

# **ZERO REPORT**

Minsk 2016

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## Introduction

On September 28, 2015 Belarus signed the Convention on the Rights of Persons with Disabilities adopted by the UN General Assembly on December 13, 2006.

After an eight year-long preparation Belarus has become associated with this important document having become the last country in Europe to sign the Convention.

The signing of the Convention will not lead to any legal consequences until its formal ratification<sup>1</sup> which is supposedly will take place in the nearest future. Belarusian legislation sets a 6 month term for this<sup>2</sup>.

But today we can say that domestic norms and draft laws contradicting the norms of the international document should not now be prepared in the country.

The educational human rights defence organization “Office for the Rights of Persons with Disabilities” has initiated preparation of an alternative (prepared by NGOs and civic society) report which is an analogue of a planned report, presented to the UN Committee on the Rights of Persons with Disabilities, which will be prepared by state structures after the ratification of the international document: firstly in two years, then — every 4 years.

The alternative Zero report will help to record the situation and will become the “zero level” (Zero report) for progress evaluation.

The Zero report will help to make a “revision” of legal documents and practices regulating the sphere of social guarantees, to show what is being used today in Belarus and what mechanisms are being used. Such a “revision” will help to ensure against a possible lowering of the level of social protection of persons with disabilities during possible reforms.

In Belarus in 2009 a full evaluation of the legislation was made in order to check its conformity with the Convention<sup>3</sup>. The analysis (hereinafter referred to as NCLA) of the Convention’s provisions gives a possibility to evaluate the level of its realization in the Belarusian legislation and the necessity of making changes and amendments in the corresponding legal acts of the Republic of Belarus. Provisions of the research had also been used in preparation of this report.

The following organizations took part in the preparation of the Zero report: “Office for the Rights of Persons with Disabilities”, PA “BelTIZ “, PA “Belarusian association for assistance to disabled children and young disabled”, “Belarusian society of deaf”, private educational institution “Center for pervasive developmental disorders “Levania”, PA for assistance to persons with mental disabilities “Minodi” named after V.M. Buchkov

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<sup>1</sup> Art. 43 of the Convention on the rights of persons with disabilities from 13 December 2006.

<sup>2</sup> Art. 20 of Law “ On International Agreements of the Republic of Belarus” dated 23.07.2008 number 421-3

<sup>3</sup> National Law and Legal research Centre of Belarus. Quasi-legal analysis of the legislation of Belarus and the Convention on the rights of persons with disabilities dated 13 December 2006, Minsk, NCLLR, 2009.

## **Article 2.**

### **Definitions**

1. Although the adopted definition of "person with disabilities" complies with the Convention, the use of this term remains problematic due to the understanding of "disability" through a limited functioning perspective. The Civil Code still operates with the out-of-date terms "dementia" and "mental illness." During the past ten years, Belarusian legislation has generated various appellations for persons with disabilities: "persons with mental and physical peculiarities", "persons with limited abilities", etc., which actually refer to the literal definition given in the Convention — "persons with disabilities".
2. Belarus recognizes sign language as a means of interpersonal communication and adopts measures to support this language<sup>4</sup>.
3. Belarusian legislation does not contain the definitions of discrimination on the basis of disability, universal design, reasonable accommodation.

## **Article 4.**

### **General obligations**

4. An Ombudsman Institution does not function in Belarus, and in particular, the one dealing with the rights of persons with disabilities (according to Article 33 of the Convention, States Parties are obliged to establish at the national level special mechanisms to promote and monitor realization of the rights of women, men and children with disabilities). The National Interdepartmental Council on the problems of disabled persons<sup>5</sup>, defined as the highest authorized body on disability issues, holds its meetings twice a year, and therefore cannot act as an effective coordinator of disability policy. The Council does not invite or admit media to its meetings. Its schedule, agenda, as well as reports and materials are not published officially. Thus, it is difficult to expect the Council effectively to develop policies and monitor realization of the rights of people with disabilities. In practice, the Ministry of Labor and Social Protection traditionally acts as the country's disability policy coordinator, with no specified authority. The Disability Agenda is viewed through social protection and support perspectives, not through the context of human rights.
5. The legislation on disability, being rather extensive, contains, however, a number of declarative norms, not supported by proper implementation mechanisms. One of them is an obligation to consider the opinion of persons with disabilities. In April 2016, despite the position of the major organizations of people with disabilities, Belarusian authorities adopted a State program on social protection and employment support of citizens for 2016-2020 years. The program contains an idea to unite such categories as people with disabilities, elderly people and physically weakened persons in a single program. Such an idea reflects only a formal vision of common needs for the comfortable environment and social services support. Thus, the program ignores the considerable differences in the character of needs of people with disabilities and elderly people, as well as of special policies concerning each group. It leads to a decrease in efficiency of problem solutions for both disabled and elderly people.
6. Employment provision, implementation of the right to education and participation in cultural life, recreation, leisure, sports activities for people with disabilities in rural areas are

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<sup>4</sup> Art. 13 of the Law "On the social protection of disabled persons in the Republic of Belarus" dated 11.11.1991 number 1224-XII

<sup>5</sup> There is no official site. For information visit:  
[http://www.mintrud.gov.by/ru/sovet\\_po\\_problemmam\\_invalidov](http://www.mintrud.gov.by/ru/sovet_po_problemmam_invalidov)

associated with particular difficulties, and in fact are inaccessible, especially in comparison with cities.

## **Article 5. Equality and non discrimination**

7. Belarusian legislation shows a significant prevalence of equality-positive promotion measures over anti-discrimination ones. Anti-discrimination legislation with a focus on persons with disabilities is not developed in Belarus. Moreover, lawmakers demonstrate a shift from the priorities of discrimination prohibition. In 2007 the prohibition of discrimination was excluded from the Law "On social protection of persons with disabilities in the Republic of Belarus". Thus, the imperative of the Article 1 of the Law (1991), which stated: "discrimination against disabled persons is prohibited and punishable by law", was replaced with declaration of policy development on the grounds of "discrimination prohibition on the basis of disability" (Law of 17.07.2009). Legislation does not contain a definition of discrimination on the basis of disability, as well as general definition of discrimination, prohibition of discrimination, and legal measures against it. The term "discrimination" is only mentioned in the field of labor law: "discrimination, that is a restriction of employment rights or any privileges gained on the grounds of gender, race, nation, language, religious or political views, participation or non-participation in labor unions or other public associations, property or official status, physical or mental disabilities that do not hinder the performance of work duties, shall be prohibited" (article 14 of the Labour Code). Juridical precedent protection from discrimination against persons with disabilities is absent.

8. Example. The administration of "Bolshoi Academic Theatre of Opera and Ballet of the Republic of Belarus" (2009), was sued for the moral damage caused by a theater employee's discriminatory acts and attitudes towards persons with disabilities. Minsk Frunzenskiy court indicated the absence of a definition of "discrimination" in the Belarusian legislation, as well as the impossibility to link moral damage to the discrimination that caused it, and to identify legal means of protection<sup>6</sup>.

9. Numerous calls by organizations of persons with disabilities for a direct action ("ad hoc") law on the prohibition of discrimination against persons with disabilities and the project of this law (draft "Law on the Rights of Persons with Disabilities"), prepared by the public association "Belarusian Society of persons with disabilities", have not yet received an official reaction.

10. Moreover, the legislation itself contains norms discriminating against people with disabilities. The Law № 239-Z dated June 14, 2007 "On state social benefits, rights and guarantees for certain categories of citizens"<sup>7</sup> contains a norm conflicting with the Constitution of the Republic of Belarus and restricting the realization of human rights on the basis of disability grounds. It specifies: "Persons with disabilities, except persons, who became disabled in consequence of illegal actions, or alcohol, drugs, toxic substances, or self-mutilation." Thus, the persons disabled in consequence of illegal actions, alcohol, drugs, toxic substances, self-mutilation are deprived of guaranteed medical support, technical means of rehabilitation and other forms of assistance. In fact, the state endangers their lives and health by not providing them with minimum social protection. The above-mentioned restriction is discriminatory on the basis of disability (disability grounds).

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<sup>6</sup> [http://naviny.by/rubrics/society/2009/05/29ic\\_articles\\_116\\_162865](http://naviny.by/rubrics/society/2009/05/29ic_articles_116_162865) 7

<sup>7</sup> <http://www.pravo.by/WEBNPA/text.asp?RN=H10700239>

11. An example of discrimination is presented in the case of a resident of one of the regional Belarusian cities who has Group One sight disability and was able to travel independently. He bought international destination tickets, but was denied transportation services while boarding a bus due to the absence of an accompanying person. After his appeal to the organization “Office for the Rights of Persons with Disabilities” — a number of discriminatory provisions were revealed in the Rules of passenger transportation. The Rules obliged persons with disabilities to have an accompanying adult without disabilities while using the services of this carrier. An appeal was made to The General Prosecutor Office and the Ministry of Transport and Communications of the Republic of Belarus to recognize the existing internal rules of passenger transportation as illegal. The undertaken audit resulted in the General Prosecutor Office’s being required to ensure that the internal carrier’s regulations complied with non-discrimination requirements<sup>8</sup>.

12. The first comprehensive research on discrimination in Belarus, published in 2013 by Equal Rights Trust (United Kingdom)<sup>9</sup> revealed the prevalence of discrimination on the basis of disability, along with the complete absence of legal protection.

13. Discriminatory restrictions in access to certain services and infringement of the rights of persons with disabilities also take place. Thus, a boy was denied rest at the recreation center "Beloe Ozero" on the ground of his disability<sup>10</sup>. Bank loan procedures also contain discriminatory restrictions setting unequal, additional requirements for persons with Group One disability.

14. Persons with mental and behavioral disorders are the most vulnerable category of persons with disabilities. The disease becomes a cause of limitations in a number of rights and opportunities. For example, at-home social services<sup>11</sup> (delivered by social workers) are available only in the absence of medical contraindications. This group of persons with disabilities cannot take sanatorium recreation<sup>12</sup> (and they are not provided with alternative compensation). Absence of relatives, lack of available at-home support services often make these persons live in a special environment, such as boarding houses, that leads to their isolation and segregation from the community.

15. The existing national legislation restricts the opportunity of persons with disabilities of Groups One and Two to be adoptive parents, foster parents, caretakers at children's family-type houses, children's villages, guardians or trustees. The open character of the restrictions list "... diseases, not specified in this list and which led to disability of the 1st or 2nd group," actually limits the right of all citizens with Group One and Two disabilities to free and responsible decision-making concerning children.

## **Article 6. Women with disabilities**

16. A number of legislative acts of the Republic of Belarus contain the prohibition of discrimination on gender and disability grounds (eg, the Labor Code, the Law "On employment

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<sup>8</sup> <http://www.interfax.by/news/belarus/1196837>

<sup>9</sup> Half an hour to spring / Report on inequality and discrimination in Belarus // ERT Country Report Series: // 3 / London, November 2013 /// [http://www.equalrightstrust.org/ertdocumentbank/belarus%20cr\\_russian\\_4web.pdf](http://www.equalrightstrust.org/ertdocumentbank/belarus%20cr_russian_4web.pdf)

<sup>10</sup> <http://news.tut.by/society/145638.html>

<sup>11</sup> Ministry of labor and social protection of the Republic of Belarus and Ministry of health of the Republic of Belarus Decree dated 10 January 2013 number 3/4

<sup>12</sup> Ministry of health of the Republic of Belarus Decree dated 20 March 2008 number 53 "On approval of the list of medical contraindications for improvement"

of the population of the Republic of Belarus ", the Law "On the Procedure and Conditions of detention of persons in custody "). However, firstly, there exists a lack of understanding that women are subject to multiple discriminations (gender equality policies do not cover issues of disability, in turn, disability policy ignores the gender aspect), and secondly, anti-discrimination protection is not established.

17. Concerning the question of violence, it should be mentioned that women often become victims of exploitation, violence and abuse (art. 16), as well as ill-treatment (art. 15) The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment underlines that certain forms of violence are equal to cruel, inhuman or degrading treatment. It refers, in particular, to forced abortion and sterilization (which is enshrined in the Belarusian legislation in relation to legally incapable persons <sup>13</sup>), forced placement to boarding institutions (in relation to legally incapable persons), and others.

18. Speaking about reproductive rights it should be mentioned that women with disabilities are often treated as objects with no control over their sexual and reproductive health. Firstly, the will of a woman with disabilities to have children often meets a negative reaction on the part of medical staff. "When it was time to register in a hospital for pregnancy care, the doctors said that giving birth is strictly forbidden to me because of my illness. They said I can not bear a child, and that I endanger my life."<sup>14</sup> Secondly, in some cases, the law allows the forced sterilization or forced termination of desired pregnancy with a pretext of protecting the interests of beneficiaries. Thirdly, mothers with disabilities are often deprived of their children because of the actions of child protection bodies (Marriage and Family Code, art. 80, 85, 93, the Ministry of Health Decree № 25 dated 19.08.2005 "On the list of diseases, leading to the impossibility for parents to fulfill their parental duties).

## **Article 7.**

### **Children with disabilities**

19. Children with disabilities are at risk of discrimination on several highly distinct grounds — age, disability, gender. The high degree of stigmatization of children with disabilities often leads to the fact that parents feel shame and fear of public opinion and that is why they "hide" their children, prefer home stay strategies, and in the worst cases place children into special boarding institutions.

20. The issue of state responsibility for this category of children remains urgent in Belarus. The responsibility is shared between the ministries of education, labor and social protection, health that leads to a lack of sufficient coordination in the establishment of an inclusive environment. Succession and maintenance of social support regardless the status transition from "child" to "adult" (at the age of 18 years) is still a pressing problem.

21. Belarusian legislation contains a norm <sup>15</sup> implying legal responsibility on parents, failing in their child-rearing duties. However, when a child with developmental disorders is born, medical staff of a hospital still can suggest parents to abandon their child with its further placement in state care institutions. A proposal may be direct or indirect, eg, through the statement: "Usually people abandon such children and place them in special institutions" or

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<sup>13</sup> Art. 26-27 of the Law of the Republic of Belarus "On healthcare"

<sup>14</sup> <http://rebenok.by/articles/woman/advice/20842-ya-ponimala-chto-beremennost--eto-ogromny-risk-dlya-menya-irebenka-schaste-v-invalidnom-kresle.html>

<sup>15</sup> The President of the Republic of Belarus Decree dated 24.11.2006 number 18 (ed. 23.02.2012) "On additional measures for state protection of children in dysfunctional families."

through the initially provocative question: “Will you keep the child or abandon it?” In such cases, children with disabilities are at risk to be deprived of family education (- according to the claims of parents received by NGO "BelAPDIIMI"). There exists a system of state institutions of various departments in Belarus — centers and offices of early intervention and national rehabilitation centers (Ministry of Health), correction- and development-training and rehabilitation centers and socio-educational centers (Ministry of Education), regional social services centers (Ministry of Labour and Social Security). However, families do not possess timely and complete information on the possibility of obtaining assistance from these centers. Such an approach seems to be declarative rather than targeted. No co-ordinated work (via interdepartmental interaction) is undertaken to provide timely and comprehensive support to families raising a child with disability. This in turn increases a risk of situations in which parents abandon their children with developmental disabilities and place them to special boarding institutions.

22. In practice, children with disabilities do not enjoy the opportunity to participate in developing and educational programs equally with their peers without disabilities. Children with disabilities are limited in out-of-school education services, participation in developing groups, and sports sections. Cultural activities involving children with intellectual and multiple disabilities take place mainly in special institutions. Events of that kind designed for children with disabilities living in families are mainly organized by NGOs.

## **Article 9. Accessibility**

23. The accessibility of the CRPD is understood as a fundamental convention principle<sup>16</sup>, as "an important prerequisite for effective and equal enjoyment of a variety of civil, political, social and cultural rights of persons with disabilities"<sup>17</sup>, considered in the context of equality and non-discrimination, as a full-blown right that should be carried out and implemented by people with disabilities without any restrictions on an equal basis with others.

24. In the Belarusian legislation the principle of accessibility is called "one of the priorities of the Republic of Belarus state policy" and virtually reduced to "ensure at the legislative level, barrier-free environment for people with disabilities" and "equal to others opportunity to obtain information."

25. Indeed, some national regulations reveal the essence of physical accessibility, architectural accessibility, contain a number of regulations on the creation of barrier-free living environment for physically impaired persons directly prescribing a specific set of obligations on executive state bodies.

26. So, according to the existing legislation:  
"During the implementation of design, construction and building activities a barrier-free environment must be created, i.e. the conditions that ensure the possibility of free passage (including by foot, in wheelchairs, personal and public transport), access to buildings and facilities, including houses and flats, travel and activities within these facilities, as well as in places of recreation and tourism..."<sup>18</sup>;

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<sup>16</sup> Art 3 of the Convention on the rights of persons with disabilities dated 13 December 2006.

<sup>17</sup> §4 of General Amendments to the Art 9 of the Committee of the Rights of People with Disabilities. (11<sup>th</sup> Assembly).

<sup>18</sup> Art. 10 of the Law of Republic of Belarus "On Architecture and City Building Activity in Republic of Belarus" dated 5 July 2004 number 300-3.



"local executive and administrative bodies" .... "provide people with disabilities with the necessary conditions for unimpeded access to social infrastructure, housing, public, and industrial buildings facilities, unimpeded enjoyment of places of recreation and leisure activities;" ... "Existing social infrastructure facilities should be adapted for the access and use by people with disabilities."<sup>19</sup>;

working objects of social infrastructure should be adapted for access and use by persons with disabilities"<sup>20</sup>;

"It is not permitted to design and construct settlements, form residential areas, develop design solutions, construct and reconstruct buildings, including airports, railway stations, bus stations, river ports, facilities and communications, develop and manufacture public transport vehicles, including individual, means of communication and information without adaptation of these objects and means to free access by persons with disabilities."<sup>21</sup>;

"The state program of creation of a barrier-free environment for disabled persons is based on an inter-departmental comprehensive approach to address issues of elimination of architectural barriers that prevent the passage, access to and the unimpeded movement of persons with disabilities"<sup>22</sup>.

27. "Despite the rule prohibiting the commissioning of new and reconstructed objects without ensuring accessibility for people with disabilities what is stated in the law 'On social protection of disabled persons in the Republic of Belarus' dated November 11, 1991 No 1224-XII, as well as there is enough legislation for specific building codes that regulate the accessibility of objects (the first standard was put into effect in 1991, the rest, over 30 — in the coming years, all these regulations are in line with European and international standards), however even in 2016 there are inaccessible facilities commissioned in non-compliance with regulations.

28. "Electronic voice announcements are currently installed at several Minsk metro stations as well as at social enterprises and administrative buildings in Brest and surroundings within the pilot project. Among these public places are: Central Universal Store of Brest, Brest Central Hospital, Brest regional department of NGO BelTiz (Belarussian society of visually-challenged people) Labour, Employment and Social protection committee of Brest, City Hospital # 1 in Pinsk, Pinsk Central Clinic, Pinsk Executive Committee administration, ElKiss enterprise of BelTis, Pinsk Town Council as well as Labour, Employment and Social protection committee of Baranovichi, Regional Department of Social Services of Baranovichi, and Regional Department of Social Services of Bereza. According to the Ministry of Industry in the country there are currently 32,278 stopping points, and 7,786 units of public transport. None of these objects, but for 6 metro stations, is equipped with an electronic voice announcement".

29. Buildings and facilities, public transport are not equipped with information signs in Braille.

30. Belarus has developed state standards "The environment for physically impaired persons. STB 2030-2010" and "Means of communication and technical information accessible to people with disabilities. STB P 51671- 2007. Now the Amendment № 3 for Technical/commercial proposal 45-3.02-7-2005 is worked out. The Technical/commercial proposal "Improvement of areas. Road surface dressing made of walkway slab. Guide". This

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<sup>19</sup> Art. 24 of the Law "On the social protection of disabled persons in the Republic of Belarus" dated 11.11.1991 number 1224-XII.

<sup>20</sup> Art. 26 *ibid.*

<sup>21</sup> Art. 25 *ibid.*

<sup>22</sup> Art. 14 of the Law "On disability prevention and rehabilitation of people with disability" dated 23 July 2008 number 422-3.

guidance states the general rules of haptic walkway slabs accessible to people visually-impaired people. By 2015 tactile tiles are selectively installed in some streets.

31. Disabled persons' organizations have expressed mistrust to the state statistics and reporting on the implementation of creating of barrier-free environment programs, which casts doubt on the objectivity of the evaluation of the general level of infrastructure accessibility for people with disabilities. In particular, invalid data was detected in the district (city) electronic database of buildings and structures, which needs to ensure the needs of physically disabled in a barrier-free environment.

32. The portal freeway run by the NGO "Republican association of wheelchair-bound disabled" states, for example, that there are only 32 accessible objects, partially accessible — 9, inaccessible — 58 out of 99 objects evaluated in Minsk<sup>23</sup>.

33. In the frames of the implemented State program<sup>24</sup> financial means have been allocated (659,363mln rubles) to create a barrier-free living environment for people with physical disabilities for 2011–2015. A number of activities under the program had not been implemented at all, some — only partially. For example, considering problems of persons with visual impairment, the following activities were not implemented:

- creation of an electronic manual containing normative legal acts regulating the issues of creating a barrier-free environment;
- the implementation of the mandatory coverage with contrasting skid materials of the first and last steps of staircases;
- installation of synchronous audio alerts in elevators in socially important facilities.
- a pilot project for equipment of socially important urban infrastructure, public transport with voice electronic announcements in the cities of Brest and Pinsk, followed by the introduction of the experience in other regions of the country,
- consideration of the possibility of equipping cinemas with equipment for people with hearing and visual impairments.
- translation of “the talking book” from analog to digital format.

34. The country's legislation contains common sanctions for violations of construction norms<sup>25</sup>. Funds transferred from the payment of penalties for failure to ensure accessibility are not allocated to the separate funds and are added in a general manner to the cumulative state budgets.

35. In available sources, including media and official websites of ministries, departments, executive committees and other institutions and organizations, there is no information on administrative liability of individuals or officials of organizations and institutions responsible for the architectural and building projects, either engaged in construction, commissioning or acceptance of newly built infrastructure without compliance with applicable technical standards and regulations regarding barrier-free environment ( i.e. practically inaccessible).

36. The existing architectural barriers are a persistent problem. The statistics of claims<sup>26</sup> on accessibility issues shows that untimely elimination of barriers deprives persons with disabilities of fully independent life activity. Such claims addressing accessibility problems

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<sup>23</sup> <http://www.freeway.by>. Accessibility/inaccessibility assessment according to the methodology of PA RAIK (Republic Association of wheel-chair users)

<sup>24</sup> Approved by the Council of Ministers of the Republic of Belarus dated 1 November 2010 number 1602.

<sup>25</sup> Art 21 of Administrative Code.

<sup>26</sup> [http://www.disright.org/sites/default/files/godovoy\\_monitoring\\_2013\\_-2014.pdf](http://www.disright.org/sites/default/files/godovoy_monitoring_2013_-2014.pdf)

present one of the three prevalent and highly pressing issues, which are subjects of monitoring of the situation concerning the rights of persons with disabilities.

37. "Without access to information and communication persons with disabilities cannot enjoy the right to freedom of opinion and expression, as well as other fundamental rights and freedoms.<sup>27</sup>" Article 34 of the Constitution guarantees "the right to receive, store and disseminate complete, reliable and timely information on the activities of state bodies, public associations, political, economic, cultural and international life, environmental conditions".

38. National legislation declares to ensure support of persons with some kinds of disabilities, i.e. governmental support of sign language<sup>28</sup> through:

- preservation and development of sign language;
- inclusion of sign language into educational training and retraining programs for specialists of labor, employment and social security, emergency, law enforcement authorities and other state bodies;
- organization of sign language interpreting;
- providing free sign language interpreting services;

39. Sign language interpreting is also envisaged for persons with hearing disabilities working in state bodies and other organizations, as well as during juridical proceedings.

40. Educational and training processes for persons with hearing problems are organized in Belarusian or Russian (verbal, written, sign-ABC) and sign languages with the use of collective and individual sound-amplifying equipment, technical means transmitting educational materials and information on a visual basis.

41. Educational establishments providing specialized secondary and higher education perform training and education of persons with hearing disabilities with the use of interpreting in sign language. The responsibility to ensure interpreting process falls on the educational institution<sup>29</sup>. At the same time there are only up to 70 sign language interpreters working across the country.

42. However, the right to accessible information is not fully ensured. Thus, persons with hearing disabilities can not fully exercise their right to receive information through the electronic media or through television broadcasts. The percentage of broadcasts, films, TV news channels, facilitated with subtitles or interpretation to sign language, is near zero level.

43. As for the people with vision problems, who therefore have significant barriers to information, training and education processes for blind persons are carried out using Braille and large print for partially sighted persons<sup>30</sup>.

44. The country's transport infrastructure does not comply with the principles of completeness and continuity of access to transportation routes, due to the lack of such provisions in the policy of traffic management.

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<sup>27</sup> §18 of General Amendments to the Art 9 of the Committee of the Rights of People with Disabilities. (11th Assembly).

<sup>28</sup> Art. 12 of the Law "On the social protection of disabled persons in the Republic of Belarus" dated 11.11.1991 number 1224-XII.

<sup>29</sup> Art. 17 of the Law "On the social protection of disabled persons in the Republic of Belarus" dated 11.11.1991 number 1224-XII.

<sup>30</sup> Art. 18 *ibid.*

45. The following example on transport's accessibility may be given<sup>31</sup>. A young man in a wheelchair was going to fly to a Baltic country to take part in a training visit. The inviting party, while purchasing a ticket, informed the carrier on the passenger's special needs. Airport staff guaranteed to provide him with a special wheelchair, needed to safely move to his place on the plane. In fact, the passenger was carried to the cabin not in a special wheelchair, but in a "chair with four wheels". The case was examined by Minsk court. The proceedings resulted in the acquisition by the national airport of special mobility means complying with the international standards.

46. Access to legal aid, in particular to professional lawyers' assistance, is an aspect of accessibility. The Constitution declares equality before the law and the equal protection of rights and legitimate interests of all persons without discrimination. However, the advocacy service is limited by a category of cases<sup>32</sup> and persons to whom assistance is provided on a free basis, within local and advocacy association budgets. This situation can not fully meet the needs of persons with disabilities for adequate professional protection.

47. The character of claims received by «Office for the Rights of Persons with Disabilities» indicates insufficient competences on accessibility standards among specialists in construction, information, services areas, etc.

48. The state should provide for adoption and distribution of "standards of accessibility", "mandatory application of accessibility standards and sanctions, including fines for those failing to comply<sup>33</sup>", as well as establishing monitoring through the "effective control mechanism" and the "effective control bodies with the appropriate capacities and clear mandate to ensure the implementation and application of the plans, strategies and standards."<sup>34</sup>

## **Article 10. Right to life**

49. The constitutional right of everyone to life is enshrined in article 24 of the Constitution of the Republic of Belarus. Part one of this article guarantees the inherent right of every person to life. The legal category of "every" means that this right is universal and is enshrined to any person (citizen of the Republic of Belarus, foreign citizens, stateless, disabled, incapacitated, minor persons, etc.). Article 10 of the Convention also declares: "States Parties reaffirm that every human being has the inherent right to life", reflecting fundamental principles of human rights — equality and nondiscrimination: "and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others."

50. Today Belarusian medicine performs as a model encouraging abortions, which is supported by the relevant regulatory documents. For example, there is an order of the Ministry of Health of the Republic of Belarus of 23.12.2004 No 288 "On measures on improvement of obstetric services of Belarus" and the instructions on prenatal diagnosis of congenital abnormalities of the fetus<sup>35</sup> (hereinafter — Instructions) that requires the identification of fetal malformations followed by abortions. Thus, ultrasound prenatal diagnostics survey includes 3

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<sup>31</sup> <http://www.disright.org/ru/news/sudya-postavil-tochku-v-nashumevshem-dele-evgeniya-shevko>

<sup>32</sup> Belarus Bar Association General Committee Decree "On specific aspects of free-of charge legal help" dated 28 December 2004 and Art 28 of the Law of Republic of Belarus "On advocacy and legal help in the Republic of Belarus" dated 30 December 2011 number 334-3.

<sup>33</sup> § 26 of General Amendments to the Art 9 of the Committee of the Rights of People with Disabilities. (11th Assembly).

<sup>34</sup> § 30 *ibid*.

<sup>35</sup> Approved by the Decree Ministry of Healthcare of the Republic of Belarus. Stated in the Art 6.

levels. At each level, the survey answers only two basic questions: whether there is a defect of the fetus; if not, then what are the causes of associated features of development identified? In the case of the presence of "features" additional diagnostic procedures are conducted. In conclusion of the Instructions it is stated: "At the moment, we can not prevent the occurrence of abnormalities in the fetus, but we can prevent the birth of sick children." Thus, elimination ("the prevention of birth") of sick children is authorized by the Ministry of Health.

51. If there is a fetal pathology suspected a woman is severely pressured by medical personnel encouraging an abortion.

52. The right to life can be regarded as limited in accordance with the criminal law. Thus, sanctions under fourteen articles of the Criminal Code presume a death penalty, although none of them defines it as the only possible punishment. During the last decade in Belarus from 2 to 9 people per year were sentenced to death.

## **Article 11.**

### **Emergency and humanitarian emergency situations**

53. No one is immune to emergencies, man-made disasters and other risk situations. According to the Central Emergency Response Fund (CERF)<sup>36</sup> in recent years have changed "the scope and nature of complex emergencies, which now require new mechanisms and human resources".

54. People with disabilities form the most vulnerable group in such situations. The vulnerability of their situation depends not only on the socio-economic situation in which they are located or the amount of available civil, political, social, economic and labor rights, but also on an opportunity to take advantage of resources and services to compensate for the effects of risk situations, if necessary, at the right time.

55. Belarus law stipulates that "every person with a disability who is unable to meet his vital needs by himself, has the right to guaranteed support from the state"<sup>37</sup>. So, people with disabilities are entitled to, along with other citizens, "protection of the health, rights, freedoms and lawful interests of persons with disabilities."<sup>38</sup>

56. In our country, authorities operating in the field of prevention and liquidation of emergency situations of natural and man-made disasters, civil defense and fire safety, are the emergency authority units<sup>39</sup>.

57. The law of the Republic of Belarus from July 16, 2009 No 45-H "On emergency situations state bodies and departments", as well as other Belarusian legal acts define framework, legal and organizational bases of activity of bodies and divisions in emergency situations. Any specially designed instruction and guidance regarding the evacuation plans of people with

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<sup>36</sup> 2 UN Charter, <http://www.un.org/ru/sections/un-charter/chapter-i/index.html>  
<http://www.un.org/ru/sections/un-char>

<sup>37</sup> Stated in 2 UN Charter, Art 6, <http://www.un.org/ru/sections/un-charter/chapter-i/index.html>  
<http://www.un.org/ru/sections/un-chart>. Art. 4 of the Law of the Law "On the social protection of disabled persons in the Republic of Belarus" dated 11.11.1991 number 1224-XII.

<sup>37</sup> Art. 18 *ibid*.

<sup>38</sup> Art. 6 *ibid*.

<sup>39</sup> Art. 1 of the Law of the Republic of Belarus "On the emergency administration and institutions of Republic of Belarus" dated 16 July 2009, number 45-3.

disabilities, taking into account the diversity of types and forms of disability (sensory, mental, musculoskeletal and other disorders) are absent.

58. Thus, people with disabilities in a situation of risk, natural disasters, conflicts or emergencies are deprived of access to services, evacuation and support (eg, camps or points of temporary settlement and distribution of food and water), which can not only significantly worsen, but are likely to make their normal functioning impossible.

59. Issues of ensuring safety during a fire are particularly acute for people with disabilities. Accommodation of people with disabilities above the ground floor in an emergency can greatly hamper their evacuation. This was noted by the General Prosecutor of the Republic of Belarus in 2010<sup>40</sup>.

60. The situation on the whole is aggravated by the lack of free access and barrier-free environment, particularly in buildings and structures of older construction (residential and non-residential, public and private funds). Similarly, the problem of transport infrastructure — land transport is not adapted for free movement of people with disabilities.

61. The next case is a Confirmation of disastrous consequences of ignoring and silencing of these problems especially in media<sup>41</sup>.

62. The fire in a Vitebsk institution for elderly and disabled people on June 2015. 47 people were evacuated, two people with mobile disabilities burned to death.

## **Article 12. Equality before the law**

63. The right to equality before the law requires that this capacity is a universal property inherent in all human beings by virtue of being human, and to be respected in relation to persons with disabilities on an equal basis<sup>42</sup>.

64. Therefore, the right to legal capacity shall be recognized by both the capacity of legal status (rights ownership) and capacity to act (the ability to exercise the rights). The capacity to act also needs to be distinguished from mental capacity, meaning the skills of a person to take decisions, in which, of course, all people are different. The Convention clearly implies that "dementia" and other discriminatory notions are not legitimate reasons for denying legal capacity (legal status and legal capacity to act). According to Article 12 of the Convention, actual or perceived mental capacity restrictions should not be used as grounds for deprivation of legal capacity.

65. Also, the problem of equality before the law can be considered within a problem of legal relations in the field of rehabilitation. In accordance with Belarusian legislation, persons with disabilities who use rehabilitation equipment (prostheses, crutches, etc.), which they have received for free, or for a partial payment by the social security system are not legally their customers and, accordingly, can not defend their rights under the laws on consumer protection<sup>43</sup>.

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<sup>40</sup> <http://www.belta.by/regions/view/sotrudniki-mchs-likvidirovali-pozhar-v-dome-internate-dlja-pensionerov-i-invalidov-v-minske-144797-2010>

<sup>41</sup> <http://www.interfax.by/news/belarus/1185582>

<sup>42</sup> § 8 *ibid.*

<sup>43</sup> The Court judgement of Moscow district of Minsk ad sectam of Rynda V.M. from 14 October 2008 .

66. The deprivation of legal capacity under the law of the Republic of Belarus on the basis of article 29 of the Civil Code (as a result of mental disorder) and placement in residential care is contrary to article 14 of the Convention, because it contains an absolute prohibition on imprisonment based on various kinds of disorders. This situation is compounded by the fact that Belarusian law does not contain capacity reinstatement procedure on the initiative of the incapacitated person.

67. People with intellectual or mental disabilities are often considered dangerous to themselves and others when they disagree or oppose medical treatment. People with disabilities are often denied equal protection of the law and transferred to a special status. Legislation relating to people with mental health problems often has a lower standard when it comes to protecting human rights, in particular the right to due process and a fair trial, which is not compatible with Articles 13 and 14 of the Convention<sup>44</sup>.

68. For example, according to the article 375 of the Civil Code the case of deprivation of legal capacity (due to a mental disorder due to which a person can not understand the significance of his actions or control them), the court may consider without his participation, if the court considers it impossible for a person to be present for reasons of health.

69. The issue of the gap in the civil legislation concerning restriction of legal capacity of citizens with mental disabilities depending on the degree of their illnesses has already been considered by the Constitutional court of the Republic of Belarus<sup>45</sup>.

70. In the discussion the expediency to limit legal capacity was noted. "Everyone, wherever he may be, has the right to recognition before the law."<sup>46</sup> As of February 2016, civil society has no information on the preparation of the draft law (the proposal of the Constitutional Court of the Republic of Belarus to the Council of Ministers) on making appropriate amendments to the Civil Code.

### **Article 13. Access to justice**

71. Articles 60 and 61 of the Constitution of the Republic of Belarus also guarantee to every citizen the protection of their rights and freedoms by a competent, independent and impartial court.

72. The positive elements in assisting people with disabilities in getting access to justice, we believe, is providing free legal assistance to people with disabilities under certain circumstances (certain disability groups; cases that do not require reading of the documentation etc.), reduction of state duty when applying to the courts and notaries.

73. However, it should be noticed that there are certain difficulties in access to justice for people with disabilities. This is evident from the absence of special equipment in courtrooms for persons with hearing and speech disorders, absence of ramps, and failure to make it possible for persons with disabilities to move inside the court building. There is no possibility of questioning of witnesses in criminal proceedings at the place of their residence (such an option

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<sup>44</sup> Guiding principles of the Convention of the Rights of People with disabilities, Art. 14, approved on the 14 Assembly of the People with Disabilities Committee dated September 2015. .

<sup>45</sup> The Decree "On the restriction of legal capacity of a person due to mental disorder" dated 16 October 2013, number P-847/2013.

<sup>46</sup> Universal Declaration of Human Rights, adopted and proclaimed by the UN General Assembly Resolution 217 A (III) on 10 December 1948.

exists only in civil proceedings). Also, no additional provisions have been made in the case of a victim who is a person with disabilities<sup>47</sup>.

74. Belarus recognizes sign language as the means of interpersonal communication and builds on measures that support sign language<sup>48</sup>, however, there is insufficient legislation in terms of its application and use, including the system of justice.

## **Article 14. Liberty and security of the person**

75. The Committee on the Rights of Persons with Disabilities insists on the absolute prohibition of deprivation of liberty on the basis of different kinds of impairments (whether they are physical, mental, intellectual or sensory human conditions that may cause (or may not) physical, mental or sensory limitations)<sup>49</sup>. This prohibition is strongly linked with Article 12 of the Convention (equal recognition before the law) and implies that placement of people with disabilities in care institutions against their will and without free and informed consent violates the Article 12 and 14 of the Convention and is recognized as arbitrary deprivation of liberty as it denies the legal capacity of persons with disabilities.

76. In accordance with chapter 14 of the Criminal Code mandatory safety measures and treatment may be appointed by the court in relation to persons suffering from mental disorders (diseases), who committed socially dangerous acts, provided by this Code, in order to prevent these persons from the new socially dangerous acts, protection and treatment of such persons. Modification and termination of the application to the persons suffering from mental disorders (diseases), compulsory security measures and treatment are carried out by a court on the basis of the conclusion of the medical advisory committee of medical specialists in the field of mental health care. However, there have been registered cases when even after pronouncement of a positive conclusion by medical specialists that there was no need for further compulsory treatment, the prosecutor's office took the other side insisting on continuation of treatment, considering it as punishment. The Court in this case almost always takes the side of the prosecutor's office.

77. Article 192 of the Penal Code defines that persons released from punishment with disabilities groups I and II, if necessary, (who need outside care, household and medical care, without able-bodied family members, with lost social ties) with their consent be sent to nursing homes for the elderly and disabled. The Resolution of the Council of ministers of the Republic of Belarus 1408 from 24.09.2008 places this category of persons with disabilities in specific care institutions which, according to their internal rules represent a restricted area with a permit regime and with a possibility to impose disciplinary penalties etc. which violates the right to liberty and security of a person.

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<sup>47</sup> The Universal Declaration of Human Rights, which was adopted and proclaimed by the UN General Assembly Resolution 217 A(III) on 10 December 1948.

<sup>48</sup> Article 13. The law "On the social protection of persons with disabilities in the Republic of Belarus" of 11.11.1991 № 1224-XII.

<sup>49</sup> *Guiding principles* under Article 14 of the Convention on the rights of persons with disabilities, adopted at 14 session of *the Committee on the Rights of Persons with Disabilities, September 2015*.



## **Article 15.**

### **Freedom from torture or cruel, inhuman or degrading treatment or punishment**

78. In accordance with the law of the Republic of Belarus from January 5, 2015 «On incorporating amendments and additions into Criminal, Criminal Procedure, Penal Codes of the Republic of Belarus, the Code of Administrative Offences of the Republic of Belarus and Procedural-Executive Code of Administrative Offences» Article 128 of the Criminal Code of the Republic of Belarus has been just supplemented with a note that gives a definition of «torture».

79. Currently the Criminal Code contains 2 Articles that mention torture: Article 128 «Crimes against human security» and part 3 of the Article 394 « Coercion to testify». The national legislation does not qualify torture as a separate type of crime.

80. Absence of appropriate criminalization of torture and cruel, inhuman or degrading treatment as official misconduct in fact diminishes the possibility to prosecute officials and makes it impossible to keep statistics. In this context, it is impossible to assess the extent of torture and cruel treatment with the help of court statistics<sup>50</sup>.

81. Often detention of persons with disabilities in places of detention amounts to cruel and inhuman treatment. Although special legislation in the area of the serving sentences has established some positive measures for persons with disabilities: they are allowed to receive additional parcels, improved living conditions, assigned to work at their request<sup>51</sup>, the general legislation to protect the rights of persons with disabilities largely does not work in places where sentences are served. In fact, there are no known cases when a person who needed outside care, (and that has been confirmed), could exercise this right. The individual rehabilitation program is totally disregarded, there is no way to receive and use necessary rehabilitation aids and there is an insufficiency of medical services. As a result, conditions under which a person without disabilities serves his/her sentence constitute cruel and inhuman treatment for people with disabilities.

82. In 2015 there have been few cases reported of cruel, inhuman treatment of persons with disabilities<sup>52</sup>.

## **Article 16.**

### **Freedom from exploitation, violence and abuse**

83. It should be noted that Belarus does not provide measures to prevent violence against people with disabilities.

84. The current law of the Republic of Belarus from November 10, 2008 «On the Principles of crime prevention activities» contains measures to prevent domestic violence. This law, in particular, obliges the relevant authorities to develop regional programs for the prevention of crime. Clearly that does not provide sufficient measures to prevent domestic violence, particularly with regard to persons with disabilities. For example, the regional program

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<sup>50</sup> <https://spring96.org/ru/news/62254>

<sup>51</sup> Articles 84, 94 and 98 of Penal Code.

<sup>52</sup> <http://news.tut.by/society/465152.html>

[http://naviny.by/rubrics/disaster/2015/02/19/ic\\_news\\_124\\_454351/](http://naviny.by/rubrics/disaster/2015/02/19/ic_news_124_454351/)

<https://people.onliner.by/2015/09/19/konflikt-9>

for the city of Minsk<sup>53</sup> in 2015 didn't contain any specific measures on prevention of domestic violence in relation to disability.

85. The Convention obliges States to take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who have become victims of any form of exploitation, violence or abuse. The situation in Belarus is such that the territorial centers for the provision of social services, which function in every administrative region, offer a different range of social services to the population, including women who became victims of violence, however, no measures have been taken to ensure that all services and resources available to prevent crime and assist victims of violence are accessible to persons with disabilities. So, the emerging network of «crisis» rooms on the premises of territorial social service centers, that aim to provide social-psychological, rehabilitation and other support for women who find themselves in difficult situations, sometimes is not available for persons with disabilities. Specifically territorial social service centers may refuse such assistance to citizens with special needs in their psychological and physical development<sup>54</sup>.

86. In addition, there are problems related to the placement of the victims in emergency rooms: inability to ensure the safety and confidentiality of victims, a short stay in the rooms — up to 10 days, failure to ensure the well-being of victims during their stay in the « crisis» rooms, the lack of specialists, and lack of work with aggressors etc.

87. The Convention emphasizes age and gender specificity for implementation of Article 16 of the Convention. Because children with disabilities as well as women suffer from double discrimination, it is necessary to take additional measures to prevent violence against minors with disabilities. The legislation establishes the right of children to be protected in Article 189 of the Marriage and Family Code: every child has the right to protection of its person, honor and dignity against all forms of exploitation and violence: economic, sexual, political, spiritual, moral, physical, psychological. The Republic of Belarus has developed and adopted The National Plan of Action for 2012-2016<sup>55</sup> that is meant to improve the situation for children and protection of their rights. One aim of it is to ensure the protection of children from violence and abuse. Yet the problem of violence against children with disabilities was not addressed by the state.

88. The legislation prescribes both administrative and criminal liability on the use of violence against anyone, but in terms of people with disabilities there is no autonomous administrative or criminal offence in the Administrative offences Code or the Criminal Code, and in addition this fact is not considered (the presence of disability in victim) as an aggravating circumstance.

89. People with special mental needs, as a rule, do not have strong critical thinking, as a result, it is easy to gain their trust and use them for profit.

90. Example. A young man with the Group Two disability (mental impairments due to microcephaly), who was brought up and was educated in a special boarding school, after he finished school and reached the legal age received social housing — a one-bedroom apartment for independent living. His income was a disability pension. During the period of receiving the pension he got «friends» who «helped» him to spend the full amount. As a result, the young man

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<sup>53</sup> The programs for 2016 have not been found publicly available.

<sup>54</sup> The provisions of the "crisis" room of Mostovsky Territorial Center for Social Services.

<sup>55</sup> Council of Ministers Decision No. 218 of March 12, 2012

was left without the funds needed to buy food and clothes, utilities and other items. In addition, people closest to him invited him to do a variety of jobs (for example, seasonal work in the countryside, at weekend homes, etc.), without paying him the actual cost of services (he was just given food). Some use social housing to solve their personal problems (live there while their own apartment is being renovated, phone calls on large sum; parties with alcohol...).

91. Another case happened with a girl, who had Group Two disabilities, infantile cerebral paralysis and mental impairments. She grew up and was educated in a special boarding school, after reaching the age of 18 she was given social housing — one-bedroom apartment — for independent living. Her income was a disability pension. She found herself in an environment of immoral behavior — alcohol abuse, sexual exploitation. The girl had a daughter out of wedlock, and after a while as a single mother with a child drew the attention of the guardianship authorities, as a result of which she was deprived of legal capacity and the child was taken away from her.

92. Thus, the lack of specialists (personal assistants) to support this category of people and protect their interests makes it impossible to protect them from exploitation, violence and abuse by others. The country has not implemented special training programs for people with mental peculiarities for self-protection from violence and abuse, with the exception of individual programs run by NGOs.

93. Collection of data about persons with disabilities, victims of offences, was conducted in Belarus until 2006 based on the form of state statistics № 11 of the Ministry of the Interior. Columns «persons with disabilities», «has become a person with disabilities» are absent in a new statistical form 1-G, that has been used since 2007.

## **Article 17. Protecting the integrity of the person**

94. In Belarus, there is no mechanism to protect persons with disabilities from medical (or other treatment), given without a free and without informed consent of the person.

95. Compulsory psychiatric treatment established through regulations in the country<sup>56</sup> is a violation of the right to equal recognition before the law (Article 12), violates the right to personal integrity (Article 17), freedom from torture (Article 15), and freedom from violence, exploitation and abuse (Article 16 of the Convention on the Rights of Persons with Disabilities).

96. Thus, the legislation requires institutions to obtain prior consent of the patient<sup>57</sup>. However, in contradiction of the requirement to obtain the consent for treatment, it also enumerates the grounds for coercion, including the avoidance of treatment and being in a state of helplessness, possible harm to health, or and assumption that a person may pose a threat to himself/herself or others.

97. The country does not provide for measures to protect persons with disabilities from forced sterilization, and girls and women from forced abortions.

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<sup>56</sup> The law of the Republic of Belarus « About mental health services and guarantees of the rights of citizens at its rendering» of 01.07.1999 № 274-Z.

<sup>57</sup> Ibid

## **Article 18.**

### **Liberty of movement and nationality**

98. There is discrimination in the provision of insurance services for the life and health of people with disabilities<sup>58</sup>. Most insurance companies working in the territory of Belarus have restrictions in their regulations on the basis of disability. This means that persons with disabilities have a problem of obtaining visa since insurance is a prerequisite. About 20% of Belarusian insurance companies offer persons with disabilities accident insurance and insurance for travelling abroad. There is no state requirement of non-discrimination when it comes to certification of insurance services.

## **Article 19.**

### **Living independently and being included in the community**

99. The Convention proclaims the right of all to live independently and be included in the community. It assumes that States Parties not only recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, but also take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community.

100. In the Belarusian legislation the principle of independence is based on the norms of the Law "On Prevention of Disability and on Rehabilitation of Disabled Persons" dated 23 July 2008 № 422-3, in particular on Article 36 — social adaptation.

101. The national social welfare system is limited in its capacity to provide special services to persons with disabilities. Stationary social care institutions (boarding houses) are the only existing form of providing care for persons with severe disabilities. Provisions<sup>59</sup> "On psycho-neurological boarding houses for the elderly and disabled" contain the following statement: "The main task of the psycho-neurological boarding house is the organization of permanent care, welfare and medical assistance to legally incapacitated citizens." For persons with mental disabilities psycho-neurological boarding houses, being state institutions of social service, actually are the only residence option alternative to living with family /relatives. Only citizens recognized by courts as legally incapacitated can be admitted to a boarding house of this type. In practice, with a view to gain an accommodation in a boarding house (because of the lack of alternative forms of social service institutions) a person with disabilities has to complete the court procedure of legal incapacity recognition. As a result, the opportunity to stay in such an institution deprives persons of all their personal rights and makes them part of the most vulnerable group.

102. In 2016 nearly 18 thousand people resided in 81 boarding houses in Belarus. These included 47 psycho-neurological boarding houses for the elderly and disabled, 22 boarding houses for the elderly and disabled, 10 boarding houses for disabled children with special needs, and the State Enterprise "Republican boarding house for veterans of war and labor", owned by the state. Complete and accurate information on the rights of persons with disabilities living there is not available, particularly, due to the lack of free access to communication with residents and administrative restrictions to visit boarding houses.

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<sup>58</sup> <http://news.tut.by/society/270440.html>

<sup>59</sup> Adopted by the Decree of the Ministry of Labour and Social Protection of the Republic of Belarus dated January 10, 2013 № 5 "On Approval of the Regulations on social service institutions."

103. Although the system of boarding houses is completely state-owned, there is no open information on state quality norms and standards provision in these institutions, budget and economic policies, staff capacity (quantitative and qualitative). Researches on these issues are almost completely absent in Belarus. Upheld analysis shows that there exists a considerable gap in conditions for respect, realization and protection of human rights of persons with disabilities living in the boarding house and outside it. Living conditions of the boarding houses definitely restrict their residents' right to affordable and high-quality health services<sup>60</sup>.

104. The administrative provisions governing the functioning of boarding houses allow the use of coercive measures for "faults" — violation of regime, rules and regulations.

105. International law guarantees the provision of persons with disabilities with support services, including personal assistance.

106. The provision of personal / individual assistants does not exist in Belarus. In most cases, it is family members who provide care and assistance to persons with disabilities. Legislation contemplates benefits to persons performing the constant care of persons with Group One disability<sup>61</sup>. However, the range of persons who can meet the requirements and gain benefit is considerably narrow. Thus, the beneficiary cannot be employed or lead commercial activity, study on a full-time schedule, and receive pensions, unemployment benefits, monthly insurance payments (in accordance with the law on compulsory insurance against accidents at work and occupational diseases) or monthly financial support (in accordance with the legislation on civil service).

107. The list of social in-home services (social worker service) provided by regional social services centers is exhausted (as a rule, it covers social and household ones) that cannot fully meet the specific needs of the individual.

108. The national policy on disability does not contain a definition of deinstitutionalization. Accordingly, deinstitutionalization as a system process is not defined among the objectives of the national disability policy.

## **Article 20.**

### **Personal mobility**

109. Concerning the term "mobility", the Convention on the Rights of Persons with Disabilities requires effective measures to be taken to ensure personal mobility of persons with disabilities with their greatest possible independence.

110. It is worth noting that in 2007 Belarusian legislation significantly changed concerning individual mobility issues. Provision of persons with disabilities (with musculoskeletal system disorders, in particular) with special motor vehicles equipped with manual control (on free of charge or special conditions) was discontinued. These changes totally ignored the widespread lack of accessible transportation and the needs of persons with disabilities.

111. Inability to ensure the full accessibility of public transport for persons with disabilities, led to the development of social means of transport (so-called "social taxi"). The 5-

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<sup>60</sup> <http://cet.eurobelarus.info/ru/library/publication/2014/06/02/kachestvo-zhizni-v-domah-internatah-mezhduzhelaemym-i-real-nym.html>

<sup>61</sup> The Council of Ministers Decree dated September 6, 2006 № 1149.

year project showed positive effects but it did not spread throughout the country. Payment conditions (chargeable or free-of-charge), beneficiaries of the service (for example, only citizens of the city can enjoy the service in Minsk), territory coverage and time schedule (for example, availability on weekends and public holidays) are not unified throughout the country.

112. The “Social taxi” service is a positive effort of the government to facilitate mobility of persons with disabilities, but still it should be considered as compensation for inaccessibility of public transport.

113. In terms of assistive technologies access it should be mentioned:

- State Register (list) of technical means of rehabilitation <sup>62</sup> contains 56 items of rehabilitation aids and prosthetic and orthopedic products, and is exhaustive. It includes social rehabilitation mobility aids, rehabilitation devices, prosthetic and orthopedic devices, aids for persons with sight and hearing disabilities;
- the support with technical means of rehabilitation (including mobility aids) is established by the Regulations <sup>63</sup> on provision of citizens with technical means of social rehabilitation, their repair and replacement. However, the approach to a specific person is not case-by-case (based on individual capabilities and needs). Moreover, the replacement of inefficient means by more modernized methods is not practiced. The established terms of technical aids repair / replacement are long (up to 30 working days) that considerably complicates the lives of persons with disabilities. It causes a need for constant care and assistance, especially for those who cannot move independently, impairing their quality of life. For example, modern assistive technologies (electronic magnifiers, Braille typewriters and displays, advanced audio aids and special software) are not available to persons with sight disability and that significantly affects the quality of their social rehabilitation. They have a limited choice of produced in Belarus technical mobility aids — haptic canes only, whole or folding;
- persons with disabilities in Belarus still can not choose the producer of rehabilitation aids, devices and assistive technologies, or order an individual design. The market of technical means of rehabilitation is actually monopolized by Republican Unitary Enterprise “Belarusian orthopedic rehabilitation center»<sup>64</sup>.

114. The uniform system of educational and training programs, services provision, for example, services of guide-dogs for persons with sight disabilities, is not developed in the Republic of Belarus. There are no state educational programs on the communication and interaction with persons with sight disabilities or on assistance provision; conditions for their individual mobility facilitation are not created. Health care settings (hospitals) do not provide persons with sight disabilities with personal assistance service and this causes troubles for them and their relatives.

115. Belarusian settlements are not equipped with special guidance systems for people with mental peculiarities that hinder their independent mobility. Public support on orientation and mobility facilitation for persons with mental disabilities as well as adequate information provision are absent. This concerns people living either in families, or in state care institutions.

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<sup>62</sup> Council of Ministers Decree dated 11 December 2007 № 1722.

<sup>63</sup> Council of Ministers Decree dated 11 December 2007 № 1722.

<sup>64</sup> Republican Unitary Enterprise “Belarus orthopedic rehabilitation center”, <http://www.bpovc.by/>

## **Article 21.**

### **Freedom of expression and opinion, and access to Information**

116. The Constitution of the Republic of Belarus guarantees the right of access to information<sup>65</sup>. However, the legislation does not clarify the accessible formats of information.

117. The right of persons with hearing disabilities to information of electronic media via TV broadcasts accompanied with subtitles or sign language interpretation is guaranteed by law<sup>66</sup>. However, the formal provision is not followed by appropriate state measures ensuring access to information for persons with disabilities. The requirements on information accessibility, as well as measures encouraging providers to make their services accessible to persons with different kinds of disabilities are not established.

118. Access to television programs, cinema, and theater for people with serious sight disabilities is limited. There are no cinemas (theaters) showing movies (performances) with audio description. The legislation does not set any requirements for film production on its adaptation to the needs of persons with sight disabilities.

119. The law "On Health Care" recognizes the patients' right to receive information about their health in the accessible format of communication. However, in practice, doctors are often unprepared to communicate with people with mental disabilities, preferring to give information to their families, often only in response to a clear question.

120. Article 34 of the Constitution obliges state bodies, public associations and officials to provide the citizens of the Republic of Belarus with information on their rights and legitimate interests.

121. Example. Websites of the majority of government bodies are not accessible to persons with serious sight problems. Web-sites monitoring, upheld in 2015 by the Legal Transformation Center Lawtrend (it investigated 48 sites), showed the following data: sufficient level of accessibility — 15%, feedback form for e-request — 88%, CAPTCHA, unrecognizable by screen readers — 69%, successful message-sending by the blind person — 48%.<sup>67</sup>

122. Belarusian legislation contains a provision, defining that in case of participation of persons with hearing disabilities in the work of state bodies and other organizations, or in legal proceedings, they should be provided with sign language translation<sup>68</sup>. However, the realization of this right is complicated. The established provision with services of sign language interpreters is limited to 36 hours per year<sup>69</sup> (3 hours per month). Civil proceedings are conducted in Belarusian and Russian languages; the use of sign language is not enshrined. However, in the case of persons with an interest in the outcome of the case who do not speak the language of the proceedings, the legislation provides them with the opportunity to participate in court proceedings through the service of interpreter. The fact that regional social centers provide services of sign language interpreters limited to 36 hours per year may cause the violation of Articles 12 (equality before the law) and 13 (access to justice). Moreover, according to the civil procedure legislation the interpreter services are provided only to the parties with interest in the

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<sup>65</sup> Article 34 of the Constitution of the Republic of Belarus.

<sup>66</sup> Article 13 of the Law "On social protection of disabled persons in the Republic of Belarus" dated 11.11.1991 number 1224-XII

<sup>67</sup> <http://news.tut.by/society/481698.html>

<sup>68</sup> Article 12 of the Law "On social protection of disabled persons in the Republic of Belarus" dated 11.11.1991 number 1224-XII.

<sup>69</sup> Council of Ministers Decree dated 27.12.2012 number 1218 art.27.4.

outcome of the case (excluding those with no interest in the outcome of the case, such as witnesses, experts, specialists and others)<sup>70</sup>.

123. The law "On mass media"<sup>71</sup>, declares the equality of rights of all individuals to impart and receive information, but it does not develop implementation measures. Persons with sight disabilities do not have access to printed media (republican newspapers and magazines). There are no periodicals published in Braille.

124. However, there exists a set of specialized libraries (departments, sectors) serving persons with sight disabilities. Their assets are regularly enriched with audio books, books in Braille and large print. According to the NGO "BelTIZ" information, in 2011-2015 the state budget has spent 2,463.5 thousands of BYR on literature for persons with sight disabilities; audiobooks purchased during the specified period — 39,720 copies, 4211 — books with large print, 1356 — Braille books.

125. It should be noted that at the present moment sign language interpreters work only in regional social services centers of Zavadski, Centralni, Leninski districts of Minsk, in Brest, Mogilev and Borisov.

126. The Law of the Republic of Belarus "On mass media" does not specify the needs of persons with mental disabilities in accessible formats of information presented to them.

127. The format of "easy-to-understand language" is used in the field of special education only and is used by professionals, social service workers and parents attending special seminars organized by NGOs. For children with mild to moderate intellectual disabilities special textbooks for school subjects are published in easy-to-understand language. However, the literature and mass media supporting persons with mental disabilities in their everyday life are absent.

128. The access to information of certain categories of children with disabilities (eg with sight or hearing disabilities) is not defined in national legislation.

129. In public places, institutions and organizations visual data is not duplicated with audio or Braille data.

130. Persons with hearing disabilities still experience problems with information accessibility. In particular, the 5-year state program on the accessibility of TV channels resulted in an accessibility increase of 40 minutes a day only, from 20 to 60 minutes per day. Since 2014, the work of the National TV and Radio Company was focused on the purchase of new equipment, which was expected to increase the accessibility of TV broadcasts for persons with hearing disability. In 2015, this equipment was installed and adjusted to work, but the broadcasting accessibility increased for 15 minutes per day only.

131. Example. Since 2014, Public Association "Belarusian deaf persons society" in cooperation with Minsk Executive Committee has been developing the first Belarusian Centre for receiving and transmitting calls of persons with hearing disabilities to Minsk emergency services. The project was tested on the basis of 131-service of JSC "Medical Initiative". The following shortcomings were identified: limited hours of work (actually — 6 hours a day) led to impossibility for a person with hearing disability to call for ambulance on a day-off; the opportunity to use mobile IP technology (Viber, Skype) was not provided; the Center was

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<sup>70</sup> Article 16 of the Civil Procedure Code.

<sup>71</sup> Law "On mass media" dated 17.07.2008 number 427-3.



operating within Minsk Telephone Databases only. The project is on the stage of approval as state social order now; the development of the Center will proceed in 2016.

## **Article 22.**

### **Right to privacy**

132. The Constitution of the Republic of Belarus guarantees that everyone shall have the right to protection against unlawful interference with his private life, including encroachments on the privacy of his correspondence and telephone and other communications, and on his honor and dignity.<sup>72</sup>

133. Article 29 of the Constitution of the Republic of Belarus guarantees inviolability of the home and other legitimate possessions of citizens. No one shall have the right without a lawful ground to enter the home or other legitimate possession of a citizen against his will.

134. Article 26 of the Procedural and Administrative Code develops the constitutional principle and says that inviolability of the home and other legitimate possessions of citizens is protected by the law and that no one shall have the right without a lawful ground to enter home or other legitimate possession of a citizen against his will. That is why every person has the right to privacy in his dwelling. Violation of this right most often happens in institutions because the order of living set by internal regulations and other instructions doesn't give grounds to think that private life, family or correspondence or other types of communication are inviolable. Besides other things the existing institute of guardianship cannot guarantee the respect of the right of people with disabilities to private life, because people who make decision have access to a wide range of personal and other information about a person and not always show proper attitude to interests of people they present.

135. According to the article 18 of the Law "On information, informatization and protection of information"<sup>73</sup> No one shall have the right to demand from a citizen information about the facts of his personal life, including information that constitutes private and family secrets, information about his health, viewpoints, political and religious beliefs, or to collecting such information in any other way against the will of the person, apart from cases specified by legislative acts of the Republic of Belarus

136. It is written in the law<sup>74</sup> that information on a patient's state of health is given by a doctor to a patient or persons mentioned in the Law<sup>75</sup>. Giving information constituting medical secrecy can be done on requests from corresponding bodies (in particular the Ministry of Health in case of spread of infectious diseases, District department of internal affairs, prosecuting agencies, investigating bodies), but on December 27, 2014 amendments came into force provided by the Law from 16.06.2014 № 164-3, which widen the list of organizations which can get information constituting medical secrecy without the consent of a patient and also made it open. The law gave healthcare organizations the right to give information constituting medical secrecy with the aim of the organization of medical assistance to a patient and in order to prevent the spread of infectious and mass non-infectious diseases. We understand it the following way: by the wish to render medical assistance to a patient you can explain almost any need to get personal information about him and it may not correspond with the interests of the patient.

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<sup>72</sup> Art 28 of the Constitution of the Republic of Belarus

<sup>73</sup> Law "On information, informatization and protection of information" from 10.11.2008 № 455-3

<sup>74</sup> Art. 45 of the Law "On healthcare" from 18.06.1993 №2435-XII

<sup>75</sup> P. 2 art. 18

## **Article 23.**

### **Respect of home and family**

137. The meaning of article 23 of the Convention is in elimination of all manifestations of discrimination of persons with disabilities in all issues concerning marriage, family, parenthood, motherhood and personal relations and in realization of their rights equally with other people.

138. The Belarusian state took on a constitutional obligation to protect marriage, motherhood, parenthood and childhood<sup>76</sup> and one of the tasks held in Belarus politics in the sphere of marriage and family claims — “strengthening of the family in the Republic of Belarus as the natural and main social unit on principles of human morale, non-admission of weakening and destruction of family connection”<sup>77</sup>.

139. “A family, which is the natural and main social unit, should get all possible protection and support”<sup>78</sup>. In the context of the article ensuring “protection and support” to families in which spouses or children are people with disabilities means that it is necessary to do everything possible to give these people the possibility to live with their families if they want to<sup>79</sup>.

140. But realization of norms written into the national legislation and aimed at the attainment and protection of the rights of persons with disabilities may, in some cases, lead to negative consequences.

141. So, the practice of law enforcement regarding people with disabilities included in the existing List of diseases when parents are not able to fulfill their parental duties (hereinafter referred to as List)<sup>80</sup> completely contradicts the goals it was created for. There are cases<sup>81</sup> of taking children away from parents with disabilities based only on decision by MAB made with reference to this List. The work of the “Office for the Rights of Persons with Disabilities” shows that such cases are of a systematic character.

142. Arbitrary interpretation of legal norms leads to cases of human rights violations such as a case in Ivatsevichi<sup>82</sup>

143. Based on the norms of international law it should be the following way: “Persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood”<sup>83</sup>.

144. Issues of adoption of underage children by parents with disabilities, getting a status of adopting parents, parents-teachers of a family type foster home, children’s village or a guardian are connected with different lists<sup>84</sup>. These lists are practically insuperable obstacles for adoption or guardianship especially in the part of definitions: “illnesses not included in this list

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<sup>76</sup> Art. 32 of the Constitution of the Republic of Belarus

<sup>77</sup> Art. 1 of the Code of the Republic of Belarus on marriage and family from July , 1999 № 278-3

<sup>78</sup> Art. 10 of International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200A (XXI) of the General Assembly on 16 December 1966.

<sup>79</sup> General Comment number 5 (eleventh session, 1994).

<sup>80</sup> Adopted by the Resolution of the Ministry of health of the Republic of Belarus from 30.03.2010 № 36

<sup>81</sup> <http://news.tut.by/society/459846.html>

<sup>82</sup> *ibid*

<sup>83</sup> Rule 9 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities adopted by the Resolution of the UN General Assembly on December 20, 1993 № 48/96.

<sup>84</sup> Adopted by the Resolution of the Ministry of health of the Republic of Belarus from February 25, 2005

which led to 1<sup>st</sup> or 2<sup>nd</sup> group disability” and “illnesses not included in this list which led to 1<sup>st</sup> group disability”. It is a complete ban, without exclusion, for all people with disabilities having 1<sup>st</sup> or 2<sup>nd</sup> group of disability to realize the abovementioned norms. Based on the existing norms of evaluation of illness which led to disability there are no methods of defining whether a person can fulfill previously untried functions. So we can see that there is no individual approach in solving the issues of adoption/guardianship — when the decision is being taken the only factor which is taken into account is disability but not personal characteristics of a person’s abilities and limitations.

145. Relating to the possibility of using assistive reproductive technologies, which are rather new to our country, it is worth mentioning that the List of medical conditions and contraindications for using assistive reproductive technologies doesn’t mention “status” disability as an obstacle for such procedures<sup>85</sup>. The list contains objective medical contraindications of recurring and severe diseases.

146. Mentioning the rights of incapable citizens in the framework of article 23 of the Convention we should state that the issue is not completely solved and has some categorical norms: these persons do not have the right to get married, to independently raise children and to make decisions on other aspects of family life.

147. According to General Prosecutor’s Office of the Republic of Belarus which showed its position during consideration of the issue by the Constitutional Court, “in the case of finding a person incapable he loses the majority of personal rights including the right to make decisions on personal belongings, treatment, place of living, participation in elections, appealing to court, raising children, communication with relatives and others”. As the result of this incapable citizens are deprived of an effective means of protection of their rights, including reinstatement of capacity and become the most vulnerable category of citizens.

## **Article 24. Education**

148. Accessibility of education is guaranteed by article 49 of the Constitution of the Republic of Belarus, article 23 of the Law “On the rights of the child” as well as the Educational Code.

149. Legal acts in the system of national legislation contain discriminative norms. Decision by the Ministry of Healthcare from December 22, 2011 № 128 “On defining medical conditions and contraindications for receiving education”, directly contradicts international norms and limits the right of every child for education because of the state of his health.

150. In accordance with the legislation<sup>86</sup> education of children with disabilities and peculiarities of development in higher educational establishments and in specialized secondary schools is connected with issues of medical expertise and depends on the character of indications for education. When people with Group One and Two disabilities and children with disabilities get an equal score with other entrants in order to use their preferential right they have to present corresponding documents and a decision by MREC that they are allowed to study their chosen specialty. There have been many cases when disabled people could not study their chosen specialty because of such medical assessments.

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<sup>85</sup> Law of the Republic of Belarus from January 7, 2012 № 341-3 “On assistive reproduction technologies”

<sup>86</sup> Decree of the President of the Republic of Belarus from February 7, 2006 № 80 “On the rules of admission to higher and secondary educational establishments” (as amended № 375 from 28.08.2015).

151. The process of centralized testing is not adapted for persons with visual impairments and such university entrants do not have the possibility to pass tests along with other people. According to p. 27 of the existing Rules of admission to higher educational establishments “entrants with hearing, visual and locomotor impairments who in accordance with medical assessment of the state center of corrective-developing studies and rehabilitation were recommended to study at institutions providing special education if they don’t have any contraindications for studying the chosen specialty, pass exams at a higher educational establishment. The form of entrance exams is defined by the admission commission taking into account psychophysical peculiarities of an entrant”.

152. There are norms in the Educational Code in which the reason why a person became disabled defines his right to social scholarship and the right to live in state educational institutions<sup>87</sup>.

153. For children with health issues or other peculiarities of development the special commission evaluates the degree of problems and a possibility to give access to education and chooses and recommends the corresponding types and profile of an institution<sup>88</sup>.

154. According to the list of the abovementioned resolution a child with mobile, hearing or visual impairments cannot get into an institution where children without disabilities study. According to the document children with severe disabilities of functional classes (FC 4 and 4) do not study at all. This document directly contradicts the understanding of inclusion as used in international practice.

155. Commissions deciding the degrees of health loss significantly use the norms of defectology which haven’t changed since 1980<sup>th</sup>.

156. The right to choose by children with disabilities, with peculiarities of psychophysical development and their parents of an educational institution is guaranteed by the state at the legislative level<sup>89</sup>. Formally children have the right to enter special integrated or common educational establishments but commissions define educational programs for a child only with his parents’ consent. But the parents’ decision depends on the presence of educational infrastructure in their district. There are cases of pressure brought to bear on parents in order to change their decisions.

157. Inclusive schools. In 2015 the Ministry of Education approved the Concept of inclusive educational development for persons with peculiarities of psychophysical development in the Republic of Belarus<sup>90</sup>. This innovation is defined by a local normative act and until now has not been introduced to legislation.

158. The following integral components of inclusive education haven’t been yet defined in Belarusian legislation: tutor and tutor support; variable educational space; individual educational program for every student.

159. The notion of inclusive education in the Concept doesn’t correspond with modern ideas and generally accepted definitions. The Concept doesn’t connect the notion of inclusion

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<sup>87</sup> P. 5 art. 42, p. 3.2 art. 44 of the Educational code of the Republic of Belarus

<sup>88</sup> Resolution of the Ministry of Health of the Republic of Belarus from 22.12.2011 № 128 “On defining medical indications and contraindications for getting education”.

<sup>89</sup> Art. 31 of the Law of the Republic of Belarus “On the rights of the child” from 19.11.1993 № 25-70-XII

<sup>90</sup> Order of the Ministry of education of the Republic of Belarus from 22.07.2015 № 608 “On approving the Concept of development of inclusive education for persons with peculiarities of psychophysical development in the Republic of Belarus”.

with the right to education and doesn't mention human rights. Inclusion in the Concept is explained by very narrowly focusing on only one of the children's profiles out of all the serious barriers faced on the way to education.

160. Open public and expert discussions on tested methods and their results are not held.

161. System of integrated classes and special schools (boarding schools) for children with vision impairments is functioning in the country (6 in the country).

162. Home education leads to worsening of a family's financial situation because one of the parents has to leave her/his job.

163. Children with abnormalities studying in special or integrated groups of educational establishments of a common type very often face a negative attitude from their peers which confirms the unpreparedness of school community (pupils and their parents) to the inclusion of children with developmental abnormalities into general educational process and the unwillingness of teachers to stop a negative attitude in their classes.

164. Parents do not have enough information about educational possibilities and rights and consequently many of them are unable protect their civic rights. As a result they do not appeal the commissions' decisions and accept imposed educational programs which mainly reflect the interests of the educational system and not of those of the children and their parents.

165. One of the issues of educational accessibility is the absence of a barrier-free environment in schools and higher educational establishments. According to the report by the department of special education of the Ministry of Education of the Republic of Belarus only 26 institutions of general secondary education in the republic (0.8 percent from all the number of institutions) completely meet the requirement of barrier-free environment (results on 2014). The department of special education plans that by 2020 barrier-free environment will have been created in 10% of the country's general secondary educational establishments.

166. There is no unified approach to evaluation of the accessibility of buildings for people with disabilities and physically weak people which leads to holding chaotic unsystematic events in this sphere.

167. Educational establishments, especially those of general education, are insufficiently provided with study materials for children with peculiarities of development.

168. In spite of the state's obligations the issue of transportation of children with disabilities to schools hasn't been solved. The social taxi service existed in Minsk till 2015 and a person with disability could use it 5 times a month.

169. Children with disabilities can study according to different educational programs depending on the type of educational establishment — general or special. In the framework of existing educational programs of special schools there is no individualization of the educational process taking into account skills, peculiarities of understanding information and extra needs of a child.

170. The system of monitoring of successes and progress of pupils with special needs is evaluated as insufficient.

171. The system of education lacks qualitative procedures of participation of parents as equal participants in the educational process. The educational system doesn't consider other

providers of educational services from the sector of informal education as equal participants and doesn't give them access to the process. There is no productive cooperation and interaction.

172. Methods of a defectology concept focus on “weaknesses” of a child but not the environment prevailing in the preparation and qualification of teachers in the sphere of education of children with peculiarities of development.

## **Article 25. Health**

173. Health is one of the main human rights of a person that is necessary in order to realize other human rights. Every person shall have the right to highest possible level of health providing him with decent living conditions. Realization of the right to health can be provided with a number of approaches such as defining politics in the sphere of healthcare, realization of healthcare programs prepared by WHO or adoption of legal agreements. Besides, the right to health includes some components, the realization of which is protected by the law<sup>91</sup>.

174. According to the Standard Rules “States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society”<sup>92</sup>. Belarus has signed this obligation to guarantee the right to physical and psychological health, which means the right of access to those medical and social services which allow people with any type of disability to become independent and to prevent further acute conditions and to support their social integration as well as the right to use these services. These people should be given rehabilitation services as well. All the services should be rendered in such a way that these people could in full measure keep respect to their rights and dignity.

175. Recognition of the status “Disabled” in the Republic of Belarus is done by a medical-rehabilitation expert commission (hereinafter referred to a MREC) and based on its results after complex evaluation of the state of health of a citizen using clinical, functional, social, professional, labour and psychological data using classifications of the main types of damages of functions and the main criteria of vital functions<sup>93</sup>.

176. Depending on the degree of intensity of dysfunctions and limitations of vital activities persons who are found disabled get groups and reasons of a disability (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>), underage children are given the category of “disabled child” with the definition of a health-loss degree.

177. In 2016 in the methodology of defining disability in the Belarus International Classification of Functioning<sup>94</sup> is not the basic methodological ground. Commissions rely on diagnoses and their hypothetical influence on limitation of vital activity in defining disability.

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<sup>91</sup> For example, the principle of nondiscrimination in access to institutions, goods and services in healthcare is protected by the law in a number of national legal systems

<sup>92</sup> Standard Rules on the Equalization of Persons with Disabilities, annexed to General Assembly resolution 48/96 of the United Nations from December 20, 1993

<sup>93</sup> Resolution of the Ministry of health of the Republic of Belarus from October 25 2007 № 97 “On approval of the Instruction on order and criteria for defining group and reason of disability, list of medical indications giving the right to social pension for disabled children under 18 and the degree of health loss”.

<sup>94</sup> World Health Organization. International Classification of Functioning, Disability and Health: ICF. Geneva: WHO, 2001.

178. Issues of appealing against set by MREC disability group or health-loss degree, the order of handling a personal rehabilitation program and its content are very often disputed. Medical expertise in civic life of a person with disability is set by the law and in many cases is defining. There also is a problem of full realization of a patient's rights in medical rehabilitation processes including an expertise stage.

179. Legislation provides for a procedure of appealing MREC's decisions in cases of disagreement. When a person is appealing MREC's decision in court, the court calls to the sitting specialists from the same MREC and is guided by its decisions because there are no other structures offering independent expertise in the country.

180. The process of delivering information to patients about their health condition and about the right to get acquainted with their diagnosis and other documents concerning their illnesses, treatment methods and provision with medicines is not sufficiently provided.

181. The majority of medical institutions are physically inaccessible to some categories of persons with disabilities (barriers and remoteness); some medical procedures and some house rules are also inaccessible.

182. Administrative procedures set for provision of free or preferentially-priced medication for persons with disabilities, significantly limit accessibility in the healthcare system. For example, instead of providing people in need with effective medicines a prohibition system exists in the country when all medicines are replaced with Belarusian generics without taking into account their therapeutic effect.

183. Example. Elena, born in 1986, Group One disabled, mental deficiency, CSIP, epilepsy; Zhanna, Born in 1985, Group Two disabled, middle degree mental deficiency. Both applied to a state stomatology polyclinic in order to get treatment under anesthetic because of peculiarities of disability. In Novopolotsk there is no possibility to get such kind of treatment. The chief physician of their district polyclinic sent them to the Vitebsk Oblast clinic. The response of deputy chief physician of the Vitebsk Oblast stomatology polyclinic "...In stomatology polyclinics in Vitebsk for adults there is no possibility to treat patients under general or local anesthetic." Private clinics do not have such a possibility either. Conclusion: there is no possibility to get dental care under general anesthetic as in local polyclinics so in the Oblast center.

## **Article 26. Habilitation and rehabilitation**

184. State policy of the Republic of Belarus regarding persons with disabilities is aimed at "improvement of the quality of life of persons with disabilities, their social adaptation and integration into society and also at reinstatement or compensation of damaged or lost functions of organism and limitations of vital activity of persons with disabilities in accordance with their interest and potential possibilities"<sup>95</sup>.

185. In the Republic of Belarus notion "rehabilitation of persons with disabilities" is written in the Law of the Republic of Belarus from July 23, 2008 № 422-3 "On prevention of disability and rehabilitation of the disabled" where it is considered as "a system of measures aimed at rendering assistance to the disabled in reaching by them an optimal physical,

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<sup>95</sup>The Law of the Republic of Belarus from July 23, 2008 № 422-3 "On disability prevention and rehabilitation of persons with disabilities".

intellectual and social levels of activities and also supporting them by providing with necessary tools, services, information and other methods providing improvement of the quality of life and widening the frames of their independence consisting of medical, professional, labour and social rehabilitation”.

186. The Belarusian rehabilitation system consists of 4 types of rehabilitation: medical, professional, labour and social. The notion of habilitation as a separate branch is not present in Belarusian law and practices.

187. Propositions regarding rights of persons with disabilities are declared in the Belarusian legislation on rehabilitation<sup>96</sup>.

188. The individual program of rehabilitation of a person with disability (hereinafter referred to as IPRPWD) is the document defining the complex of rehabilitation events and exact types and terms of rehabilitation of a person with disability and people who are responsible for it<sup>97</sup>.

189. The character of appeals sent to the “Office for the Rights of Persons with Disabilities” gives us a possibility to define the insufficiency of measures on giving information completely or partially to a client regarding significant options defined in IPRPWD. The lack of information about the procedure together with the lack of knowledge about their rights make mechanisms of protection of persons with disabilities and their families ineffective.

190. Another proof of this fact is that people with disabilities who got IPRPWD do not know that they could have rejected the response completely or partially<sup>98</sup>. Today there is no precisely written mechanism of realization of this right by a person with disability. Rejection recognizes an imperative right of this person for a choice of rehabilitation measures and rehabilitation for himself on the whole. There is a positive decision of the Constitutional Court of the Republic of Belarus on legitimacy of rejection of IPRPWD<sup>99</sup>. IPRPWD practically is an obligatory for realization document. But inclusion to IPRPWD of the maximum number of possible components (procedures, technical devices for rehabilitation etc.) for rehabilitation in a number of cases is rather formal and not complete.

191. For example, usually a section “labour and professional rehabilitation” is filled in accordance with the standard list of specialties (an applicant has the right to employ) without considering possibilities of the person (often without wishes of a person), and conditions of the environment. The labour market in the region where a person lives is also not always taken into

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<sup>96</sup> Art. 24 of the Law of the Republic of Belarus from July 23, 2008 № 422-3 “On disability prevention and rehabilitation of persons with disabilities”.

<sup>97</sup> Approved by the Resolution of the Ministry of Health of the Republic of Belarus from July 1, 2011 № 65 “On establishing the form of individual program of rehabilitation of a person with disability, approval of instruction of completing it and on recognition of invalidity of the Resolution of the Ministry of Health of the Republic of Belarus from February 2, 2009 № 10”

<sup>98</sup> P. 13 of the Resolution of the Ministry of Health of the Republic of Belarus from July 1, 2011 № 65 “On establishing the form of individual program of rehabilitation of a person with disability, approval of instruction of completing it and on recognition of invalidity of the Resolution of the Ministry of Health of the Republic of Belarus from February 2, 2009 № 10”

<sup>99</sup> Decision from 10.07.2009 № P-358/2009 “On correspondence with the Constitution of the Republic of Belarus of the Law “On amending some laws of the Republic of Belarus on issues of social support of persons with disabilities”.



account. It leads to difficulties in employment including the program of adaptation to labour activities<sup>100</sup>.

192. Separately we should mention labour rehabilitation of persons with disabilities in institutions. For persons living in psychoneurological institutions and deprived of activities in some situations participation in labour rehabilitation equals employment. And in such situations there are significant questions if it was a voluntarily decision to get engaged in this or that activity which constitute labour. In these situations there is always an unsolved issue of forced labour violating human rights.

193. Example. According to the NGO for assistance to mentally disabled “Minodi” named after V. Buchkov: “We should mention issues of people with disabilities of psychic character connected first of all with the absence of a rehabilitation system. Persons of this category are being stigmatized. A “Medical model” prevails in the system of rendering assistance — a doctor defines and makes a prognosis and at the same time there is almost no social and adaptation work. We also want to mention instability of the creation of special services. For example, workshops in RCH “Novinki” had started to work and then were closed. The same happened with a day hospital there.

194. Social services have only one offer for this category of citizens — to place them in an institution. We know a case when a woman with mental problems with a rather developed level of functioning was placed in an institution by her elderly father without her consent and notwithstanding her appeals and unwillingness to stay there.

## **Article 27.**

### **Labour and employment**

195. Today MREC is a representative body and its regulatory function is obligatory at every abovementioned stage of professional rehabilitation and employment of persons with disabilities. The right of persons with disabilities to labour is connected by the legislator with IPRPWD which regulates measures of professional rehabilitation. Till now in regions MREC’s employees use in their recommendations an outdated list of professions which needs constant and difficult on practice update. There are examples when because of a formal approach persons with disabilities can be recommended such types of activities in which there are no vacancies in regions they live in. And first of all they take into account the client’s state of health but not the situation at labour market because there is no specialist from a center of employment in MREC.

196. In accordance with legislation people with disabilities are given extra guarantees of employment and there are also a number of mechanisms promoting employment: professional labour rehabilitation, adaptation at the work place, compensation by funds allocated to the creation of work places and others.

197. Nevertheless there is a high level of unemployment among persons with disabilities. Unemployment here means nonparticipation in the sphere of labor without formal registration as unemployed. There is an especially high rate of unemployment (90–95%) among Group One disabled.

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<sup>100</sup> Resolution of the Council of Ministers of the Republic of Belarus from February 2, 2009 № 128 “On approval of the provision on the order of financing and compensation of expenses for creation and preservation of employment for persons with disabilities and the Resolution on the order of organization and financing of event aimed at adaptation of persons with disabilities to working activities”.

198. Example. Young people with mental disabilities of mild and moderate degrees having basic education have the possibility to get technical education (house-painter, plasterer, gardener, shoemaker etc.). But the system of technical education very often doesn't correspond with the structure of disability and not always gives a chance of employment even when a person is qualified. There is almost no specialized system of professional education for young people with moderate to severe mental disabilities. Services working on professional orientation of young people without disabilities have to work with children with disabilities and their employees are not ready and prepared to work with such clients.

199. More than 70% of adolescents and young people with mental peculiarities need to undergo professional education using specially prepared for them program.

200. There is no system of analysis and prognosis of the labour market and as a result planning of study programs in the system of professional education are ineffective.

201. There is a lack of extra stimulation measures for employers who hire people with disabilities who are unable to compete at open labour market.

202. For example, for Groups One and Two disabled there is an obligatory (without consent of the person) shortened working week (not more than 35 hours a week)<sup>101</sup> and not longer than 7 hours a day. Secondary employment is also prohibited to the abovementioned categories.

203. There is a list of illnesses and contraindications in the Belarusian legislation limiting access to control motor vehicles. That is why separate categories of citizens with disabilities (including locomotor disabilities) are allowed to get a driving license but are not allowed to work as a driver. It is a discriminative limitation because it doesn't have any reasonable grounds.

204. Provision of employment and assistance in employment are not MREC's tasks but it is the commission which makes a decision on a person's ability to work and as a consequence the social payments he will get. But ability to work doesn't mean a possibility to get a job and assistance in finding a job is not in the framework of MREC's activities. It is a prerogative of the person or of the employment services.

205. Professional rehabilitation and employment of persons with disabilities is the task of an employment service. This type of activity of employment departments is under special control and the reporting indicator is the provision of full (100%) employment of all representatives of this group of population registered with the employment service. In practice Groups One and Two disabled do not register as unemployed because they cannot get unemployment benefit and many of them do not have labour recommendations.

206. Measures of positive actions, for example reservation of jobs<sup>102</sup>, are aimed at provision of equality of possibilities and at elimination of structural obstacles some groups are facing. But these measures do not take into account individual needs. The system of job reservation doesn't pay back. Employers as a rule reserve low-paid jobs with unfavorable working conditions. Creation of special working places for persons with disabilities is labor-

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<sup>101</sup> Code of the Republic of Belarus from 26.07.1999 № 296-3 (amended 15.07.2015) "Le Labour code of the Republic of Belarus", art. 114.

<sup>102</sup> Resolution of the Council of Ministers № 1595 "Provision on the order of establishing reservation for employing citizens who are in need of social protection and not able to equally compete at labour market" from 29.11.2006.

intensive and costly. Very often an employer doesn't have free finances for this goal and the employment service covers expenses only after the creation of a working place.

207. Existing measures of stimulating employment of persons with disabilities are aimed at employers and they start to work after hiring not less than 30% of staff with disabilities but significant preferences for the employer are given by the state when this number reaches 50% of staff. Such conditions of stimulation don't interest employers, vice versa they say about inadequacy of this model.

208. An important obstacle in the sphere of job creation for persons with disabilities is the creation of specialized jobs for disabled strictly corresponding the set task of the Minsk city executive committee, departments on labour, employment and social protection of city district executive committees and on condition that an employer gave preliminary information that he is ready to create a job (as a rule before a new calendar year). If an employer has decided to create a job after January 1 it means that this year he can only lodge an application for creation of a job in the next calendar year. Such a system doesn't let an employer solve quickly an employment issue of a person with disability.

209. There is no such notion as "social firm" in the legislation, which aims not at getting purely at profit but at the employment of persons with disabilities and it can't be used by small or large business. People who cannot compete in the open labor market because the state of their health could have worked at such firms.

210. When people with disabilities are working as entrepreneurs they do not have extra protection (because of disability). The legal norm on provision of disabled entrepreneurs with premises for doing business is not provided with corresponding legal mechanisms for its fulfilment.

211. Labour legislation has a discriminative duty towards a person with disability in that she/he must an employer some labour-recommendation documents which people without disabilities don't have to provide. There is no system of professional orientation of persons with disabilities in the Republic of Belarus.

212. Until now in Belarusian legislation there is a List of which preclude people of obtaining certain jobs. For example, the list of illnesses excluding people from the performance of specific duties set by the resolution by the Council of Ministers of the Republic of Belarus from October 2, 2003. № 1250. Although the List is not directly connected with disability it is identified with disability leading to stigmatization.

213. Article 28. Adequate standard of living and social protection.

214. Article 28 of the Convention recognizes the rights of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing and social protection. In Belarus an adequate standard of living is defined based on calculations of the minimum subsistence level as a social norm which is used for:

- Analysis and prognosis of population's living standards.
- Rendering state social support to citizens (families) with low income.
- Substantiation of minimal state social and labour guarantees<sup>103</sup>.

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<sup>103</sup> The Law of the Republic of Belarus from 06.01.1999 № 239-3 "On minimum subsistence level in the Republic of Belarus".

215. This figure is calculated for basic social-demographic groups among which there is no category of persons with disabilities in spite of the peculiarities of their needs: medicines, rehabilitation, special diet etc. Minimum subsistence level of persons with disabilities correlates with the budget of pensioners and at the moment of making this report is 1.304.000 rubles<sup>104</sup> a month (about 68 USD). Thus there is no adequate poverty assessment indicator for people with disabilities.

216. But in the country there is such an indicator as a minimum consumer budget which consists of expenses for buying a set of goods and services for satisfying basic physiological, social and cultural needs of a person<sup>105</sup>.

217. It is worth mentioning that the minimum consumer budget for pensioners is 2.587.070<sup>106</sup> a month (about 135 USD). Disabled citizens not getting employment pension (as a rule these are people with severe forms of disabilities) (or) pension from other states in accordance with international treaties of the Republic of Belarus in the sphere of social (pension) protection get the social pension and on February 2016 social pension of Group One disabled since childhood is — 1.804.000<sup>107</sup> rubles a month (about 94 USD) which is below minimum consumer budget for pensioners and cannot in full measure satisfy the needs of a person with disability. According to researches (2003) more than 50% of Group One disabled live in poverty. The research held in 2010 showed that only about 16% of households of persons with disabilities have a car<sup>108</sup>.

218. A problem of persons with disabilities with access to food and prime necessities is mainly usual for persons living in state institutions (including medical, penitentiary and of a system of social service). As a rule they live in stationary institutions of social service and are supported by the state. The so-called “full state support” (a term used by the legislator but having no definition) of people living in institutions is expressed in the form of nutrition norms and negatively differs from institutions of healthcare and penitentiary systems which questions the realization of adequate standards of living guarantees. The analysis of norms regulating cases of getting into institutions and free living there doesn't give a full definition of a type of civic relations between a person living in an institution and its owner (state). Such a situation questions the fairness of taking away 90% of pensions from people living in institutions under guarantees of “full state support”<sup>109</sup>.

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<sup>104</sup> Resolution of the Ministry of labour and social protection of the Republic of Belarus from 20.01.2016 № 4 “On setting the budget of subsistence minimum per capita and main social and demographic groups of population in prices as of December 2015 per month”.

<sup>105</sup> The Law of the Republic of Belarus from 09.01.1992 № 1383-XII “On formation and usage of minimum consumer budget”

<sup>106</sup> Resolution of the Ministry of labour and social protection of the Republic of Belarus from 20.01.2016 № 4 “On minimum consumer budgets for different social and demographic groups on average per capita and per one member of the family of different structure”.

<sup>107</sup> <http://www.mintrud.gov.by/system/extensions/spaw/uploads/files/Informatsija-o-pereraschetax-pensij-fevral-2016.pdf>

<sup>108</sup> The Ministry of labour and social protection of the Republic of Belarus Institution “Research institute of the Ministry of labour and social protection”: Police brief on topic: research of situation with people with disabilities in the Republic of Belarus (UNDP project “Assistance to the Republic of Belarus in joining the Convention on the rights of persons with disabilities), Minsk 2010.

<sup>109</sup> Quality of life in boarding institutions: “between current and desired”: report on the research's results: [http://cet.eurobelarus.info/files/userfiles/5/2014\\_QLNH\\_RU.pdf](http://cet.eurobelarus.info/files/userfiles/5/2014_QLNH_RU.pdf)

219. Our country's legislation regulates the order of giving to some categories of people with disabilities extra premises based on the list of illnesses<sup>110</sup>. But this document mentions only general names of illnesses without taking into account degrees: mild, severe etc.

220. Example. Citizen I. is a pensioner and lives together with two wheelchair-bound Group Two disabled: her son and her husband. The family lives in a one-bedroom apartment 46 square meters total and 28 meter living with narrow corridors. Because of the absence of a barrier-free environment her son and husband cannot use bathroom and toilet and do not have an opportunity to go out because the corridor and doors are narrow and there is no ramp<sup>111</sup>. All appeals to state bodies about the change of the apartment haven't led to any result because there is no legislative base for change of apartments which are owned by physical persons and social services do not help because it is not in their competence.

221. The Law of the Republic of Belarus "On state social benefits, rights and guarantees for some categories of citizens" states that persons with disabilities (excluding people with disabilities who have become disabled as a result of unlawful actions, in a state of alcohol, drug or toxic intoxication or as a result of self-mutilation) are guaranteed a number of benefits. In particular:

- medical services, provision with technical devices of social rehabilitation, sanatorium and spa treatment and rehabilitation;
- the use of public transport;
- prices for utilities services, communal payments;
- communication services.

222. But it should be mentioned that all the above mentioned benefits are declared for all categories of persons with disabilities without consideration of individual needs which doesn't give a possibility to evaluate their effectiveness.

## **Article 29. Participation in political and social life**

223. Political rights of persons with disabilities do not have any normative of legal limits on the basis of disability. The only exclusion is the group of persons with mental or psychological disabilities deprived of capacity. Participation in political life for them is very limited.

224. We can consider as achievement a situation when during Presidential elections 2015 voters with visual impairments for the first time got a possibility to vote independently without assistance. The Central electoral commission of the Republic of Belarus together with NGO "BelTIZ" prepared stencils for independent voting and provided polling stations with magnifying glasses and information on candidates in Braille.

225. But the state doesn't adopt positive measures for creation of equal opportunities for competing of candidates with and without disabilities. It is significant that there are no representatives of organizations with disabilities or a disabled deputy of Group One or Group Two in the parliament. Participation of people with disabilities in public life in the form of

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<sup>110</sup> Resolution of the Ministry of health of the Republic of Belarus from April 19, 2001 № 27 "On setting a List of illnesses giving people suffering from then a right to extra living premises and a List of illnesses having which it is impossible to live with people having them in one room (apartment)".

<sup>111</sup> Alternative report on condition of provision and realization of human rights of persons with disabilities in the Republic of Belarus., Minsk 2011.

working in state service is limited by their state of health and the list of illnesses limiting the right to work in state service of people with Group One and Two disabilities.

## **Article 30.**

### **Participation in cultural life, leisure and sport**

226. The national legislation declares the following norm<sup>112</sup>: “Every person shall have the right to participation in cultural life. This right is provided with common accessibility of values of domestic and world culture, development of the network of cultural and educational institutions”.

227. In practice participation of persons with disabilities in cultural life often is limited to holding cultural events by persons with disabilities themselves.

228. The right to access to cultural life (as a right guaranteed by the state), cultural values as well as the access to art processes is not fully provided. It concerns issues of accessibility in the sphere of creation of the environment and conditions in which a person with disability can in full measure show his artistic abilities. It is worth mentioning specific issues: many employees of institutes of culture lack skills of working with disabled children and adults. Cultural events with participation of people with mental disabilities mainly take place in institutions. NGOs are the main organizers of such events for people living in families.

229. The rights provided by the article 30 of the Convention are least available for persons living in institutions including those of a psychoneurological nature. Free choice of visiting sport complexes, excursions, exhibitions, cultural events etc. is almost impossible for them because of their status of “incapacitated” and the closeness of institutions of this type.

230. The situation regarding sport is more positive thanks to sportsmen participating in Paralympic movement. The committee which heads the Belarusian Paralympic movement is an NGO. There are also three sports federations<sup>113</sup>: for people with hearing, visual and loco-motor disabilities.

231. According to legislation: “Every citizen of the Republic of Belarus shall have the right to go in for physical culture and sport”<sup>114</sup>. According to the state this right is provided with conditions created for its fulfilment. But it is worth mentioning that usually prize money for winners of Olympics and Paralympics differ — athletes of Paralympics are discriminated because they get twice less money.

232. Physical culture and sport are very important for the rehabilitation of persons with disabilities. Analyzing the situation regarding accessibility and involvement of persons with disabilities in sport we should mention the presence of problems in this sphere especially the absence of infrastructure (including architectural and transport accessibility, availability of adapted equipment), absence of services and lack of specialists.

233. Example. A boy with disability started to go in for table tennis. But a trainer refused to work with him because the boy based on his peculiarities of physical development

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<sup>112</sup> Art. 51 of the Constitution of the Republic of Belarus

<sup>113</sup> <http://www.sportedu.by/sovremennoe-sostoyanie-sporta-dlya-invalidov/>

<sup>114</sup> Art. 31 of the Law of the Republic of Belarus from January 4, 2014. № 125-3 “On physical culture and sport”

couldn't play using the usual techniques (although he could play tennis using his own techniques and showed good results).

234. The situation regarding accessibility of sport in rural areas is even more critical. Such sport facilities in the Republic as swimming pools are not adapted for being used by persons with disabilities<sup>115</sup>. It is worth mentioning that issues of provision<sup>116</sup> of persons with disabilities with “necessary conditions for free access and use of sport facilities for physical education and sport exercises, provision with special sport equipment” is the obligation of local executive and administrative bodies.

235. Monitoring of the World Hockey Championship 2014 showed extremely low infrastructural ability to accept guests and participants with disabilities and low organizational ability to provide accessibility to the event for persons with disabilities<sup>117</sup>. As the result WCH 2014 was negatively evaluated from the point of view of accessibility. We should say that other mass sport holidays are even more inaccessible to demands of persons with disabilities than the evaluated event.

236. First of all there is no accessible environment in institutions of social services, places of cultural and mass leisure (museums, theatres, cinemas, circuses etc.), sports facilities, recreational and touristic facilities.

237. Financing of clubs, sport sections and so on created by NGOs is not provided by legislation. Thus there are no real mechanisms of provision of state guarantees for their activities.

238. While creating a system which gives people with disabilities a possibility to realize in full measure their rights to cultural life, sport and leisure it is necessary to use an integrational approach which will allow absolutely all the participants to participate regardless of their physical limitations.

239. Holding and financing of championships of the Republic of Belarus among people with disabilities in different categories and kinds of sport is provided for in the calendar plan of the Ministry of Sport and Tourism of the Republic of Belarus.

## **Article 31. Statistics and collection of data**

240. According to the official statistics in the Republic of Belarus there are 550,445 people with disabilities registered in bodies of labor and social protection<sup>118</sup> or 5.7% of the population. But because not only bodies of labor employment and social protection are recording the number of people with disabilities the exact number of these persons is not recorded. Systematic appeals against not giving (cancellation) of the status “disabled” filed by citizens together with absence of sufficient measures of challenging administrative decisions (including

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<sup>115</sup> <http://www.sportedu.by/sovremennoe-sostoyanie-sporta-dlya-invalidov/>

<sup>116</sup> Art. 31 of the Law of the Republic of Belarus from January 4, 2014. № 125-3 “On physical culture and sport”

<sup>117</sup> Accessibility monitoring of World Hockey Championship 2014/Final report/Prepared by “Office for the Rights of Persons with Disabilities” /// in the frames of the company “Fair play beyond sports” /// [http://www.disright.org/sites/default/files/monitoring\\_chm\\_polnyy.pdf](http://www.disright.org/sites/default/files/monitoring_chm_polnyy.pdf)

<sup>118</sup> The amount of persons in status “disabled” registered in bodies of labour, employment and social protection as of March 2016. <http://mintrud.gov.by/ru/chisliny>

court) also point to the fact that the statistics of the real number of citizens who are in desperate situation because of disability are not exact.

241. We should positively evaluate the creation of an interdepartmental database which keeps records of persons with disabilities. Work on this has started in 2016 and the database is currently in operation in test mode. It will store information from the Ministry of labor and social protection on people who receive pensions, from the State employment service, from the Ministry of education regarding disabled children, from the Ministry of health regarding examination of persons with disabilities, from Belgosstrakh and from NGOs. But it is still a questionable if the database shows correct and full data on the calculation, situation and needs of persons with disabilities. It is also important to know how the rights of persons with disabilities for protection of personal data and personal privacy will be protected.



## Recommendation

242. The authors of the report welcome the signing of the Convention on the Rights of Persons with Disabilities (UN, 2006) by the Republic of Belarus and insist on its immediate ratification. At the same time they recommend the government to institute a process of consideration and public debate on the issue of signing and ratification of the Optional protocol to the Convention on the rights of persons with disabilities. This step will be a logical continuation of the Republic's movement to the full and complete respect of human dignity of persons with disability, accessibility of all human rights for them, full protection and promotion of realization of all the rights and possibilities granted by the modern society.

243. The ratification process of the Convention's ratification should be accompanied with the process of implementation of Convention's norms into the national legislation, the creation of mechanisms of its effective realization, the creation and provision of functioning state management infrastructure aimed at the realization of the Convention's obligations.

244. The authors of the report consider that by the moment of the ratification and right after it a number of legislative initiatives have to be prepared, including:

- Changes to normative legal acts for bringing Belarusian legislation in line with the Convention's norms. In this context it is important to divide changes into immediate and long-term categories. Immediate — they should stop continuing violations of the rights of persons with disabilities, to eliminate and change discriminative legislative norms, legislatively guarantee protection from any disability discriminations and to create an effective mechanism of compensation to victims. Measures aimed at changing situation in discriminative limitations in political and public spheres should be taken immediately. Long-term changes should concern measures which need reconstruction of state and public institutions, changes of administrative, financial and economic relations.
- A systematic and multidisciplinary program of actions, involving state and society, should be instituted and provided with finances for the transformation of the Belarusian politics and practices of disability. The program should include amended state programs on integration and social protection of people with disabilities. Amendment of the national and regional disability programs based on the main Convention's principles should become one the program's elements. It should have a concrete and informative plan of interaction of state and disability NGOs based on principles of pluralism, democracy and freedom of choice. The program should be interdepartmental and with several branches, it should have precise indicators and terms of fulfillment, should have responsible bodies and instances.
- The authors are sure that the ratification process will be effective when it is followed by parliamentary hearings and a dialogue in which the state and organizations work in favor of people with disabilities. It is necessary to exactly name and admit the existing problems of disability. It should fully take into account the opinion of civic society including this Zero report.
- During the ratification of the Convention to use the right of a signatory country for a reservation to the Convention and to accept notion "PERSON WITH DISABILITY" instead of a notion "disabled". To provide Belarusian legal terminology with the new term and to introduce the corresponding changes into the legislation.
- The creation of a National institution for protection of the rights of persons with disabilities should be planned immediately during the preparation to ratification. At the time of appointment of creation of a mechanism corresponding to the

Convention's demands the State should take into account principles concerning a status of national institutions dealing with promotion and protection of human rights. These principles had been worked out at the International meeting of institutions for protection of human rights in Paris and later adopted by UN General Assembly.

245. It is necessary to:
1. Appoint in the government one or several instances or contact groups working with issues connected with the Convention.
  2. Provide for the creation or appointment in the government of a coordination mechanism for promotion of corresponding work in different sectors and on different levels.
  3. Create an independent structure, for example, a national institution for the protection of human rights of persons with disabilities.
246. The creation of such a structure in a number of countries took place in the framework of an ombudsman institute. But in Belarus there is no an ombudsman institute and that is why the issues should be considered in another way. The authors consider that there is no such body in the structure of the government and it would be a big mistake just to rename the Republican interdepartmental council on disability issues.
247. Antidiscrimination legislation should be immediately created. It is obvious that the Convention's demand on this issue will be followed by the necessity to create a framework of antidiscrimination legislation provided with effective mechanisms of law enforcement. Limitation of access of a person to his rights because of disability constitutes discrimination. One of the main principles of the Convention states that persons with disabilities should be protected from any type of discrimination by state or private structures. It means that any law or any legislative measure prohibiting discrimination or guaranteeing the principle of equal treatment should be applied to physical persons or private structures and to state institutions and bodies.
248. Positive measures aimed at the provision of equality of persons with disabilities should be created and promoted.
249. Analysis of facts written in this report says that a so-called "medical" ("paternalist") approach to understanding disability prevails in the country and this differs from the understanding of the issue of disability based on human rights offered by the Convention.
250. Because of this we offer to implement a more profound informational policy aimed at changing public opinion. To widen possibilities of education and information for NGOs and first of all for organizations representing people with disabilities. Another important task is the promotion of information among people with disabilities connected with forthcoming changes of laws, norms and practices.
251. It is necessary to introduce an approach based on the principle of "accessibility". This should become a guiding standard along with the principle of antidiscrimination during evaluation of the quality of laws, norms, politics and some concrete actions. It is important to remind the position of the Committee on the Rights of Persons with Disabilities that "the accessibility issue is being considered in all its volume" and goods and services open or rendered to population "should be accessible for all without any difference whether they are owned or

rendered by private companies or state bodies<sup>119</sup>. Thus the principle should be observed in full measure without any regard to the ownership of the company or body.

252. An approach based on accessibility principle will give a possibility to advance in effectiveness of creating the barrier-free environment and to widen accessibility of informational space. This would provide the possibility to create more effective indicators of accessibility-monitoring and its provision for different aspects of disability and spheres of life.

253. It is necessary to take all possible effective measures to provide equal accessibility in cities and rural areas.

254. The concept of care based on local communities should be recognized as a priority of development. At the same time we need to define the country's deinstitutionalization road map, to open institutions for HR defence monitoring and in cases where there are violations of human rights of people living in institutions to take immediate measure of their correction.

255. Activity of institutions regarding persons with disabilities should be aimed at timely character of their staying in them and at quicker return to normal, natural and independent life. As a way of fulfilling this task we can offer to strengthen social-psychological and rehabilitation components of institutions' activities and in order to do it there is a need to make changes and amendments in corresponding by-laws and normative acts. The situation with equalization of persons with disabilities with categories of elderly, orphans which is observed in some normative acts is not grounded. Such an approach is not set by special legal acts of the Republic of Belarus and contradicts goals and principles set by the Convention. The State's assistance should be just a "replacement" of natural life of persons with disabilities. Some "patronage" measures based on individual peculiarities of each person with disability should be realized after a thorough analysis of the situation of this person and in cases when other ways of protection, including adaptive, are ineffective.

256. The following measures are offered for legal protection of citizens with disabilities:

- to broaden the categories of citizens who can use free legal assistance;
- to provide training for employees of the legal system and advocacy connected with rendering assistance to people with disabilities;
- to provide a possibility in the legal process to question persons with disabilities at places where they live;
- to continue the work on provision of barrier-free environment in bodies of the legal system and executive authorities;
- introduce the notion of "torture" to the legislation;
- to prohibit torture and ill-treatment of persons with disabilities by state officials;
- a pro bono<sup>120</sup> institute creating social responsibility and raising personal reputation of jurists and lawyers should be developed in the country.

257. It is necessary to take measures aimed at elimination of realization of politics and legal norms giving permission or prescribing compulsory treatment because it is a violation of international norms on psychological health.

258. Concerning issues of serving sentences — persons deprived of freedom should be treated in accordance with the aims and principles of the Convention including conditions of accessibility and reasonable accommodation. It is necessary to take measures aimed at the

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<sup>119</sup> P. 10 General amendments on article 9 of the Committee on the rights of persons with disabilities (11<sup>th</sup> session).

<sup>120</sup> [https://ru.wikipedia.org/wiki/Pro\\_bono](https://ru.wikipedia.org/wiki/Pro_bono)

provision of persons with disabilities with a possibility to live a full and independent life and participate in all aspects of life in places of imprisonment.

259. Recommendations:

- Decisions, concerning physical or mental conditions of a person, should be taken only based on free and informed consent of this person.
- Legislation regulating forced contraception, sterilization and abortions should be revised so that it could guarantee reproductive rights to women with disabilities.

260. Special sanctions for violation of accessibility construction norms should be introduced. In this case the current procedural and administrative sanctions cannot be considered an effective legal protection and should be revised. There is a need to strengthen control by authorized bodies aimed at gathering facts of violations, systematization and to impose immediate adequate measures.

261. It is necessary to revise approaches in the system of provision of rehabilitation devices and to transfer these to “personal budgets” with the right to spend them by persons with disability themselves.

262. In order to amend the list of technical devices for rehabilitation (including guide dogs), customized tools for education (including literature for persons with visual impairments) and realization of labour activities and also special sport equipment.

263. The state has to make all possible efforts to provide alternative care of children with disabilities by more distant relatives (in a cases when close relatives are not able to provide care) and in cases when there are no relatives to provide family conditions of living in local community. It means that there is a necessity to develop family forms of raising children.

264. Immediate cancellation of existing norms and liquidation of understanding disability as a barrier on the way of realization by persons with disabilities of their main rights is needed, including a right to adoption or obtaining custody of children.

265. Abolition of such legislative norms of the national legislation is a step to elimination of the conditions limiting realization of rights what is discrimination. Such measures are legal to such degree when they represent rational, objective and proportionate measures of elimination of practical discrimination. Their realization is stopped when there is a steady equality.

266. While ratifying the Convention and taking measures of state support regarding to art. 25 of the Convention attention should be paid to the following aspects:

- Working away from and transition from the three-grade category of disability to a more differentiated based on WHO’s classification.
- Revision of norms containing indications and contraindications to different spheres of life (labour activity, education and other) regarding persons with disabilities.
- Preparation and introduction of standards of quality of disability expertise, rehabilitation, social protection and social services. The main criterion should be the evaluation of quality of rehabilitation and effectiveness.
- Creation of conditions for functioning of institutions which of independent expertise.
- Introduction of state programs for working out effective mechanisms of improvement of the situation regarding child mortality.

- Prohibition of discrimination against persons with disabilities in spheres of life and health insurance.
- The approach to filling the IPR in its part of labor recommendations is outdated and needs revision: it is necessary to set the order of defining limitation of access to some types of working activities in the framework of jobs and professions. Meaning that any profession can have one or several limited types of activities but at the same time to be an accessible one.

267.

In the rehabilitation process it is necessary:

- to work out and introduce to the legislation a notion of “habilitation” because there is no such notion in the existing legislation. But during the preparation it is important to consider habilitation as a system of measures and a process;
- to prepare precise criteria of social rehabilitation effectiveness;
- to prepare a model of final results of separate stages of rehabilitation.

268.

When defining the main directions of state policy in the sphere of physical culture and sport it is necessary to move the development of sport for persons with disabilities to the list of the main goals of sport organizations and State’s policy on the whole; to recognize sport for persons with disabilities as an integral part of common sport movement.