specialization of health workers; health inspection;  
organization of supervision over the expert work of health institutions; health insurance  
and provision of health insurance from public revenues; production and trade of  
medicines, toxic and narcotics, medical equipment and medical appliances; health  
propriety of water, food and products of general use; inspection and  
supervision in sanitary field; social protection  
system; social care over families and children; activities of



PSYCHIATRIC ASSOCIATION OF BOSNIA-HERZEGOVINA  
UDRUŽENJE/UDRUGA PSIHIJATARA U BOSNI I HERCEGOVINI  
УДРУЖЕЊЕ ПСИХИЈАТАРА У БОСНИ И ХЕРЦЕГОВИНИ

public organizations and citizens' associations in the socio-humanitarian sphere; provides information through the media and other public means and performs other tasks in accordance with law and other regulations of the Republic of Srpska and B-H."

## **2.4. Legal framework regulating accommodation of mentally disabled persons in the Entities**

### **2.4.1. Legislation of Republic of Srpska**

„Official Gazette of Republic of Srpska“, N° 5/93, 15/96, 110/03 and 33/08,

„Official Gazette of Republic of Srpska“, N° 18/99, 58/01 and 62/02,

„Official Gazette of Republic of Srpska“, N° 46/00,

„Official Gazette of Republic of Srpska“, N° 68/07.

Exercise of the rights of mentally disabled persons and their accommodation in the institutions of Republic of Srpska is regulated by the following pieces of legislation:

- *The Law on Social Protection,*
- *The Law on Health Protection,*
- *The Law on Protection of Persons with Disabilities,*
- *The Law on the System of Public Services.*



PSYCHIATRIC ASSOCIATION OF BOSNIA-HERZEGOVINA  
UDRUŽENJE/UDRUGA PSIHIJATARA U BOSNI I HERCEGOVINI  
УДРУЖЕЊЕ ПСИХИЈАТАРА У БОСНИ И ХЕРЦЕГОВИНИ

## 2.4.2. Legislation of the Federation of B-H

“Official Gazette of the Federation of B-H”, N° 31/08,

“Official Gazette of the Federation of B-H”, N° 36/99, 54/04, 39/06 and 14/09,

“Official Gazette of the Federation of B-H”, N° 29/97,

“Official Gazette of the Federation of B-H”, N° 30/97,

“Official Gazette of the Federation of B-H”, N° 37/01 and 40/02.

Exercise of the rights of mentally disabled persons and their accommodation in the institutions of the Federation of B-H (FB-H) is regulated by the following pieces of legislation:

- *The Law on the Taking over of Rights and Obligations by the Founders of Social Protection Institution in the Federation of B-H,*
- *The Law on Basis of Social Protection, Protection of Civil Victims of the War and Protection of Families with Children,*
  - *The Law on Health Protection,*
  - *The Law on Health Insurance,*
- *The Law on Protection of the Persons with Mental Disorders.*



PSYCHIATRIC ASSOCIATION OF BOSNIA-HERZEGOVINA  
UDRUŽENJE/UDRUGA PSIHIJATARA U BOSNI I HERCEGOVINI  
УДРУЖЕЊЕ ПСИХИЈАТАРА У БОСНИ И ХЕРЦЕГОВИНИ

## **2.5. By-Laws**

### **2.5.1. Republic of Srpska**

- Rules on supervision of professional work and provision of professional assistance in the social protection instructions of Republic of Srpska  
(„Official Gazette of Republic of Srpska“, N° 67/02),
- Rules on elaborated conditions related to space, equipment, necessary professional and other workers needed for founding of social protection institution  
(„Official Gazette of Republic of Srpska“, N° 26/03),
- Rules on classification of persons with difficulties in physical and psychical developing  
(„Official Gazette of Republic of Srpska“, N° 115/03),
- Rules on education, work and funding of the Commission for Protection of Persons with Mental Disorders  
(„Official Gazette of Republic of Srpska“, N° 15/06),
  - Methodology guidelines for supervision, professional work and provision of professional assistance to social protection institutions of Republic of Srpska  
(„Official Gazette of Republic of Srpska“, N° 78/02),
- Guidelines for first instance procedure of classification of persons with difficulties in physical and psychical developing  
(„Official Gazette of Republic of Srpska“, N° 15/07).