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## **RIGHT TO EDUCATION AND ANTI - DISCRIMINATION LAW IN THE FIELD OF EDUCATION IN BOSNIA AND HERZEGOVINA**

**Franjo Ljubas**

**Doktorand na Pravnom fakultetu Sveučilišta u Mostaru, II. generacija, i član radne skupine za izradu „Smjernica za prepoznavanje diskriminacije u obrazovanju u Bosni i Hercegovini“, donesenih od strane predstavnika svih mjerodavnih obrazovnih vlasti u BiH, uz podršku OEES-a BiH-e**

### ***Abstract***

*As Bosnia and Herzegovina goes through the process of implementing the Stabilization and Association Agreement with the European Union, the response to discrimination in general, and in the field of education in particular, is an important element in the process of meeting the conditions for accession to the European Union. Considering that education is important for every society as a whole and represents the foundation for its further democratic development and the realization and protection of fundamental human rights and freedoms. A particular challenge for Bosnia and Herzegovina in the EU accession process is the introduction of international standards in the field of education, bearing in mind the complexity of the education system given its constitutional competence in BiH. Exercising the right to education according to domestic and international legal norms implies exercising the right to education without discrimination.*

**Key words:** *right to education, right to education in the international and legal framework of BiH, anti-discrimination law, protection against discrimination in the field of education.*

## 1. INTRODUCTION

In the educational process of young people, it is important to create preconditions for the development of tolerance, awareness of community and a better life, so that young people are timely and without any pressure or any form of discrimination to prepare for responsible participation in all areas of society, which we see today in the modern world very complex and demanding. The occurrence of various forms of discrimination is faced daily by both individuals and groups of people, so that the forms of discrimination in the education system are sufficient reason to do everything possible to take the necessary measures and activities that have a preventive and educational character. Much more needs to be done than all those responsible in society and the community, to raise awareness of the problem of discrimination in education in Bosnia and Herzegovina, and the need for systematic recognition and institutional prevention of the same. Education as a social activity is of exceptional importance to the society of Bosnia and Herzegovina and represents the foundation for further democratic development, and the realization and protection of fundamental human rights and freedoms in Bosnia and Herzegovina. The introduction of international standards in the field of education is an important challenge for Bosnia and Herzegovina, given the complexity of the education system with regard to the constitutional competence in the field of education.

In the process of educating young people, everything should be done to create the preconditions for the development of tolerance, awareness of community and a better life, in order to prepare young people for responsible participation in all areas of social life.

## 2. THE RIGHT TO EDUCATION IN THE INTERNATIONAL AND LEGAL FRAMEWORK IN BOSNIA AND HERZEGOVINA

The right to education is one of the fundamental human rights and is in the group of economic, social and cultural rights, and as such there are several international documents and legal documents in Bosnia and Herzegovina which ensure it to all people in Bosnia and Herzegovina.

It is the obligation of each state to ensure the realization of economic, social and cultural rights in accordance with the level of economic and social development, independently and in cooperation with other states, international organizations and associations.

The realization of the right to education is a precondition for the building of a democratic society and a necessary factor in respecting the human rights and freedoms of all people. The Constitution and legislation at the level of Bosnia and Herzegovina, as well as at the level of entities, counties and Brčko District of Bosnia and Herzegovina and lower levels, guarantee the right to education, which obliges all those responsible for ensuring this right to ensure the highest level of internationally recognized human rights, without discrimination. This implies that all bodies and institutions have a special obligation and responsibility to create the conditions that through the exercise of the right to education every child and adult is given the opportunity to develop their abilities and gain intellectual, spiritual and social independence through the acquisition of knowledge, skills, values and attitudes. The right to education in the best interests of the child. In order to ensure the realization of the right to education in Bosnia and Herzegovina, and to prevent the violation and denial of the right to education that negatively affects the development of human personality, leading to social and economic stagnation, and weakening democracy, spiritual and intellectual development and disturbing peace and security, ensure the application of international and domestic legal and political documents with the application of case law, respecting the

constitutional and overall normative-legal framework with regard to the Dayton organization of the state, political system and order in Bosnia and Herzegovina without discriminating anyone on any grounds, almost in the field exercising the right to education.

Given that the right to education, as one of the fundamental human rights, affects the exercise of many other rights and freedoms that ensure a better quality of life for children, youth and all citizens in Bosnia and Herzegovina, it is necessary to establish certain criteria that will recognize discrimination and protect against discrimination. in the fields of upbringing and education, taking into account the best interests of the child but also others who participate in the educational process in educational institutions at all levels of education from preschool, primary, secondary and higher education, and lifelong learning in Bosnia and Herzegovina and all educational institutions, both public and private. In order to point out the fundamental problems and obstacles that cause discrimination in the process of exercising the right to education, it is necessary to identify them in time, give assessments of the real situation, have the right attitudes and give clear instructions for successfully overcoming discrimination in education.

### 2.1. International legal framework in the field of the right to education

Given that international legal documents in the field of education, Dayton Bosnia and Herzegovina is bound, in the context of their application in Bosnia and Herzegovina, they contain provisions relating to the recognition of discrimination in the field of education.

#### - Universal Human Rights Declaration<sup>77</sup>

The right to education was first proclaimed at the general level by the Universal

Declaration of Human Rights. Article 26 of the Universal Declaration provides:

*"(1) Everyone has the right to education. Education must be free, at least in the basic and lower levels. Primary education must be compulsory. Technical and vocational training must be generally accessible, and higher education must also be accessible to all on the basis of ability.*

*(2) Education must be aimed at the full development of the human person and at strengthening respect for human rights and fundamental freedoms. It must promote understanding, tolerance and friendship among all peoples, racial and religious groups, and it must advance the activities of the United Nations in the maintenance of peace.*

*(3) Parents have the primary right to choose the type of education for their children. "*

#### - International Covenant on Economic, Social and Cultural Rights<sup>78</sup>

In this paper, based on the Universal Declaration of Human Rights, Article 13 recognizes and elaborates the obligations of states regarding the right to education. In accordance with article 13, all States Parties to the Covenant recognize the right of everyone to education, which should be directed towards the full development of the human person, strengthening respect for human rights and fundamental freedoms, enabling all people to participate effectively in a free society. racial, ethnic and religious groups, as well as supporting UN peacekeeping activities. States recognize that primary education must be compulsory and free for all, while secondary education, in its various forms, must be available and accessible to all; higher and higher education, in turn, must be equally accessible to all according to ability. The availability of secondary, higher and higher education is achieved by using all means, and especially by the gradual introduction of free education. States have the duty, as far as possible, to encourage or improve primary education for persons who do not have it or have not completed it in full, as well as to develop a network of schools at all levels, introduce an

<sup>77</sup> Adopted by the UN General Assembly on December 10, 1948.

<sup>78</sup> The International Covenant on Economic, Social and Cultural Rights was adopted on 16 December 1966 and entered into force on 3 January

1976, and BiH became his party by succession on September 1, 1993.

appropriate scholarship system and continuously improve the financial situation of teaching staff. States must respect the freedom of parents to choose for their children, in addition to schools established by the state, other schools that meet the minimum educational standards prescribed by the state, and to provide their children with education in accordance with personal beliefs.

In article 2, States have undertaken, independently and through international assistance and cooperation, to take measures to the fullest extent possible of their available resources, in order to progressively achieve the full realization, without discrimination, of all rights recognized in the Covenant, by all appropriate means. , and in particular by enacting legal measures. Under Article 4, States Parties may subject these secured rights to the limitations prescribed by law only if this is compatible with the nature of those rights and solely for the purpose of achieving the general welfare of society.

- **Convention on the Rights of the Child<sup>79</sup>**

By this Convention, Article 28, States Parties recognize the right of every child to education. States Parties have undertaken in particular to ensure free primary education, to encourage the development of secondary general and vocational education and to take appropriate measures to make this education free of charge, to make higher education based on ability more accessible, to improve vocational information and guidance for all children. for regular attendance and reduction of the rate of incomplete schooling. Article 29 of the Convention states that States Parties agree that the upbringing and education of the child should be directed to the development of the personality, talents and highest potentials of the child's mental and physical abilities, the development of

respect for human rights and fundamental freedoms, the development of respect for the child's parents and cultural identity. language and values, the national values of the country in which they live and originate, as well as preparing the child for a responsible life in a free society in the spirit of understanding, peace, tolerance, gender equality and friendship among all peoples, ethnic, national and religious groups, etc.

- **Convention against Discrimination in Education<sup>80</sup>**

The Convention regulates the issue of discrimination in all its forms and at all levels of education. Article 1 of the Convention provides:

*"For the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, restriction or preference based on race, color, sex, religion, political or other opinion, national or social origin, economic status or birth, for the purpose of contesting or endangering the right to equality in education, in particular:*

*challenging any person or group of access to any type or level of upbringing and education;*  
*limiting any person or group to a lower educational standard;*  
*the establishment or maintenance of separate educational systems or institutions for persons or groups, except as provided in the provisions of Article 2 of this Convention,*  
*bringing any person or group into a position incompatible with human dignity. "*

- **European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>81</sup>**

In the constitutional and legal system of BiH, the European Convention has a status which, according to Article II. (2). Of the Constitution of BiH on international standards regarding human rights and fundamental freedoms, stipulates that the rights and freedoms provided by the

<sup>79</sup> The Convention on the Rights of the Child was adopted on 20 November 1989 and entered into force on 2 September 1990. BiH became its party by notifying the succession on November 23rd, 1993.

<sup>80</sup> The Convention against Discrimination in Education was adopted by the General Conference of UNESCO on 14 December 1960. It entered into force on 22 May 1962. Bosnia and Herzegovina

became its party by notifying the succession on July 12, 1993.

<sup>81</sup> The European Convention for the Protection of Human Rights and Fundamental Freedoms was signed on November 4, 1950. It entered into force on 3 September 1953, and Bosnia and Herzegovina became its party by ratification on 12 July 2002.

European Convention and its protocols will be applied directly and have priority over all other laws.

The European Convention and its protocols oblige all 47 member states of the Council of Europe to ensure the rights and freedoms of all persons under their jurisdiction. The protection of the rights and freedoms guaranteed by the European Convention and its protocols is ensured through the European Court of Human Rights in Strasbourg, which was established in 1959. The European Convention does not contain special provisions relating to the right to education, so Protocol no. 1<sup>82</sup> guaranteed right to education.

Article 2 provides that:

*"... No one can be deprived of the right to education. In carrying out all its activities in the fields of education and teaching, the State shall respect the right of parents to provide such education and instruction as is consistent with their own religious and philosophical beliefs."*

Article 14 of the European Convention prohibits discrimination in the enjoyment of the rights and freedoms set forth in this Convention on any grounds, such as sex, race, color, language, religion, political or other opinion, national or social origin, affiliation with a national minority, property status, birth or other status. This provision has limited meaning only to the rights recognized by the Convention, so applicants must prove discrimination in the enjoyment of a recognized right under the Convention. The prohibition of discrimination was further extended by Protocol no. 12,<sup>83</sup> which proclaims in Article 1 a general prohibition of discrimination, stipulating that the enjoyment of all rights enshrined in law is ensured without discrimination on any grounds, such as sex, race, color, language, religion, political or other opinion, national or social origin, connection with a national minority, property status, birth or other status. Paragraph 2 of the same article also explicitly stipulates that no authority may discriminate against anyone on any of the above grounds.

<sup>82</sup> Protocol no. 1 was signed on March 20, 1952. BiH ratified it on July 12, 2002.

## **2.2. Legal and institutional framework in the field of education in Bosnia and Herzegovina**

### **2.2.1. Legal frame**

In the Constitution of Bosnia and Herzegovina, in Article II. (3), contains a catalog of human rights and fundamental freedoms that persons enjoy in the territory of Bosnia and Herzegovina. The right to education is listed as one of the fundamental human rights in paragraph 4 of Article II, where the prohibition of discrimination in the enjoyment of rights and freedoms provided for in this Article or international agreements listed in Annex I of the Bosnia and Herzegovina Constitution is prescribed to all persons in Bosnia and Herzegovina. on any grounds such as gender, race, color, language, religion, political or other opinion, national or social origin, affiliation with a national minority, property, birth or other status. For the legal and institutional framework, and responsibilities in the field of education, we start from the fact that there is a significant number of laws in this field at all levels. In the Republika Srpska, the education system is unique, while in the Federation of Bosnia and Herzegovina it is decentralized and established within 10 counties, and the Brčko District of Bosnia and Herzegovina, as a special unit of local self-government, has an autonomous education system.

### **2.2.2. Institutional framework**

Legislation in the field of education, based on the Constitution of Bosnia and Herzegovina, the Constitution of the entities, cantons and the Statute of the Brčko District of Bosnia and Herzegovina, determines responsibilities for determining and implementing educational policies at the level of municipalities, cities, cantons, entities and at the level of Brčko District. Institutional structures responsible for defining and managing, monitoring and coordinating education policy in Bosnia and Herzegovina

*Protocol no. 12 was signed on 4 November 2000; ratified by BiH on July 29, 2003 .*

have been established at various levels of government.

- At the level of Bosnia and Herzegovina, these are:
- **The Ministry of Civil Affairs of Bosnia and Herzegovina (MCP)**, which coordinates activities, harmonizes plans of entity authorities and defines strategies at the international level. The ICR implements the coordinating role through the Conference of Ministers of Education in Bosnia and Herzegovina (Conference). The Conference is the permanent and highest advisory body for the coordination of education in Bosnia and Herzegovina, whose mandate does not interfere with the constitutional and legal responsibilities of education authorities at all levels.<sup>84</sup>
- **Agency for Preschool, Primary and Secondary Education (APOSO)**, which is responsible for “establishing knowledge standards, evaluating the achieved results and developing a common core curriculum in preschool, primary and secondary education, and for other professional activities in the field of knowledge standards and quality assessment determined by special laws and other regulations.”<sup>85</sup> Pored toga, sukladno članku 10. ”In addition, in accordance with Article 10 of the Framework Law on Secondary Vocational Education and Training in Bosnia and Herzegovina, the Agency monitors the standard and quality of education within secondary vocational education, as well as adult education.
- **Agency for the Development of Higher Education and Quality Assurance of Bosnia and Herzegovina**

(HEA), which is responsible for establishing clear, transparent and accessible criteria for accreditation of higher education institutions and adoption of standards setting minimum standards in higher education, the state register of accredited higher education institutions in Bosnia and Herzegovina, and publishing the list of accredited higher education institutions in Bosnia and Herzegovina on its website.<sup>86</sup>

- **Center for Information and Recognition of Documents in the Field of Higher Education (CIP)**, which is responsible for information and recognition of higher education qualifications in Bosnia and Herzegovina in accordance with the Lisbon Convention on the Recognition of Higher Education Qualifications.<sup>87</sup>
- **The Rectors' Assembly of Bosnia and Herzegovina**, which was established by an agreement between the university / university for the implementation of higher education reform and acts as an advisory body. It consists of rectors of accredited and licensed universities in Bosnia and Herzegovina. Identifies and represents their common interests, and cooperates with institutions in the field of education in Bosnia and Herzegovina.<sup>88</sup>
- **Ministry of Human Rights and Refugees of Bosnia and Herzegovina**, which is responsible for monitoring and reporting on the application of human rights standards to international bodies. Also, based on the Law on Prohibition of Discrimination in Bosnia and Herzegovina<sup>89</sup> (hereinafter: the Law on Prohibition of Discrimination), this Ministry compiles an annual report on the

<sup>84</sup> Memorandum of Understanding for the Establishment of the Conference of Ministers of Education in BiH ", item 1 ("Official Gazette of BiH", No. 19/08)

<sup>85</sup> Article 4 of the Law on the Agency for Preschool, Primary and Secondary Education ("Official Gazette of BiH", No. 88/07)

<sup>86</sup> Articles 48 and 49 of the Framework Law on Higher Education in Bosnia and Herzegovina ("Official Gazette of BiH", No. 59/07 and 59/09)

<sup>87</sup> Articles 45 and 46 of the Framework Law on Higher Education in Bosnia and Herzegovina ("Official Gazette of BiH", No. 59/07 and 59/09)

<sup>88</sup> Article 43 of the Framework Law on Higher Education in Bosnia and Herzegovina ("Official Gazette of BiH", No. 59/07 and 59/09)

<sup>89</sup> Temeljem članka 8. točka 2 i 3 Zakona o zabrani diskriminacije u BiH („Sl. glasnik BiH“, br. 59/09, 66/16 Pursuant to Article 8, items 2 and 3 of the Law on Prohibition of Discrimination in BiH ("Official Gazette of BiH", No. 59/09, 66/16)

forms of discrimination in Bosnia and Herzegovina.

In the Federation of Bosnia and Herzegovina:

- **Federal Ministry of Education and Science**, which performs a coordinating role in planning and implementation of activities related to education policy in the Federation of Bosnia and Herzegovina.

- **County ministries of education**, which in each county individually, have responsibilities for determining education policy, with the adoption of regulations on education and education, which have established or use in their area the services of *Pedagogical Institutes / Institutes of Education* perform professional, developmental, research and related administrative tasks in the education sector in the Federation of Bosnia and Herzegovina (six pedagogical institutes, one Institute for Education and one Institute for Education). The institutes were established with the aim of improving educational work, counseling and performing professional and pedagogical supervision over the work of pre-school, primary and secondary education institutions. Their key tasks are the development of curricula, the introduction of new approaches and methods in the educational process, professional development and training of teachers, as follows:

1. Ministry of Education, Science, Culture and Sports of Una-Sana County, Bihać
2. Ministry of Education, Science, Culture and Sports of Posavina County, Orašje
3. Ministry of Education and Science of Tuzla County, Tuzla
4. Ministry of Education, Science, Culture and Sports of Zenica-Doboj County, Zenica
5. Ministry of Education, Youth, Science, Culture and Sports of the Bosnian-Podrinje County of Goražde
6. Ministry of Education, Science, Youth, Culture and Sports of the Central Bosnia County, Travnik
7. Ministry of Education, Science, Culture and Sports of the Herzegovina-Neretva County, Mostar

8. Ministry of Education, Science, Culture and Sports of the West Herzegovina County, Široki Brijeg

9. Ministry of Education, Science and Youth of Sarajevo County, Sarajevo

10. Ministry of Science, Education, Culture and Sports of Hercegbosna County, Livno.

- At the level of Republika Srpska:

- **The Ministry of Education and Culture of Republika Srpska**, which includes the Republic Pedagogical Institute of Republika Srpska, the Institute for Adult Education of Republika Srpska and an independent organization of the Agency for Accreditation of Higher Education Institutions of Republika Srpska, regulates and ensures, in accordance with the Constitution of Republika Srpska, youth, education, culture and protection of cultural property, and physical culture. Management of education in this entity is centralized in this Ministry, which performs administrative and other professional tasks related to: ... *system of pre-school education, primary education, secondary and higher education ensures lifelong learning, creates enrollment policy in accordance with labor market needs.*<sup>90</sup>

Na razini Brčko distrikta BiH:

- In the Brčko District of Bosnia and Herzegovina (District), in accordance with the Statute of the Brčko District, the responsibility of public authorities in the District includes the field of education. Among other bodies, the public administration consists of departments of the District Government. Heads of departments have executive powers provided by the laws of the District. *The Department for Education of the Government of the Brčko District of Bosnia and Herzegovina*, within which the Pedagogical Institution also operates, performs professional, administrative and other tasks related to the implementation of laws and regulations of responsible bodies and institutions of Bosnia and Herzegovina and the District in the field of education.

<sup>90</sup> Article 19 Law on Republic Administration of the Republika Srpska ("Official Gazette of the RS" No. 118/08, 11/09, 74/10 and 86/10)

A feature of the Brčko District is the fact that primary and secondary schools do not have the status of public institutions.

### 3.1. RIGHT TO EDUCATION, PURPOSE, GOALS AND TASKS Right to education (Chart 4A)

The starting point for establishing and exercising the right to education, and recognizing various situations in which the human right to education is endangered, is the so-called Scheme 4A introduced by the UN Committee on Economic, Social and Cultural Rights.<sup>91</sup> The right to education, analyzed through this scheme, contains four basic dimensions:

**Availability:** Is there a sufficient number of adequately equipped educational institutions and how are they distributed?

- Wider definition:
- The availability of education implies the obligation of the state to establish and finance educational institutions in order for everyone to exercise their right to education, but also the obligation to provide the necessary financial resources and human and material resources so that private and legal entities can independently establish educational institutions. Availability, therefore, refers to the provision of as many educational institutions as possible that are made available to individuals and free choice, especially institutions of primary education, which must be compulsory and free of charge.
- **Accessibility:** are these institutions physically and financially accessible, ie do all social groups have equal access?
- Wider definition:
- Access to education refers to the state's obligation to provide free primary education and secondary and higher education to all under certain conditions, which includes identifying and removing all barriers to discrimination and exclusion of individuals based on gender, language, financial means, ethnicity and

other characteristics. Accessibility, therefore, implies equipment, and physical and financial dimension (proximity to educational institutions, access through modern technologies, prices of textbooks and other materials, and public transport for students), as well as non-discriminatory dimension (education without discriminatory practice, available to all, and especially to the most vulnerable social groups).

- **Acceptability:** do educational programs provide quality education and do the study conditions comply with minimum international standards?

- *Wider definition:*

Eligibility refers to the obligation of the state to provide education according to certain standards, ie certain qualities. This includes free choice of education, quality programs and content, as well as relevant and culturally appropriate teaching and evaluation methods. In addition, acceptability means that the human rights of all participants are improved in upbringing and education, and that school and classroom discipline are implemented accordingly.

- **Adaptability:** is the system adaptable, does it suit the interests of pupils / students, parents, minorities, the wider community and the labor market; does the system adapt appropriately to people with disabilities, minorities and other marginalized groups?

*Wider definition:*

Adaptability refers to the quality of education, and refers to the obligation of the state to adapt education to different groups of children and youth, such as members of minorities, children with disabilities, children with refugee or displaced person status, etc. Adaptability means that education and adaptable education, ie that they can adapt to the different needs of different students, and not that children have to adapt to school, which is unfortunately a common situation in practice.

The role of responsible education authorities in the education system in practice lies between two views: a) one who views responsible education authorities as the sole

<sup>91</sup> Adopted at the session of the UN Committee on Economic, Social and Cultural Rights on 8th of December 1999



founder and provider of education, and b) the other who sees responsible education authorities only as regulators in the field of education. By its very nature, the right to education requires it to be regulated by the state and can vary considerably in space and time, depending on the needs and resources of the community and individuals. States are obliged to ensure the operation of all educational institutions in accordance with the minimum prescribed educational criteria. The right to education gives every person the opportunity and access to primary, secondary and higher education. The right to education includes the obligation of states to respect, protect and exercise the right to education, and gives parents the freedom to choose private or public schools for their children, as well as religious and moral education in accordance with their beliefs. Schools must ensure equal access for all through respect for the principles of equality of children and the prohibition of discrimination, but also ensure the prohibition of corporal punishment.

The international legal criteria for the right to education, which states should achieve at three levels of education, are: a) free and compulsory primary education, b) accessible and accessible secondary education, which includes technical and vocational education, and c) accessible to all ability-based education.

These criteria also require that education be directed towards the full development of people and awareness of human dignity from pre-school to adult education, and that states must strengthen respect for human rights and fundamental freedoms, promote understanding, tolerance, friendship and peace among peoples, and enable all people to participate effectively in a free society.

### **3.2. The purpose of education**

The purpose of education derives from the generally accepted, universal values of a democratic society, value systems based on the peculiarities of the civilizational, national, historical, cultural and religious heritage of peoples and national minorities.

The purpose of education should be viewed through the domestic legal framework and compliance with international standards and criteria. The purpose of education is, through

optimal and intellectual, physical, moral, and social development of the individual, in accordance with his abilities and capabilities, to contribute to the creation of a society based on the rule of law and respect for human rights, and to contribute to its economic development.

### **3.3. Goals and objectives of education**

Education is based on the principles of: respect for human rights and the rights of the child; respect for the strategic goals of the development of education in the "European educational area"; ensuring horizontal and vertical possibility of the system; inclusion in the education system of persons exposed to marginalization; competences and respect for the professional ethics of employees in the education system; making decisions in a democratic way with the participation of all in the educational process; Respecting the needs of society for educational staff, i.e. the needs of the labor market, designing and improving the work of teachers and educational institutions.

Education plays a key role in the development of society. The quality of education is a fundamental resource for the development of the economy and society as a whole. It ensures connectivity, cooperation and openness to other systems in society. Cooperation of all systems in society improves creative work, creative action that enables everyone, especially young people, inclusion in the labor market, scientific, research and production process, and work and development processes that improve the availability of information and its quality development use.

The goals and tasks of education, clearly expressed in the key competencies whose adoption enables an individual to work and live in a knowledge society, should be observed within the following areas of education in Bosnia and Herzegovina.

#### ***Preschool education***

The goal of preschool education is to encourage physical, intellectual, social and emotional development, development of speech and communication, creativity and creativity of children. The goal of this form of education is learning based on experience

and occupations, gaining new experiences and expanding knowledge about themselves, other people and the world, necessary for further education, and inclusion of children in society, while respecting the rights and opportunities of children. The task of pre-school education is to strengthen the partnership with the family with the aim of informing the family about the obligation of early learning. Preschool education must be available to all children without discrimination on any grounds, and especially to vulnerable groups of children. The obligation of educational institutions is to ensure and organize the work of preschool institutions according to the needs of children.

- ***Elementary education***

The aim of primary education is to encourage the complete and harmonious intellectual, moral, physical, emotional and social development of a self-aware and independent, enterprising and responsible student, ready to learn, develop, defend and harmonize their attitudes, able to continue education, find and apply knowledge, think creatively. and create. The basic task of primary education is to ensure that each student masters the knowledge and skills that can be interconnected and applied in further education and in everyday life, meeting their developmental needs and the needs of society, while respecting the equal right of access and equal opportunities of every individual. based. In the process of education, it is necessary to use modern curricula, cooperative and interactive learning methods and objective assessment of students, safe and correct choice of the most appropriate measures depending on the school, and ensure equal treatment of every child, regardless of whether they are educated in the city or the village. Also, information and communication technologies and achievements should be included in primary education. It is especially important to further encourage and develop the inclusion of children with disabilities in the existing education system. The inclusion of children with disabilities implies the provision of adequate financial and human resources and targeted training of teaching staff, who would be able to provide appropriate support to these children.

Another task is for society, and especially the school, to establish an active and stimulating relationship with gifted and talented students as an important resource for development. This would be achieved by establishing a system for identifying and monitoring such students, and greater participation, contribution and support from the school, the local community and relevant institutions at all levels. It is necessary to pay special attention to the existing study programs for future teachers and professional associates, and to create conditions for the adoption of better programs in line with modern educational processes and current needs of society. A particularly important segment is the establishment of continuous professional development of teachers and professional associates with the aim of improving their abilities and competencies, and expanding their knowledge for greater efficiency in work and better quality of the educational process.

- ***Secondary education***

Secondary education is an activity of general social interest that includes various types and forms of education. After completing secondary education, the knowledge and skills necessary for further education and work in the profession are acquired. Secondary education should be available to all under equal conditions and in accordance with the interests and needs of the individual. Quality secondary education must provide the individual with the necessary knowledge, skills, abilities and competencies to continue further education, and to acquire qualifications that will enable him to enter the labor market.

- ***Higher Education***

The goal of higher education is: the acquisition, development, protection and transfer of knowledge and skills through teaching and scientific research, with the aim of contributing to the development of the abilities of individuals and society; providing opportunities for individuals to obtain higher education and lifelong learning on equal terms; knowledge transfer and connection with the labor market, and the creation and development of a knowledge society.

In higher education, it is necessary to improve: efficiency, quality of study at higher education institutions, vertical and

horizontal mobility of students from higher education institutions from Bosnia and Herzegovina in the European Higher Education Area. It is necessary to train students to constantly improve and to constantly modernize their professional competencies; work on developing a quality system of higher education, which, through organized studies and research, will continuously transfer and create scientific knowledge based on professional competencies in order to improve the social, economic, cultural and other progress of BiH and its citizens, as a society that provides equal opportunities.

- *Lifelong learning*

The goals of lifelong learning are to raise the general level of education of an individual, to determine his or her personal potentials and abilities, his or her training to cope with and adapt to greater demands and changing working conditions, and for greater employment opportunities.

#### 4. ANTI-DISCRIMINATION FRAMEWORK AND PROTECTION AGAINST DISCRIMINATION IN THE FIELD OF EDUCATION IN BOSNIA AND HERZEGOVINA

##### 4.1. Anti-discrimination legal framework

The legal framework applicable in Bosnia and Herzegovina sets out the responsibilities and obligations of the authorities at all levels - legislative, executive and judicial - to promote and create the conditions for equal treatment of all persons without discrimination. Legal entities and individuals exercising public authority have the same obligation. The obligation to act in a non-discriminatory manner is contained within the framework of international standards that Bosnia and Herzegovina has adopted on the basis of membership in the United Nations and the Council of Europe. Anti-discrimination provisions are an integral part of the Constitution of Bosnia and Herzegovina, the Constitution of the Federation of Bosnia and Herzegovina, the

Constitution of the Republika Srpska, the Statute of the Brčko District of Bosnia and Herzegovina and the Constitution of the counties in the Federation of Bosnia and Herzegovina. Furthermore, the Law on Prohibition of Discrimination in Bosnia and Herzegovina<sup>92</sup> (hereinafter: the Law), as well as other acts, determine the foundations, forms and mechanisms for protection against discrimination.

The law stipulates that protection against discrimination is an obligation of all levels of government in Bosnia and Herzegovina. The key institutions that need to ensure effective basic mechanisms for protection against discrimination in the Bosnia and Herzegovina legal system are the parliamentary, executive, judicial authorities, as well as independent bodies. The law applies to the actions of all levels of government, legal entities with public authority, as well as to the actions of all legal and natural persons. The law also specifies areas of application, one of which is education. The law also provides a practical mechanism because it stipulates that all public bodies and other legal entities have the obligation to regulate the principles of equal treatment and ensure effective internal procedures for protection against discrimination by their general or special legal acts.

Discrimination is a term that is often misused to denote any form of human rights violation. Discrimination is a violation of a certain right, and it is a right to equal treatment that is not respected in the areas of protection and insurance of any of the rights in any area of life. Therefore, regardless of the stated ground, discrimination can be direct or indirect.

In a broader sense, discrimination implies unequal treatment of another person or group of persons, unequal rights, or failure to give equal opportunities and opportunities in relation to another person or group.

Article 2 of the Law on Prohibition of Discrimination in Bosnia and Herzegovina contains a definition of discrimination:

*"(1) For the purposes of this Law, discrimination is considered to be any different treatment, including any exclusion, restriction or preference*

<sup>92</sup> „Official Gazette of BiH ", no. 59/09 and 66/16

*based on actual or presumed grounds against any person or group of persons and those related to them on the basis of their race, color, language, religion, ethnicity, disability, age, national or social origin, affiliation with a national minority, political or other beliefs, property status, membership in a trade union or other association, education, social status and gender, sexual orientation, gender identity, sexual characteristics, as well as any other circumstance that has the purpose or consequence of preventing or endangering any person from recognizing, enjoying or exercising on an equal basis, rights and freedoms in all areas of life. "*

Discrimination exists in all situations when there exist disrespect, non-provision and non-fulfillment of the rights of a person or group of persons.

- **Non-compliance** with rights: the right of an individual or a group is endangered in a situation when the removal of measures that prevent or reduce the enjoyment of rights is avoided;
- **Failure to provide protection:** in the same context, the situation should be recognized, eg when measures are introduced to prevent a third party from exercising its rights;
- **Non-fulfillment of rights:** a situation in which positive measures are not introduced that facilitate the exercise of rights or measures are not introduced that ensure the enjoyment of rights by those persons who are unable to exercise their rights due to obstacles beyond their control.

In addition, the Law lists other forms of discrimination, such as: incitement to discrimination; issuing orders to others to discriminate; helping others to discriminate; victimization (any form of unfair treatment of persons who have reported or intend to report discrimination in good faith). In addition to the above, the Law lists more serious forms of discrimination: multiple discrimination (discrimination committed against a certain person on several grounds); repeated discrimination (discrimination committed more than once) and prolonged

discrimination (discrimination that has existed for a long time). In the field of education, the anti-discrimination provision is contained in the framework laws governing pre-school, primary, secondary and higher education, and in all laws enacted by the responsible education authorities in the entities, cantons and the Brčko District of BiH.

Based on the standards established by the international and domestic legal framework for protection against discrimination in the field of education, and the elements that indicate discrimination, it is possible to identify the following phenomena:

- when in any way any person or group of persons is denied access to any type or level of upbringing due to the personal characteristics or affiliation of that person or group of persons;
- when any person or group is limited to a lower educational standard due to the personal characteristics or affiliation of that person or group of persons or a person or group of persons is transferred to a higher educational standard without having mastered the curriculum from a lower one;
- in cases of bringing any person or group into a position incompatible with human dignity;
- separation, separation of social groups due to special social treatment and on the basis of racial, ethnic, religious or socio-economic affiliation, or separation of children with disabilities from regular classes into specially organized classes for them when the basic standards for special treatment are not met;
- implementation of processes and measures by which individuals or ethnic groups, through assimilative language education and culture, merge into the predominant social group;
- the establishment or maintenance of separate educational systems or institutions for persons or groups, except as provided for in the Convention against Discrimination in Education.<sup>93</sup>

<sup>93</sup> Article 2: *If approved by the State, the following circumstances shall not be considered discrimination within the meaning of Article 1 of this Convention:*

*For example, the industry of furniture, carpets, glass and various other tourist facilities, then construction builds new tourist facilities, and agriculture places a significant part of its products in tourism.*

## 4.2. Protection against discrimination in the field of education

### 4.2.1. Educational institutions and educational inspection

The Law on Prohibition of Discrimination obliges educational authorities to adopt a practical mechanism for protection against discrimination, ie their general legal acts or special legal acts, regulate the principles of equal treatment and ensure effective internal procedures for protection against discrimination. Starting from the obligations of educational authorities when it comes to providing education in accordance with human rights standards, and preventing discrimination, it is necessary that all bodies of educational institutions provide protection against discrimination in accordance with their mandates, as follows: Director; School Board; Teachers' Council; Rector; Dean; Board of Directors; University Senate and other bodies. Based on the obligation of school authorities to regulate the issue of equal treatment and ensure effective procedures for protection against discrimination, any participant in the education process (pupils / students, parents, school staff, parents' council, pupils' council, etc.) may, pursuant to Article 11. Of the Law on Prohibition of Discrimination, in all proceedings in which school bodies decide on any of the rights, raise an objection or complaint related to discrimination. In the event that the complaint is filed with school bodies, ie the bodies of higher education institutions, the bodies: are obliged to declare themselves in connection with the submitted

complaints and objections; they can make a decision to prevent further discrimination. Education inspectors, based on the law on education, represent the first level of control in cases of violation of the law, misinterpretation or non-application of the law. Due to the fact that all laws in education contain provisions on non-discrimination, educational inspectors, who supervise the application of laws and regulations in this area, have the obligation and the right to act in case of violation of these provisions. In the event that a complaint is submitted to the education inspection, the education inspection: is obliged to declare itself in connection with the submitted complaints; can make a decision if necessary. Therefore, if we are of the opinion that discrimination has been committed at any level of education (preschool, primary and secondary schools, as well as higher education institutions), everyone has the right to file a complaint primarily to educational institutions and the education inspectorate, which are obliged to respond or review. state the appeals and, if necessary, make a decision on them. It is important to note that in fulfilling this role, and with the aim of protection and preventive action against discrimination, educational institutions and educational inspection should achieve full cooperation with civil society, as well as with parents and students.

### 4.2.1. The role of the Institution of the Human Rights Ombudsman in Bosnia and Herzegovina

The central institution for investigating individual and collective cases of discrimination is the Institution of the Human Rights Ombudsman.<sup>94</sup> The Ombudsman is

*a) Establishment or maintenance of separate educational systems or institutions for students of different sexes, if these systems or institutions offer equal access to education, have professional qualifications of the same standard, have space and equipment of the same quality and offer the opportunity to attend the same or approximately the same programs;*

*b) the establishment or maintenance of special educational systems or institutions for religious or linguistic reasons, in which education is provided in accordance with the wishes of the student's parents or legal guardians, if inclusion in these systems or attendance is based on choice and if education and the education provided in them meets those standards adopted or approved by the responsible authorities, in*

*particular for education and training of the same level;*

*c) the establishment or maintenance of private educational institutions, if the aim of these institutions is not to exclude any group but to provide additional educational opportunities in addition to those established by public authorities, if those institutions are run in accordance with that goal and if the education provided in them meets those standards adopted or approved by the responsible authorities, in particular for upbringing and education of the same level. "*

<sup>94</sup> Article 7 of the Law on Prohibition of Discrimination ("Official Gazette of BiH", No. 59/09 and 66/16)

responsible for promoting the Law on Prohibition of Discrimination, informing the public, raising awareness, implementing the campaign and, in other ways, actively promoting the fight against discrimination in order to prevent it.

Pursuant to the Law on the Human Rights Ombudsman of Bosnia and Herzegovina<sup>95</sup> and the Law on Prohibition of Discrimination:

Ombudsmen receive and consider individual and collective complaints regarding discrimination;

- The complaint is submitted by filling out a form where it is important to state the required information, circumstances, actions and facts that support the allegations of discrimination. A duly completed complaint form is submitted by mail, fax, e-mail or in person to one of the offices of this institution. When submitting an appeal, it is important to take into account the legally prescribed deadline for filing an appeal. Ombudsmen provide natural and legal persons who have complained of discrimination with the necessary information on their rights and obligations, as well as the possibilities of judicial and other forms of protection;

- Regarding the complaint, the Ombudsman may decide not to accept the complaint or initiate an investigation procedure;

The Ombudsman proposes initiating the mediation procedure in accordance with the provisions of the Law on the Mediation Procedure in Bosnia and Herzegovina.<sup>31</sup> If discrimination is found, the Ombudsman issues a recommendation with the aim of correcting violations of rights arising from discrimination and eliminating further discrimination. If the Ombudsman's recommendations are not followed, misdemeanor proceedings may be initiated;

- Failure of a state institution, company or responsible person to comply with the

Ombudsman's recommendations is punishable by fines upon completion of misdemeanor proceedings.

The court is obliged to consider the Ombudsman's recommendations in the case when considering a case on which the Ombudsperson Institution has already made a recommendation, and which the party uses as evidence.

Ombudsmen submit annual reports on discrimination to the competent parliaments in Bosnia and Herzegovina and issue appropriate recommendations to the responsible bodies; in this way, it is possible to determine the level of discrimination in Bosnia and Herzegovina and in certain areas, to point out the institutions that do not implement their recommendations and initiatives for changes in the law; the reporting process enables the competent parliaments, i.e. assemblies that consider these reports and unexecuted recommendations, to ask the executive to take all necessary measures to combat discrimination.

Ombudsmen also prepare special reports on the occurrence of discrimination, if necessary.

#### **4.2.2. Judicial protection against discrimination**

If a person considers that he / she has been discriminated against, he / she can request protection from the court, which is provided by the courts in Bosnia and Herzegovina at all levels of government according to their local jurisdiction. Courts are responsible for resolving individual or collective lawsuits for protection against discrimination filed in accordance with the Law on Prohibition of Discrimination.<sup>96</sup>

According to the Law on Prohibition of Discrimination, there are four types of lawsuits:

- **Lawsuit for establishing discrimination** (declaratory anti-discrimination request) - this lawsuit establishes that the defendant violated the plaintiff's right to equal treatment, ie that the action he took or

<sup>95</sup> Law on the Human Rights Ombudsman of Bosnia and Herzegovina ("Official Gazette of BiH", No. 19/02, 35/04, 32/06)

<sup>96</sup> Law on Prohibition of Discrimination ("Official Gazette of BiH", No. 59/09 and 66/16).

omitted may directly lead to a violation of the right to equal treatment.

- **Lawsuit for prohibition, ie omission** (prohibitive request) or elimination of discrimination (restorative request) - this lawsuit seeks a ban on actions that violate or may violate the plaintiff's right to equal treatment, or to perform actions that eliminate discrimination or its consequences

- **Lawsuit for compensation of damages** - this lawsuit seeks compensation for material and non-material damage caused by the violation of the rights protected by this law.

- Lawsuit for the announcement of the verdict - this lawsuit requires that the verdict establishing the violation of the right to equal treatment be published in the media at the expense of the accused.

What is significant for court proceedings related to the Law on Prohibition of Discrimination is that the burden of proving that discrimination did not occur passes to the perpetrator of discrimination, and not to the person who has been discriminated against.

The court and other bodies are obliged to apply the principle of urgency in all proceedings in which allegations of discrimination are examined.

The deadline for filing lawsuits for protection against discrimination is three years from the day of learning about the violation, and no longer than five years from the day the violation was committed, while the deadline for filing a request for review is three months from the day of delivery of the second instance court verdict.

The law provides:

- judicial security measure before and during the proceedings;
- "situation testing - a method for proving discrimination";
- the obligation of the court to consider the Ombudsman's recommendations;
- participation of third parties;
- the possibility for associations or other organizations dealing with the protection of human rights to file a lawsuit.

The Constitutional Court of Bosnia and Herzegovina has appellate jurisdiction in

matters contained in the Constitution of Bosnia and Herzegovina<sup>97</sup>, due to the judgment of any court in Bosnia and Herzegovina.

An appeal may be filed against judgments and other decisions and rulings of regular courts which finally decide on certain rights and freedoms if all effective remedies available under the law have been exhausted and if the appeal is filed within 60 days of the judgment becoming final. After all regular legal remedies have been exhausted before the responsible bodies in Bosnia and Herzegovina, invoking the European Convention on Human Rights and Freedoms, lawsuits can be filed before the European Court of Human Rights in Strasbourg.

Individuals whose fundamental rights have been violated and who are unable to exercise their rights before domestic judicial and administrative authorities may apply to the Court for any right recognized and guaranteed by the European Convention or its Protocols 1, 4, 6, 7, 12 and 13.

In order to file a complaint, it is not necessary that the complainant has suffered any damage as a result of a violation of a right, but only that he is a victim of a violation of a right under the Convention.

Before applying to the European Court, a party must exhaust all legal remedies available to it in the legislation of Bosnia and Herzegovina; however, even if not all domestic remedies have been exhausted, the court may accept the appeal if the appellant proves that the remedies are unavailable, or that the use of the remedies would be ineffective, or that it would take an unreasonably long time.

The lawsuit shall be filed within six months from the day when the final decision on the case in the domestic proceedings was made. The time limit starts to run from the moment the appellant uses all domestic effective remedies. If the judgment on the case before the domestic court has not been made public, the time limit shall run from the day on which the final decision is served on the party.

If the party to the proceedings before the domestic court did not know that a violation of the right provided for in the Convention

<sup>97</sup> According to Article VI./3.b) of the Constitution of Bosnia and Herzegovina

had taken place, and later learns the new facts, the time limit shall be calculated from the moment when the party came to such knowledge.

A complaint may be lodged by an individual, a non-governmental organization or a group of persons who allege that they have been the victims of a violation of the rights established by the Convention or the protocols.

The right to file an appeal does not apply only to citizens of our country, but it belongs to everyone (foreigner, stateless person) who is under the jurisdiction of our state and who shows that he has been denied this right. It also means how our citizens can sue another State that has ratified the Convention if they are under the jurisdiction of that state and if they show how it has denied or violated a right under the Convention.

The European Court of Justice may indicate to a State which legal provisions in its legislation are incompatible with the Convention and order it to what extent and how the practice of the work of public authorities should be changed.

The European Court of Justice may not be required to alter, annul or revoke a decision of a domestic judicial or administrative authority, nor to grant the appellant any right which it has been denied; the court may be asked to establish whether a particular right of the appellant has been violated in a particular case and to decide how the injured party will receive satisfaction or appropriate compensation for the damage thus caused to him.

#### **4.2.3. Ministry of Human Rights and Refugees of Bosnia and Herzegovina**

Pursuant to the Law on Prohibition of Discrimination, this Ministry monitors the implementation of the Law on Prohibition of Discrimination in Bosnia and Herzegovina, maintains a central database on discrimination cases on the basis of which it prepares annual and special reports on discrimination, and proposes legislative and other measures to prevent and combat discrimination in Bosnia and Herzegovina. It calls for the elimination of systematic forms of discrimination and advocates the application of the highest standards in the field of human rights and the harmonization

of laws with the Law on Prohibition of Discrimination.

The Ministry has the obligation to regularly submit state reports to international bodies, and this process of reporting and presentation of Bosnia and Herzegovina reports before the competent commissions is carried out in cooperation with all responsible levels of government.

An important role in this process is played by the recommendations and concluding observations of international bodies that the state receives after the presentation. Recommendations and conclusions of international bodies are a mechanism through which states are required to better apply international standards, especially in the areas of harmonization of laws and practices to which they relate and protection against discrimination.

Citizens of Bosnia and Herzegovina may submit petitions to UN commissions based on ratified: Optional Protocol to the International Covenant on Civil and Political Rights, Optional Protocol to the Convention on the Rights of Persons with Disabilities. UN commissions, based on individual or collective petitions, may also issue appropriate recommendations to the authorities of Bosnia and Herzegovina regarding discrimination.

## **5. CONCLUSION**

Based on the international legal framework for protection against discrimination taken over by Bosnia and Herzegovina, and the legal framework in Bosnia and Herzegovina in the field of education, it is necessary to ensure criteria that ensure the availability of education without discrimination.

In order to ensure the right to education without discrimination, education authorities have an obligation to take the measures at their disposal, and in addition to the physical and economic, to ensure a non-discriminatory dimension, especially towards the most vulnerable groups in society; to ensure greater coverage of children with pre-school education, free and compulsory primary education, and equal



access to secondary and higher education, where through the enrollment system of pupils and students, everyone would have equal opportunities for education.

All education authorities have an obligation to specify the composition and representation of all governing, managerial, advisory and professional bodies and bodies on a non-discriminatory basis, and to implement continuous active measures that improve the level of participation of parents, students and pupils in work and decision-making, and strengthen the autonomy of educational institutions in the community.

It is necessary to improve the existing curricula, and better include criteria for non-discrimination and respect for the principles of adaptability of educational programs to the needs of all students and parents, and in accordance with their commitments, while respecting individual differences.

Education authorities in Bosnia and Herzegovina should improve the content of existing regulations, which are adopted in educational institutions for protection against unacceptable communication, in a way that clearly and in detail

define the ways and principles of free expression of opinion and religious belief, and the role of members of the educational community in developing a culture of dialogue within educational institutions.

It is necessary to develop an improved system of monitoring, evaluation and assessment, adapted to the needs of students in educational systems, without discrimination and to establish an efficient and sustainable mechanism for combating all forms of violence in educational institutions. Without the establishment of clear rules of conduct in society, without timely recognition and action on all forms of discrimination and discriminatory behavior in Bosnia and Herzegovina, it is not possible to ensure the right to education.

All bodies and institutions of government at all levels are responsible for creating a democratic society, without any form of discrimination in the field of education, while providing adequate assistance to all participants in the educational process - management, governing, advisory and professional bodies in educational institutions, teachers, parents and guardians,

children, pupils and students - to recognize discrimination and act on time, which would contribute to the realization of the full right to education.

Recognizing and timely indicating the existence of discrimination in the field of education will greatly affect the quality of every aspect of human life and work, and prevent any rejection, marginalization and dehumanization of a person or group of persons, and eliminate the situation and intentions that jeopardize or prevent the exercise of rights. to education without discrimination and to act preventively on the occurrence of all forms of discrimination.

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## USE OF LEAN TOOLS AND METHODS IN INCREASING PRODUCTION CAPACITY USE

**Snježana Klarić, univ. spec. oec., Klinička bolnica „Sveti Duh“, 10000 Zagreb, Ul. Sveti Duh 64,  
+385912117987 (E-mail: sklaric5@gmail.com)**

*Summary: One of the fundamental challenges faced by today's organizations is capacity management. The capacity of the organization is the sum of the capacities of all machines and devices, i.e. the capacities of all organizational employees. The capacity of organizational employees is determined by their efficiency. If employees maintain low efficiency, which is determined by the total duration of activities that add value and the total duration of the process, this is also reflected in the capacity of the organization. The organization, given the demand for its products and services, needs to manage and prepare capacities. For capacity planning and management, it is necessary to measure the current capacity and allocate resources based on it, i.e. to develop an organizational plan. Furthermore, given the changes in demand and changes in the market, one of the requirements placed on the organization is to increase flexibility towards demand. To increase flexibility, as well as to increase capacity, an organization can use a variety of tools and methods developed within the Lean philosophy. The fundamental goal of the application of such tools is to equalize the capacities of all components within the process as well as to increase the utilization of current capacities.*

*Keywords: capacity management, business processes, Lean philosophy*