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**United Nations**

**Office of High Commissioner for Human Rights**

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*On the rights of older persons with disabilities*

The Ombudsman of the Republic of Latvia has received a letter from United Nations Office of the High Commissioner for Human Rights (hereinafter - the UN) dated 6 February 2019.

In the letter UN is kindly asking to respond to the questionnaire attached. The information is needed for the preparation of report for the 74th session of the General Assembly on the rights of older persons with disabilities, which aims to identify and address specific human rights concerns faced by both persons with disabilities who are ageing and older persons who acquire a disability.

The Ombudsman draws attention that the Ministry of Welfare is governmental body responsible for the development of regulatory enactments, policy planning documents and programs to ensure that older people with disability could fully and equally enjoy human rights and fundamental freedoms. Therefore, this letter will provide information about issues and activities within the Ombudsman`s functions and competence.

Speaking about general policy and legislative framework, it must be said that there are no specific conditions for the older persons with disabilities. All persons with disabilities are granted equal rights and possibilities. The only difference comes out of the the level of limitation of physical or mental abilities, where group I disability is very severe disability, group II - severe disability and group III - the level of limitation of physical or mental abilities. Persons with group I and group II disability receive more support from the state and local government.

This letter will cover 5 main aspects concerning realization of the rights of older people with disabilities: state support, welfare standards, life in the long-term care institutions, issues of deinstitutionalization, the rights of persons with mental disability.

[1] ***The state support***

[1.1] *Assistant services*

Assistant services are available for the persons with group I and group II disability. Assistant services are provided by the municipality and financed by the state. Assistant may be assigned for certain purposes, such as for getting to the workplace, education institution, day-care center, medical care institution, and for the different social activities (work in a society or foundation, volunteering, sports activities, participation in amateur groups) and social events (shopping, theaters, concerts, sports games, and other events related to leisure). Yet, the time of state paid assistant service is limited. For example, for the purpose of getting to education institution, day-care center, medical care institution or social events those are no more than 20 hours a week, whereas for attending social events – 8 hours a week only.

In the Ombudsman`s opinion, the available time of assistant service in one week is not sufficient and do not facilitate to enjoying public activities and leading a fulfilled life.

[1.2] *Availability of the technical aids*

For the last few years the Ombudsman has been drawing the government's attention to the necessity to provide availability of technical aids for persons with disabilities, by pointing out that demand for the technical aids has been increasing, which shows deterioration of health condition, general ageing of society, as well as increase of the number of persons for whom disability has been determined for the first time. Taking into consideration the fact that funding assigned by the state was significantly reduced during the economic crisis, the following situation arouse: demand of all persons for the technical aids could not be satisfied within the assigned funding, therefore, demand of persons is being satisfied on a ‘first come, first served’ basis.

In the discussion with organizations of persons with disabilities the following problems were identified:

* Technical aids are still unavailable;
* Persons with disabilities are afraid to complain on unavailability of technical aids, because they think that in such a case they will never get these aids;
* Technical specifications for public procurements on technical aids are not understandable, because they include technical aids, which are out of production.

The Ombudsman has suggested to the authorities to provide the persons with disabilities with good quality technical aids corresponding to their needs within a reasonable time; and to ensure that persons with disabilities can effectively and fully participate in decision making process regarding the development of technical specifications for the purchase of technical aids.

[1.3] *Access to health care*

The Ombudsman draws attention that there have not been any significant improvements in the health care area for many years. Satisfaction level of the residents of Latvia with health care system is one of the lowest in the European Union. Availability of health care services is very limited, approximately every fifth resident of Latvia has not attended a health care specialist, when it was necessary.[[1]](#footnote-1) The above-mentioned description in general applies also to persons with disabilities. Although the Medical Treatment Law stipulates that health care of person with foreseeable disability and children is a priority, this norm does not work in practice. Persons with disabilities, as well as other residents, are exposed to quota system and incommensurate waiting lists to receive the service. Within a reasonable time only paid health care services are available. Unavailability of services is caused by the insufficient funding allocated by the government. At the same time, Ombudsman points out that the above mentioned is one of several reasons for the increase of number of persons with disabilities.

The law "Law On Health Care Financing" was adopted in December 2017, this law provides compulsory health insurance which implies two packages of medical services. Minimum package of medical treatment such as emergency, family doctor (general practitioner), particular types of diagnostics, oncological treatment, dialysis and early detection of cardiovascular diseases, are granted for all persons. Meanwhile “full” package, including considerably wider scope of medical services is available for those people only, who have health insurance.

State compulsory social insurance is due for certain groups of people, including persons with I and II group disability, yet, persons with III group disability will join in 2021.

The Ombudsman has already expressed his critics towards the “two packages” of medical service system, pointing out that this kind of division violates the principle of legal equality enshrined in the Constitution.

[1.4] *Access to pharmaceutical services*

The Ombudsman has drawn attention to very unequal availability of pharmaceutical or chemist's services. Pharmaceutical services are available in cities, district centers and parishes located near the national roads. Whereas, such services are partially available or unavailable at all in the remaining sparsely populated rural territory of Latvia. In separate cases, the Ombudsman found that the nearest chemist's is located even 50 km away from a resident's home, which is not commensurate, taking into consideration the public transport intensity and road quality in rural regions.

The Ombudsman has recommended to improve criteria, in order to provide availability of pharmaceutical services to all residents.

[2] ***Welfare standards***

Since 2011, the Ombudsman has regularly pointed to the government the need for promotion of national prosperity and reduction of poverty. Among the European countries Latvia shows extremely low indicators in the standard of living and welfare.

For the purposes of insight, particular minimum amounts of social benefits determined by the government should be mentioned:

* Amount of the benefit for persons with disabilities varies between 64.03 euro and 138.74 euro (per month) depending on disability group and the time of obtaining of disability status.
* Minimum amount of the disability pension has been determined between 64.03 euro and 170.75 euro (per month) depending on disability group and the time of obtaining of disability status.

The Ombudsman stresses that frequently the amount indicated above is the only source of income for the persons with disabilities, especially - for the persons with more severe disabilities, and the person concerned must basically be able to cover all his/her needs or apply for municipal support, which is also rather insufficient.

Already for several years the Ombudsman has constantly appealed to the government to increase the amount of social protection.

[3] ***Life in long-term social care institutions***

According to Law on Social Services and Social Assistance the state guarantees assistance in cases of sickness, disability and also agedness. There are no long-term social care (LTC) institutions for old people with disabilities only. Usually long-term social care service includes service for both old people and adult people with disabilities of any age.

The Ombudsman monitors situation in LTC institutions already for many years. Usually the most important challenge is the quality of services provided in the LTC institutions. The Ombudsman has informed national and international institutions, including UN Committee on the Rights of Persons with Disabilities (2017), [[2]](#footnote-2) on issues which shall be settled in LTC institutions, which are:

* Assessment of the compliance of the amount of personnel must be performed, taking into consideration full provision of the LTC institution's functions to provide all clients with opportunity to receive services compliant with their needs and required care;
* Improvement of knowledge level of the personnel, especially the care-takers, for example, on client positioning aspects, auxiliary means, catering process and reasons of behavioural disorders must be provided. Additionally, it is necessary to develop guidelines in order to improve the work of social care and social rehabilitation;
* Lack of information exchange on matters regarding provision of the objective needs of clients can be observed between the responsible employees in separate LTC institutions;
* Important information for clients should be posted on a special information stand in each unit, including the easy language version, to provide equal understanding opportunity for all;
* Daily walks outdoors are not being provided for all clients of the LTC institution;
* Monotony of the offered food, lack of fresh fruit and vegetables on the menu;
* Poor, worn clothing of clients;
* Medical documentation still shows that the clients are being prescribed excessive neuroleptic medication;
* Lack of purposeful, meaningful activities;
* Quality of drawing up of clients' individual rehabilitation plans must be improved to develop both the client's self-care abilities, and their further integration into society.
* LTC institution does not follow the requirement to ensure LTC institution’s environment similar to the family environment. Clients are not provided with the necessary support to personalize their rooms to create a pleasant environment in the LTC institution.
* The availability of hygiene products (toilet paper, towels and soap) for sanitary facilities is not provided to the clients.

The Ombudsman considers that right to LTC for older persons includes several aspects, such as:

* LTC services which suit the needs of the clients.
* Access to services (including universal design, accessible information) near the place of residence or at place of residence.
* Access to LTC services within a reasonable time.
* Professional (and kind) LTC service providers.
* Affordable LTC services.
* Family type care in LTC institutions.

The Ombudsman has drawn attention to necessity to ensure that older people are perceived as equal part of the society. People who have been active in their lives after reaching retirement age do not want to be less active or isolated from the society. The Ombudsman has suggested to improve the realization of the rights of older people outside the long-term care systems, for example, rights to receive health or travel insurance or participate in surveys. Older people are not satisfied that surveys often do not include age group over 64. Thus, they feel excluded from the society.

[4] ***Deinstitutionalization***

Deinstitutionalization (hereinafter – DI) process is implemented by the Ministry of Welfare in cooperation with Latvian planning regions and municipalities. DI concerns two main target groups – children with functional disabilities and adults with mental disabilities. Most people with mental disabilities do not live in LTC institutions. However, many people who could live independently with little support have come to a long-term social care institution and have lost control of their lives. Adults, including old people with other types of disability are not the subjects of DI. Yet, due to the difficulties in providing proper home care and medical treatment for old people with mental disabilities, DI is applied to the young and middle age persons with mental disabilities only.

Yet, in order to enhance DI process, the Ombudsman has suggested providing more information on the DI process, to improve assistance services and comprehensive training for social workers.

[5] ***Realization of the rights of older persons with disabilities***

Persons with disabilities and persons with mental disabilities in particular constitute one of the most vulnerable parts of society.

The Ombudsman is receiving increasing number of applications from persons with mental disabilities. In the course of investigation, the Ombudsman has revealed several sore points in the realization of the rights of persons with mental disabilities.

* persons with mental disabilities in LTC institutions should have more information about their rights, and have free access to state-provided legal aids; legal aid providers should be prepared and trained to work with clients with mental disabilities, otherwise it lowers effectiveness and quality of legal aid provided;
* LTC institutions must provide secure and humane course of treatment for persons with mental disabilities, by increasing the staff and equipping LTC with as possible non-restrictive facilities;
* Persons with mental disabilities do not have free access to court and possibility to testify at the trial;
* In order to ensure respect for the rights, free will and choice of a person, guarantees must be provided to protect persons with mental disabilities from abuse.  
  Any support given to a person in making decisions must include protection against excessive influence.

The Ombudsman assessed the court judgements regarding restriction of legal capacity and revealed that courts establish restrictions in the area without any necessity; courts do not assess cases individually, nevertheless courts establish equal limitations in majority of cases; courts initiate proceedings also in cases, where the applicant may not act as applicant pursuant to the law. The Ombudsman has suggested to provide appropriate application of the regulatory framework in courts in relation to the restriction of legal capacity.

Often persons at age and persons with disabilities are taken as a risk groups by commercial insurance companies. On this basis some of them have refused to provide travel insurance. Constitution of the Republic of Latvia stipulates that human rights shall be exercised without any discrimination, including age discrimination. At the same time, the Ombudsman points out that different treatment of certain groups of persons is admissible only if it has objective and reasonable justification.

In the field of insurance and banking services, a specific provision is added to take into account the fact that age and disability can be an important factor in assessing the risk of some services and hence the price. If insurers would not allow age and disability to be taken into account at all, the additional costs would have to be borne entirely by the rest of the insured and would result in higher overall costs and less consumer protection. The use of age and disability in risk assessment should be based on accurate data and statistics.

Accordingly, the Ombudsman has indicated that insurance companies may set age limits for certain insurance services, however, these restrictions must be proportionate and justified, as well as individual assessment of the client.

Yours sincerely,

Deputy Ombudsman I. Piļāne

1. Concept for introduction of compulsory health insurance, the Bank of Latvia, available on: https://www.bank.lv/images/stories/pielikumi/publikacijas/citaspublikacijas/OVA-koncepcija.pdf [↑](#footnote-ref-1)
2. Alternative Report on the Initial Report of the Republic of Latvia Regarding Implementation of the UN Convention on the Rights of Persons with Disabilities of 13 December 2006 in the Republic of Latvia Between 31 March 2010 and 31 December 2013. The Ombudsman of the Republic of Latvia. 2017. Available from : <http://tbinternet.ohchr.org/\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fNHS%2fLVA%2f28605&Lang=en> [↑](#footnote-ref-2)