

**PLOVDIV UNIVERSITY „PAISII HILENDARSKI”**

**FACULTY OF LAW**

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**ADMINISTRATIVE-LEGAL REGIME REGARDING PEOPLE WITH  
DISABILITIES IN BULGARIAN LAW**

**PHD DISSERTATION ABSTRACT**

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## **Chapter I**

### **General introductory provisions**

#### **1. Relevance of the research**

The present dissertation is an in-depth study of the administrative-legal regime regarding people with disabilities in the Bulgarian law.

With the development of civilization, and in particular with the progress of medicine, some of the most negative trends in modern society are developing and deepening, namely the emergence and lasting existence of various types of disabilities that affect people of different ages. Along with these processes of development of medicine, in all its forms of manifestation (such as science and practice) there is a need for a quality legal framework in the legislation of individual countries to regulate the complex legal relationships arising from the growing need for understanding of the specific needs related to all types of disabilities.

For this reason, various legal mechanisms (most often of an administrative nature) are being set up to serve as a regulator in the specific area of disability.

The relevance of the topic is due to the fact that all people, and in particular those with disabilities have legal rights and obligations from the day of birth to the rest of their lives and are accordingly authorized to exercise them after the occurrence of certain prerequisites, which by nature they are of a biological, physical, mental and volitional nature. From the point of view of the legal order, people with disabilities are subjects of law and as an essential part of modern society, which has more specific needs than other individuals, they need greater protection of their rights and legitimate interests.

The choice of topic was influenced by the lack of a comprehensive study on the matter, encompassing the special legislation in the field of disabilities, especially the People with Disabilities Act, Personal Assistance Act and all related laws.

#### **2. Research tasks**

The main task of the dissertation is to clarify the issue of the administrative-legal regime regarding people with disabilities in the Bulgarian legislation.

The aim of the dissertation is to outline the current state of the issues and the possible directions of its future development.

#### **3. Research methods**

The methodological basis of the research is related to the use of various methods such as historical, normative, formal-logical, systemic and comparative-legal methods.

The current and largely repealed legal framework of the administrative-legal regime regarding people with disabilities in the Bulgarian legislation is analyzed. Particular attention is paid to international acts regulating issues related to the specific field of disabilities.

All available law case studies are duly collected, summarized and analyzed in this paper. There have been used similar practices from other countries, to clarify certain topic related questions. The same approach was used in the search for possible solutions to current problems in the Republic of Bulgaria.

Some passed and defeated bills, submitted to the Bulgarian Parliament, were also taken into consideration, aiming to improve the regulation of legal relations in the field of disability.

#### **4. Scientific novelty of the dissertation**

The first broader study of issues related to disabilities, and in particular with regard to persons with mental disabilities, is the published book "Legal Regime on Persons with Mental Disabilities" by Professor Darina Zinovieva and Associate Professor Nina Gevrenova.

Another study with regard to employees with reduced working ability was conducted in 2003 by Associate Professor Nina Gevrenova - "Special protection of employees with reduced working capacity".

In 2019, Labor and Law Publishing House published the book "Obligations of the company under the People with Disabilities Act" by Teodora Dicheva.

This dissertation is first of its kind, in terms of scale and depth of the topic dedicated to the administrative-legal regime regarding people with disabilities. It makes a comprehensive analysis of the special legislation in the field of disabilities - People with Disabilities Act and the Personal Assistance Act of 2019.

The novelty also stems from the study of the executive bodies, which have competence in relation to people with disabilities. For the first time, the status and powers of the Agency for People with Disabilities, the Monitoring Council and the National Council for People with Disabilities are examined in one paper.

The references to case law by Bulgarian and foreign courts contributes and strengthen the need for quality access to justice for persons with disabilities.

There is also a contribution in the conclusion of the dissertation as well as in the formulated proposals *de lege ferenda*.

#### **5. Practical significance of the research**

The present study was initiated by a practical need to clarify the nature of the individual acts of the administrative bodies in the field of disability. The work also serves to acquaint with

the fundamental rights and areas for support of persons with disabilities and the specific measures that have been established to overcome barriers.

This dissertation would be useful to all participants in the field of disability - executive bodies, legislatures, executive agencies, medical professionals, legal practitioners - judges and lawyers, employers, organizations for people with disabilities and all citizens with or without disabilities who are interested in disability legislation.

## **6. Structure of the dissertation**

The dissertation is 289 pages long. The study consists of an introductory part, a main part and a conclusion, which are structured in eleven chapters. A list of used and cited legal and other literature is attached. Footnotes are 161.

## **Chapter II**

### **Administrative-legal regime regarding people with disabilities in the Bulgarian legislation**

#### **1. General**

The administrative-legal regime regarding people with disabilities in the Bulgarian legislation is conditioned by the growing need for quality legal regulation to fill the gaps accumulated over the years in the specific field of disabilities as part of the general.

Briefly in point one of this part of the dissertation attention is paid to the repealed special laws in the field of disabilities - Protection, Rehabilitation and Social Integration of Disabled People Act of 1995 (PRSIDPA) and Integration of People with Disabilities Act of 2005 (IPDA) and the reasons for their cancellation. A brief analysis was made of the scope of the current special laws, namely People with Disabilities Act (PDA) and the Personal Assistance Act (PAA), which have been in force since 01.01.2019.

#### **2. Legal concepts related to the administrative-legal regime of people with disabilities**

Point two analyzes important legal concepts related to the administrative-legal regime regarding people with disabilities, such as "administrative regulation in the field of disabilities", "people with disabilities", "people with permanent disabilities", "persons with mobility difficulties" and "mental health".

##### **2.1. The concept of "administrative regulation in the field of disability"**

Due to the lack of a legally established definition of "administrative regulation in the field of disability", a study is made on the conclusions reached by individual authors in the doctrine of public relations regulated by administrative law and the general theory of law. Thus, *de lege ferenda*, a definition of "administrative regulation in the field of disability" is proposed.

##### **2.2. The terms "people with disabilities", "people with permanent disabilities" and "people with reduced mobility"**



Until the adoption of the PDA , the term "people with disabilities" is legally enshrined only in Art. 1 of the Convention on the Rights of Persons with Disabilities . And now the concept is found in § 1, item 1 of the PDA. They are people with physical, mental, intellectual and sensory disabilities who, when interacting with their environment, could hinder their full and effective participation in public life. The author concludes that with this definition, for the first time in the legislation related to disabilities, a clear distinction is made between the species diversity of people with disabilities, which is a good legislative approach.

§ 1, item 2 and item 12 of People with Disabilities Act contain two legally established definitions, namely for “people with permanent disabilities” and “persons with mobility difficulties ”.

### **2.3. The concept of "mental health"**

The term "mental health" is derived from the work of Professor Zinovieva.<sup>1</sup>

## **Chapter III**

### **Historical overview of the administrative regulation in the field of disabilities**

#### **1. Development of the legal framework of disabilities in the world**

The UN General Assembly in 1992 declared December 3 as the International Day of Persons with Disabilities. Furthermore, they introduced a new democratic law about disabled people in the world - the Americans with disabilities Act.

#### **2. Development of the legal framework of disabilities in Bulgaria**

The development of the legal framework related to disabilities in Bulgaria found expression only in 1995 with the adoption of the special PRSIDPA (repealed). Otherwise, some of the earliest evidence of disabilities, and in particular of mental ones, is found in Roman law, as well as in the Eclogue. Roman law recognized the insane as the insane and extravagant.

For example, according to the Eclogue, those "who have gone mad from a disease", "the mad forever", as well as the deaf and dumb by birth, cannot make a will. The Slavic Eclogue points out that the madness of one of the spouses is not a ground for divorce, while the mental disorder has been declared by the Byzantine Eclogue as a reason for divorce.

## **Chapter IV**

### **Bodies of management, control and cooperation in the field of disabilities in the Bulgarian legislation**

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<sup>1</sup>Zinovieva, D., Gevrenova, N. Legal regime regarding persons with mental disabilities (administrative, labor, social and other legal aspects), S :. Ciela, 2012, pp. 16

## **1. Historical and legal analysis of the state institutions in the field of disabilities in the Bulgarian legislation**

The institutions are explored in point one of this part of the dissertation, as they were regulated in PRSIDPA (revoked) and IPDA (revoked). The Constitution of the Republic of Bulgaria is active as of 12 July 1991.

### **1.1. Constitution of the Republic of Bulgaria**

Art. 1, para. 1 and para. 2 proclaims the important postulate that Bulgaria is a republic with parliamentary government and all state power derives from the people, as it is exercised by them directly and through the bodies provided for in the Constitution.

The principle of separation of powers between the legislature, the executive and the judiciary is also crucial, and in this chapter the legislative and executive branches of government are given priority for a comprehensive study.

### **1.2. Protection, Rehabilitation and Social Integration of Disabled People Act (repealed)**

In PRSIDPA (repealed) the legal framework related to the governing bodies in the field of disabilities is very scattered and laconic. As an executive and administrative body, the Council of Ministers has pursued the state policy for protection, rehabilitation and social integration of the disabled. The powers of the state bodies in the field of healthcare, education, labor and social policy, the line ministries and agencies, the municipalities, the institutions of the health insurance system, which assisted in the field of disabilities, are also analyzed. The main bodies that were directly related to disabilities were also examined - the National Council for Rehabilitation and Social Rehabilitation of the Disabled and the Rehabilitation and Social Integration Fund. The shortcomings in the repealed regulation have also been identified.

### **1.3. Integration of People with Disabilities Act (repealed)**

The Council of Ministers has defined the state policy for integration of people with disabilities, which means that the state is directly linked to the implementation of the specific needs of people with disabilities of quality control arising from the highest executive body - the Council of Ministers. The state policy for integration of people with disabilities has been pursued by the Council of Ministers, the Minister of Labor and Social Policy, regional governors and local governments in cooperation with nationally representative organizations for people with disabilities, nationally representative organizations of employers and nationally workers' organizations. The functions of the National Council for Integration of People with Disabilities are also analyzed.

## **2. Disability legislatures**

Legislative body in the field of disabilities in the Republic of Bulgaria is the National Assembly. It regulates the legal framework in the field of disability, and at the same time has control functions in the structures of the executive power.

The National Assembly has specialized committees, among which the Bill on People with Disabilities has been distributed. They are listed sequentially in this point, with the Committee on Labor, Social and Demographic Policy leading. It is a standing committee.

### **3. Executive and regulatory bodies in the field of disabilities**

PDA is administrative. *A priori*, the governing bodies in the field of disability, which are provided for in it, are mainly administrative. Therefore, the essence of the state administrative apparatus and its species characteristics derived from the doctrine are clarified.

#### **3.1. The Council of Ministers determines the state policy for the rights of people with disabilities**

The need for personal choice, independence, equality, non-discrimination, social inclusion, accessibility and full and effective participation of people with disabilities require a relevant system, guaranteed by the power resources of the state. The Council of Ministers is a central body with general competence.

#### **3.2. Minister of Labor and Social Policy**

The central body with special competence is the Minister of Labor and Social Policy. He has a major role in the field of disability. People with Disabilities Act, for the first time in the Bulgarian legal order, in Art. 9, para. 1 regulates the main competencies of the Minister.

In the Personal Assistance Act in Art. 17 regulates the Minister of Labor and Social Policy to issue Ordinance Д RD-07-7 of June 28, 2019 for inclusion in the mechanism of personal assistance. He exercises control over the implementation of the Personal Assistance Act.

#### **3.3. Minister of Health**

The Minister of Health is the central sole body of the executive. In the General Health Act in Chapter Five, Section I, the powers of the Minister and the Ministry regarding the protection of mental health are regulated in separate articles (Art. 147a, para 1 and para 2, Art. 149, para 2, Art. 150, paragraph 8, Article 151, paragraph 3). The Minister organizes and manages the medical expertise.

The Minister of Health is also given powers in the special Law on People with Disabilities. At his suggestion, the Council of Ministers adopted a program for early diagnosis and prevention of genetic and prenatal diseases and acquired conditions.

#### **3.4. Minister of Education and Science**

The Minister of Education and Science is the central sole body of the executive branch. He directs and coordinates the implementation of the state policy in the field of pre-school and school education for children with SLN.

#### **3.5. Ministry of Transport, Information Technology and Communications**

The Ministry of Transport, Information Technology and Communications is headed and represented by the Minister of Transport, Information Technology and Communications. It is the central sole body of the executive and has an important role to play in providing an accessible environment for people with disabilities .

### **3.6. Ministry of Youth and Sports**

The Ministry of Youth and Sports is managed and represented by the Minister of Youth and Sports. It is a central sole body of the executive branch.

### **3.7. Ministry of Culture**

The Ministry of Culture is headed and represented by the Minister of Culture. It is a central sole body of the executive branch.

### **3.8. District Governor and District Councils**

The sole body of the executive power in the district, which carries out the local government and ensures compliance between the national and local interests in the implementation of the regional policy is the regional governor. In Art. 19 of People with Disabilities Act provides for the implementation of the policy on the rights of people with disabilities, the regional governors to establish regional councils.

### **3.9. Mayor of the municipality**

The Personal Assistance Act provides for powers in the field of disabilities for the mayor of the municipality.

Ordinance № 1 of August 19, 2020 on the requirements for the activities of health mediators provides for the appointment of health mediators to the mayor of the municipality. Health mediators support the activities of municipalities in implementing policies in the field of health prevention among the population (including persons with disabilities) and doctors in and on the occasion of the provided medical care. Their powers are regulated in the said Ordinance.

## **4. Status and powers of the Agency for People with Disabilities, the Monitoring Council and the National Council for People with Disabilities**

### **4.1. Agency for People with Disabilities**

The legislation of the Agency for People with Disabilities can be found in the PDA and the Structural Rules of the APD. The dissertation presents its legally defined powers. She runs and maintains an information system for people with disabilities. There is also a Register of specialized enterprises and cooperatives for people with disabilities, as well as a Register of persons carrying out activities for the provision and repair of aids, devices, equipment and medical devices for people with disabilities. The Bulgarian legislator envisages that the Agency for People with Disabilities will be transformed into a state agency as of January 1, 2021.

### **4.2. Supervisory Board**

The Supervisory Board was established by the PFA. The composition of the Supervisory Board is regulated in Art. 12, para. 1 of the PDA. It consists of 9 members. The paper presents the procedure for election of representatives of the organizations of and for people with disabilities for members of the Supervisory Board.

### **4.3. National Council for People with Disabilities**

The National Council for People with Disabilities is established at the Council of Ministers to cooperate in the development and implementation of the policy on the rights of people with disabilities. The study analyzes its structure and powers.

## **5. Other bodies with competence in the field of disabilities**

### **5.1. Agency for Social Assistance**

The Social Assistance Agency is regulated in the Social Services Act (SSA) and the Rules of Procedure of the Social Assistance Agency. It has the status of an executive agency under the Minister of Labor and Social Policy.

The work defines the powers of the Executive Director of the Social Assistance Agency under the Personal Assistance Act. The structure of the SAA and the role of the Social Assistance Directorates in the preparation of the individual needs assessment are presented.

### **5.2. Employment Agency**

The Employment Agency finds regulation in the Employment Promotion Act (EPA) and the Rules of Procedure of the Employment Agency. The PDA provides for the Employment Agency to implement the employment policy for people with permanent disabilities by developing and proposing for financing and implementation programs and measures to promote employment, providing equal opportunities through socio-economic integration of people with permanent disabilities, according to The Employment Promotion Act. The territorial divisions of the Employment Agency provide specialized labor mediation to people with disabilities looking for work.

### **5.3. Agency for the quality of social services**

The Agency for the Quality of Social Services was established by the Social Services Act (SSA), which entered into force on 01.07.2020. It is an executive agency of the Minister of Labor and Social Policy and has the task of controlling and monitoring the provision of social services.

### **5.4. Commission for Protection against Discrimination**

The Commission for Protection against Discrimination was established under the Protection against Discrimination Act and is an independent specialized state body for prevention of discrimination, protection against discrimination and ensuring equality of opportunity (Article 40). The commission consists of 9 people, of which at least four are lawyers.

In the field of disability, the Chairman of the Commission for Protection against Discrimination determines part of the composition of the Supervisory Board - two representatives (Article 12, paragraph 1 of the PDA).

### **5.5. Coordinators for the rights of people with disabilities**

The coordinators for the rights of people with disabilities are determined by the central and territorial bodies of the executive power, which we examined in the previous lines. They and their powers in the field of disabilities are regulated in Art. 18 of the People with Disabilities Act.

### **5.6. Bodies of the judiciary**

The bodies of the judiciary are defined in the Constitution of the Republic of Bulgaria and the Judiciary Act. The judiciary, as well as all state institutions, provide people with disabilities with effective access to justice on an equal footing with all others, including by providing procedural and age-appropriate support measures in view of their role in all phases of the process (Art. 67 of the PDA).

### **5.7. Ombudsman**

The figure of the ombudsman is regulated in detail in the Ombudsman Act. Of particular interest is the Ombudsman Act, which introduces an alternative procedure for indirect reporting by citizens. If he accepts the considerations set out in them, the ombudsman may in turn signal the administrative bodies (Article 109 of the APC), thus giving the case additional moral weight with his authority.

## **Chapter V**

### **Administrative regulation in assessing the type and degree of disability**

#### **1. Medical expertise. Development of the Bulgarian legislation on medical expertise**

##### **1.1. Medical expertise**

The issues related to the medical expertise are essential for the administrative regulation in the field of disabilities, as it is an integral part of the diagnostic-treatment and prophylactic activity of the medical establishments. The medical expertise shall be performed for establishing the temporary incapacity for work, for establishing the permanently reduced working capacity of persons of working age, as well as of persons, who have acquired the right to a pension for insurance length of service and age under Art. 68 of the Social Security Code (SSC), who are employed and have not been determined the type and degree of disability. It also serves to establish the type and degree of disability of children up to 16 years of age and of persons who have acquired the right to a pension for insurance length of service and age under Art. 68 SSC, as well as to confirm or reject the occupational nature of the diseases.

##### **1.2. Development of the Bulgarian legislation related to it**

Until the middle of the 19th century, the assessment of fitness for work was mainly done by the military. The foundations of the expertise of working capacity are laid for the first time in Bismarck's Germany.

In 1975, on the grounds of Art. 6 of the Regulations for implementation of the Health Act (repealed) Ordinance № 36 on the expertise of permanent incapacity for work (repealed) is adopted. In it, things are settled in an extremely discriminatory manner, as an example is the Order of the SAC. Following the repeal of Ordinance № 36 on the expertise of permanent incapacity for work in 2000, an Ordinance on the expertise of working capacity was adopted.

In view of the ineffectiveness of the Ordinance on the expertise of the working capacity, in 2005 the Ordinance on the medical expertise of the working capacity was adopted. In 2010 an Ordinance on medical expertise was adopted. However, it has been partially repealed by the SAC and due to the created legal vacuum after the partial repeal of the Ordinance, on 27.06.2017 a new Ordinance on medical expertise enters into force.

## **2. Bodies of medical expertise**

The legislator regulates the bodies of medical expertise, which are the attending physician or dentist, the medical advisory commissions (MCC), the territorial expert medical commissions (TMEC), the National Expert Medical Commission (NEMC). Their structure and organization of work are regulated by the Regulations for the structure and organization of work of the bodies of the medical expertise and of the regional files of the medical expertise.

### **2.1. Medical advisory commissions**

The medical advisory commissions (MAC) are opened and closed by an order of the directors of the Regional Health Inspectorates in medical establishments for outpatient and inpatient care at the proposal of the head of the respective medical establishment.

Medical advisory commissions are general and specialized.

### **2.2. Territorial Medical Expert Commissions and the National Medical Expert Commission**

The Territorial Medical Expert Commissions (TMEC) are opened and closed by the directors of the regional health inspectorates in coordination with the Minister of Health at state and municipal medical establishments for hospital care, mental health centers, centers for skin and venereal diseases and complex oncology centers. The territorial expert medical commissions are structural units of the medical establishments to which they are opened. The TEMC and NEMC employ doctors with a recognized specialty and with not less than 5 years of work experience in medicine.

The National Expert Medical Commission is a budget-supported legal entity under the Minister of Health. It is managed and represented by a director holding the position through a

competition. NEMC carries out expert, control-methodical and consultative activities on the expertise of the working capacity.

The novelty in the legal framework is that the National Expert Medical Commission creates and maintains an information database for all persons who have passed through the TEMC or NEMC to establish the permanently reduced working capacity, type and degree of disability. The content of the information database is defined in Art. 108a, para. 2 of the Health Act.

### **3. Content of the medical expertise**

The examination of the temporary incapacity for work is performed by the attending physician or dentist, by the medical advisory commissions (MCC), by the territorial expert medical commissions (TEMC) and by the National Expert Medical Commission (NEMC). The expertise of the permanently reduced working capacity, of the type and degree of disability of the persons, who have acquired the right to a pension for insurance length of service and age under Art. 68 SSC, is carried out by TEMC and NEMC. The examination of the type and degree of disability of children up to 16 years of age is performed by TEMC and NEMC with the participation of a doctor with a recognized specialty in pediatrics. The examination of occupational diseases is performed by the TEMC and the NEMC and includes the confirmation or rejection of the occupational nature of the disease.

### **4. Administrative and legal regime of individual needs assessment**

The term "individual assessment" is introduced for the first time with PDA, while before that in Art . 12-13 the term "social assessment" was present at the repealed IPDA . The fact is that the previous model of social assessment did not meet the needs of people with disabilities for adequate support, given the recommended optional nature of the assessment, which did not have its own legal nature.

People with disabilities according to their needs have the right to an individual needs assessment, which is complex. It is envisaged that this assessment will examine the functional difficulties of the person with a disability related to his / her health condition and the presence of barriers in the performance of daily and other activities, as well as the type of support. In this point of the dissertation the procedure for preparation of an individual assessment of the needs, the necessity of it, as well as the terms for its validity is subjected to analysis.

## **Chapter VI**

### **Administrative regulation of health care and rehabilitation in the field of disabilities**

#### **1. Legal regulation of health care in the field of disabilities**

##### **1.1. Legal concepts related to the health care of people with disabilities**

Definitions such as "healthcare", "health", "health information", "patient", "health documentation", "screening", "informed consent" are considered. The terms "health care" and



"health" are doctrinaire, while the rest are in the Health Act. They are important in view of the need of people with disabilities for health services.

## **1.2. Legislation of health care in the field of disabilities**

In this part of the dissertation, the right to health insurance, guaranteed in art. 52 of the CRB. Also, the special PDA provides for one of the areas of support for people with disabilities to be health care, but the Act itself lacks specific legal regulation of the matter. This is found in the analysis of the Health Act, the Medical Establishments Act and the Health Insurance Act. Basic principles in healthcare have been studied, with an emphasis on the one related to the special health protection of people with physical and mental disorders. The rights and obligations of people with disabilities as patients and their basic right to accessible medical care are presented. The legal regulations related to mental health are also subject to analysis.

### **2. Access to health care for women with disabilities - legal aspects and practical problems**

#### **2.1. Access to health care for women with disabilities in the analysis of international instruments**

Rule nine of the UN Standard Rules on Equality and Equal Opportunities for People with Disabilities, entitled "Family Life and Personal Integrity", specifically addresses women and girls with disabilities and states that states must take steps to change the negative attitude that it is still prevalent in society towards marriages, sexual relations and parental qualities of people with disabilities, especially with regard to girls and women.

In the light of the variety of barriers affecting women with disabilities in terms of their health, the establishment of appropriate government measures aimed at guaranteeing the right to health has always been essential for addressing women-specific provisions in the text of the Convention on the rights of people with disabilities. Its preamble states that women and girls with disabilities are often at greater risk - both inside and outside the home - of violence, injury or harassment, neglect or negligence, ill-treatment or exploitation. The negative impact of forced sterilization, provided for in some legislation, is also being investigated.

#### **2.2. Access to healthcare for women with disabilities in Bulgarian legislation**

Separate provisions from the CRB related to the protection of the mother are presented. The need for specific legal regulation of the matter for access to health care for women with disabilities in the PDA and the Health Act is also analyzed.

Ordinance № 2 of 1 February 1990 on the terms and conditions for abortion regulates the terms and conditions for abortion (abortion). Of interest is the abortion on medical grounds, provided in Art. 12 - art. 17 of the Ordinance. It is carried out at the request of the pregnant woman in the presence of a disease that is clearly proven and documented, in which the further course of the pregnancy or childbirth may endanger the life or health of the woman or the vitality of the offspring (eg nervous and mental illness). of pregnancy not greater than 20 weeks of gestation.

### **3. Historical and legal analysis of the Bulgarian legislation on rehabilitation and prevention in the field of disabilities**

Rehabilitation is essential for people with disabilities, as it aims to achieve their functional independence, and with it the realization of their basic rights enshrined in regulations. Since the legal framework determines the legal framework related to prevention and rehabilitation, which is leading for people with disabilities and in particular plays a key role in working with them, its development in the Republic of Bulgaria is considered. This was done through the analysis of occupational therapy in repealed acts, PRSIDPA (revoked) and IPDA (revoked).

#### **4. Prevention and rehabilitation - nature and legal regime. Types of rehabilitation**

##### **4.1. Legal regulation of prevention and rehabilitation according to the People with Disabilities Act**

The legal concepts of “rehabilitation” and “prevention” are found in § 1, item 7 and item 8 of the PDA, respectively.

The types of rehabilitation and their significance are regulated mainly in Art. 29 of the People with Disabilities Act. The author comes to the conclusion that the Bulgarian legislator in Art. 29, para. 1 of the PDA has declared rehabilitation as a right of people with disabilities, which means that if this right is possibly violated, a claim should arise in the person entitled (in this case the person with a disability) for elimination of the violation or for compensation. The types of rehabilitation are medical, professional, social, labor, psychological (Art. 29, para. 1, items 1-5 of the PDA). It is necessary to specify that for one type of rehabilitation, namely the social one, we find regulation in the Regulations for the implementation for people with disabilities act.

##### **4.2. Legal regulation of rehabilitation according to the Medical Establishments Act**

Some of the activities that the medical establishments carry out are related to the rehabilitation of patients, as well as to the prevention of diseases and the early detection of diseases.

The Medical Establishments Act also provides for other medical establishments, which we associate with the topic of the rehabilitation of people with disabilities. These are the centers for mental health and the centers for complex care of children with disabilities and chronic diseases. Psychotherapy and psycho-social rehabilitation are provided in the mental health centers. And the centers for complex services for children with disabilities and chronic diseases are legal entities established by the state. We find their regulation in the Regulations for the structure, activity and internal order of the centers for complex service of children with disabilities and chronic diseases.

##### **4.3. Legal regulation of rehabilitation according to the Health Insurance Act**

Rehabilitation activities are complexes of physiotherapeutic, balneotherapy and other treatment methods, applied after the acute stage of the disease to strengthen or restore health or

to stabilize the patient to the possibility of self-care. Here we refer to post-treatment, long-term treatment and medical rehabilitation (Art. 45, para. 1, item 4 of the Health Insurance Act). We can add to this type of activities and medical devices, aids, devices and facilities for people with disabilities, outside the scope of compulsory health insurance (Article 45, paragraph 1, item 15 of the Health Insurance Act).

The Health Insurance Act stipulates that the NHIF pays for medical devices, aids, devices and facilities for people with disabilities - to persons carrying out activities for the provision and repair of aids, devices, facilities and medical devices for people with disabilities, registered as traders and registered in the register of the persons carrying out activities for provision and repair of MDADF.

#### **4.4. Legal regulation of rehabilitation according to the Health Act**

The legal regulation of resort resources and resorts is found in Chapter Two, Section Eight of the Health Act. They are important for the prevention and rehabilitation of people with disabilities.

A provision on occupational therapy for persons with mental disorders is envisaged, which is part of the psycho-social rehabilitation programs (Article 151 of the Health Insurance Act).

## **Chapter VII**

### **Administrative regulation of education and vocational training in the field of disabilities**

#### **1. Development of the Bulgarian legislation on the education and vocational training of people with disabilities**

##### **1.1. A brief overview of the legislation related to the education of people with disabilities in the world**

The right to education is a fundamental human right guaranteed by international documents ranging from the Universal Declaration of Human Rights 1948 . In recent th January UN Convention on the Rights of the Child of 1989 , particular attention is paid to children with disabilities as a group subjected to segregation in education.

This part of the dissertation traces the legislative experience of other countries related to the education of people with special needs (such as Norway, USA, UK).

##### **1.2. Development of the Bulgarian legislation on the education and vocational training of people with disabilities**

The legal status of education in the Republic of Bulgaria is regulated by the Constitution in Art. 53.

The Public Education Act of 1948 (repealed), the Public Education Act of 1991 (repealed), the Public Education Act (repealed), the Public Education Act(repealed) and some repealed by-laws have been submitted for analysis. Emphasis is placed on the existing policy of separating children with physical and mental disabilities in special schools. The negative moments in the

integrated education of children and students with special educational needs are also noted and the need to change the legislation to inclusive education is emphasized.

## **2. The right to education of people with disabilities in the Bulgarian legislation**

### **2.1. Legal concepts related to the right to education in the field of disabilities**

Some basic legal concepts such as "state educational standards", "inclusive education", "resource support for children and students", "special educational needs" and "assessment of the individual needs of a child or student" are explored. Most of them are enshrined in the Law on Preschool and School Education, and others in the Ordinance on Inclusive Education.

### **2.2. The right to pre-school and school education in the field of disabilities**

Specific norms related to the right to pre-school and school education of people with disabilities in our country can be found in the People with Disabilities Act (PDA), the Pre-school and School Education Act (PSSEA), the Vocational Education and Training Act (VETA). Such provisions are also found in several bylaws such as - Ordinance on inclusive education of 27 October 2017 , Ordinance № 10 of 1 September 2016 on the organization of activities in school education, Ordinance № 5 of 3 June 2016 on preschool education. education, Ordinance № 5 of 30 November 2015 on general education, Ordinance № 4 of 30 November 2015 on the curriculum, Regulations on the structure and operation of special educational support centers, Regulations on the organization and operation of regional support centers the process of inclusive education and others.

### **2.3. The right to higher education in the field of disabilities**

The purpose of higher education in the Republic of Bulgaria is the training of highly qualified specialists, including those with disabilities, above secondary education and the development of education and culture.

The Higher Education Act stipulates that under favorable conditions and in accordance with the regulations for the activities of the higher school, candidate students who have successfully participated in the competitive examinations, who are persons with permanent disabilities and reduced working capacity 70 and over 70 years of age, may be admitted. one hundred or are war invalids and war victims (art. 68, para. 3, items 2-3 of the Higher Education Act). The decision of the SAC is important<sup>2</sup>, in which the Bulgarian Lawyers for Human Rights Foundation filed a complaint against Art. 7, para. 2 of the Ordinance on the state requirements for admission of students in the higher schools of the Republic of Bulgaria, in the part "persons with permanent disabilities and reduced working capacity 70 and over 70 per cent". The court considers that the same was issued by a competent authority, fully in accordance with the special HEA and in fulfillment of its objectives, fully reproduces the legal provision of Art. 68, para. 3, item 2 of the Higher Education Act and during its issuance no significant violations of the administrative procedure rules have been established. Therefore, the SAC has rejected the appeal. P eglamentira is that students and postgraduates - people with sensory disabilities and

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<sup>2</sup> Decision № 6126 dated 16.05.2017 under Adm. d. № 5764/2016, IV OTD. of YOU

others with permanent disabilities and reduced working 70 and 70 percent, military, and War and dispensary are entitled to special treatment provided for in the regulations of the university ( Article 70, paragraph 2 of the Higher Education Act). For example, Regulations for the educational activity in the University of Plovdiv "Paisii Hilendarski".

## **Chapter VIII**

### **Public law aspects of employment in the field of disabilities**

#### **1. Historical and legal analysis of the Bulgarian legislation on employment in the field of disabilities**

##### **1.1. Constitution of the Republic of Bulgaria**

The Constitution of the Republic of Bulgaria, in its Preamble, defines the state as social and this is the basis of the principle of the right to work, which is one of the legal guarantees for the employment of people with disabilities in normal, specialized and protected work environment. In Art. 16 of the Basic Law stipulates that labor is guaranteed and protected by law. With Art. 48, para. 2 of the CRB, the legislator takes into account the specifics of the reduced opportunity to look for work for people with disabilities and provides for the state to create conditions for the exercise of the right to work of persons with physical and mental disabilities.

##### **1.2. Protection, Rehabilitation and Social Integration of the Disabled People Act (repealed)**

The analysis of PRSIDPA (repealed) shows that the provisions related to the labor rights of persons with disabilities are in a number of cases referring to other normative acts, such as the Labor Code and the Civil Servant Act. Therefore, it is considered that the repealed PRSIDPA as a special law did not effectively protect the right to work of people with disabilities. This conclusion is also caused by the fact that the legislator did not take into account the species diversity of the working environment in which the disabled person can work, but used only one type of working environment - the integrated, provided that in the abolished The law is also a specialized one through the specialized enterprises, cooperatives and workshops for the disabled with permanent disabilities that existed in the 1990s.

##### **1.3. Integration of People with Disabilities Act (repealed)**

In IPDA (repealed), the employment of people with disabilities was regulated in Chapter IV, Section III, as the measures for employment of people with more specific needs, the legislator divided into two main groups - in an integrated work environment and in a specialized working environment.

##### **1.4. Ordinance on the procedure for reimbursement of paid social security contributions by employers and specialized enterprises, occupational health facilities and cooperatives of people with disabilities, members of the nationally**

## **representative organizations of and for people with disabilities (repealed)**

The Ordinance on the procedure for reimbursement of paid social security contributions by employers and specialized enterprises, occupational health facilities and cooperatives of people with disabilities, members of nationally representative organizations of and for people with disabilities (repealed) has regulated the procedure for reimbursement of paid social security contributions from employers and specialized enterprises, labor treatment bases and cooperatives of people with disabilities, members of the nationally representative organizations of and for people with disabilities, for state social insurance, compulsory health insurance and additional compulsory pension insurance.

### **2. Basic concepts of employment in the field of disability**

#### **2.1. The terms "employer", "enterprise" and "workplace"**

The Labor Code in § 1 item 1, item 2 and item 4 of its Additional Provisions defines important concepts such as “employer”, “enterprise”, “workplace” relevant to the right to work of persons with disabilities.

#### **2.2. The terms "direct discrimination" and "indirect discrimination"**

In Art. 4, para. 2 and para. 3 of the Protection against Discrimination Act contain legal terms for "direct discrimination" and "indirect discrimination".

#### **2.3. The terms "occupational health facilities", "normal work environment", "specialized work environment", "protected work environment" and "support staff"**

Most of the legal definitions concerning the employment of people with disabilities in Bulgaria are enshrined in the Additional Provisions of the PDA and EPA.

#### **2.4. The terms "disadvantaged groups in the labor market" and "supported employment"**

In the Additional Provisions of the current Employment Promotion Act (EPA) we also find legal concepts important for understanding the complexity of the matter of labor rights of people with more specific needs. § 1 item 4a gives a definition of “disadvantaged groups on the labor market”. And in item 45 of § 1 we find the concept of "supported employment".

#### **2.5. The concept of "specialized enterprises and cooperatives of people with disabilities"**

In § 1 item 46 of the Public Procurement Act the term for “specialized enterprises and cooperatives of people with disabilities” is legally defined.

#### **2.6. The terms "accessible workplace" and "integrated (common) work environment"**

The terms "accessible workplace" and "integrated (common) work environment" are contained in a non-legal source.

### **3. Types of employment. The right to work of people with disabilities in a normal work environment**

Point three analyzes one of the main acts related to the realization of people with disabilities on the labor market - CRPD. This international act recognizes the right to work of persons with disabilities on an equal footing with all other people.

In the Bulgarian legislation, provisions related to the right to work of people with disabilities in a normal working environment are fragmented in the Labor Code, the Civil Servant Act, the Employment Promotion Act, the People with Disability Act, the Protection against Discrimination Act. The hiring of people with reduced working capacity is imposed on the employers as an obligation with the imperative norm of art. 315, para. 1 of the Labor Code (LC).

In the Civil Servant Act (CSA), the legislator regulated the possibility for determining positions under official legal relations for people with permanent disabilities with the imperative norm of Art. 9a.

The Employment Promotion Act provides for measures for unemployed persons and for promotion and preservation of employment, provision of services for mediation in finding a job, for vocational training and orientation, including for people with permanent disabilities, respectively in Art. 36, para. 2, Art. 43a and Art. 52.

The employment of people with disabilities is regulated in Chapter IV, Section III of the PDA. It is divided into three main groups - in a normal work environment, a specialized work environment and a protected work environment. The Bulgarian legislator imperatively prohibits the jobs determined by the order of art. 315 of the Labor Code, to be taken into account when taking into account the implementation of the quota (Article 38, paragraph 2 of the PDA).

### **4. Specialized work environment. Legal regime of specialized enterprises and cooperatives of people with disabilities in the Bulgarian legislation**

Of interest is the consideration of the specialized working environment within the specialized enterprises and cooperatives of people with disabilities, which is legally regulated in the People with Disabilities Act and the Regulations for its implementation. The specialized enterprises and cooperatives are the micro - small and medium enterprises for people with disabilities, the municipal enterprises for people with disabilities, the cooperatives for people with disabilities, the specialized enterprises for the blind and visually impaired, the specialized enterprises for the hearing impaired, the labor medical bases, which provide employment through occupational therapy. They are entered in the Register of Specialized Enterprises and Cooperatives of People with Disabilities, created and maintained by the APD. It is used for monitoring and control of specialized enterprises and cooperatives of people with disabilities and the activities performed by them in the implementation of targeted projects and

programs. The conditions for entry in the Register, as well as the grounds for termination of registration are analyzed in the item.

For the specialized enterprises and cooperatives of people with disabilities, separate provisions are provided in the Public Procurement Act (PPA), the Corporate Income Tax Act (CITA) and the Personal Income Tax Act (PITA), as well as in Ordinance № RD- 07-6 of 20 June 2019 on the procedure for exercising control over the spending of funds from reimbursed social security contributions of employers, respectively appointing authorities, specialized enterprises and cooperatives of people with disabilities and occupational health facilities. Legislative experience in Germany and Finland regarding the labor rights of people with disabilities is examined. Enterprises of the Social and Solidarity Economy Act (ESSEA), which entered into force in 2019, is presented.

## **5. Legal regime of the protected working environment**

For the first time in the Bulgarian legislation, a third type of employment is regulated - protected employment with the People with Disabilities Act. It is intended to provide employment for people with multiple permanent disabilities by setting up sheltered employment centers. The Draft Law on Amendments and Supplements to the PDA of 29.09.2020 proposed expanding the circle of persons involved in sheltered employment with people with mental disorders and those with intellectual disabilities. Development on the topic is forthcoming. Sheltered employment centers are a mechanism to support the labor integration of people with multiple permanent disabilities in order to provide conditions for productive activity, paid work and the provision of personal support services.

## **Chapter IX**

### **Administrative regulation of access - accessible environment and reasonable facilities, accessible information, personal mobility in the field of disabilities. Access to justice and legal protection for people with disabilities**

#### **1. Development of the Bulgarian legislation on the accessible environment for people with disabilities**

##### **1.1. Protection, Rehabilitation and Social Integration of Disabled People Act (repealed)**

In PRSIDPA (repealed) the legal framework related to the accessible environment of people with disabilities is too concise. It provided for Section V, entitled "Accessible household and environment".

##### **1.2. Integration of People with Disabilities Act (repealed)**

The accessible living and architectural environment has been defined as one of the main areas for settling public relations for the integration of people with disabilities in Art. 4, item 4 of IPDA. In Art. 32 of the Act provided for the state bodies and local self-government bodies



to organize the structure and construction of urban areas for the population, including people with disabilities, as the norm referred to the conditions and order in the Spatial Planning Act.

### **1.3.Orders (revoked)**

In this part of the scientific work are repealed bylaws in order to make a comparative legal analysis between the old and current legislation on accessibility, namely - Ordinance № 1 of 10 January of 10 January 1995 on building an environment in settlements with a view to the use of disabled people (repealed), Ordinance № 6 of 26 November 2003 on the construction of an accessible environment in urban areas (repealed). Partially framework existed in Decree № 2 of 2004 for planning and design of communication and transport systems in urban areas, Ordinance on the essential requirements and conformity assessment of lifts and their safety devices Ordinance for categorization of funds for shelter, month t accommodation and catering and entertainment establishments.

## **2. Basic concepts related to the accessible environment of people with disabilities**

### **2.1.The terms "communication", "discrimination on the grounds of disability", "reasonable facilities" and "universal design"**

These concepts are derived from Art. 2 of the CRPD.

### **2.2.The terms "language" and "aids, devices and equipment"**

The legal definitions of “language” and “aids, devices and equipment” are contained in § 1, item 4 and item 9 of the Additional Provisions of the People with Disabilities Act.

### **2.3.The concept of "action to protect against discrimination"**

Within the meaning of §1, item 4 of the Additional Provisions of the Protection against Discrimination Act, the actions for protection against discrimination may include filing a complaint or signal, filing a claim or testifying in proceedings for protection against discrimination.

### **2.4.The concept of "social housing"**

In §5, item 67 of the Additional Provisions of the Spatial Planning Act, a legal definition of the term “social housing” is enshrined. Most of the legal concepts related to the topic of accessible living and architectural environment of people with disabilities, namely "people with reduced mobility", "accessible environment", "accessible route in urban areas", "accessible entrance", "accessible route to building or facility ”,“ accessible route in a building or facility ”,“ accessible information map ”,“ accessible website ”are in §1, items 1, 2, 3, 4, 5, 6, 9 and 10 of Ordinance № 4 of 1 July 2009 on the design, implementation and maintenance of constructions in accordance with the requirements for an accessible environment for the population, including people with disabilities.

### **2.5.Concepts of an illegal nature**

The terms "access", "accessible workplace", "isolation", "supportive environment", "universal solution" are contained in a source of illegal nature.

### **3. Accessibility in the context of the Convention on the Rights of Persons with Disabilities. Legal aspects and practical problems regarding the accessible environment of people with disabilities in Bulgaria**

In point three, first of all, the emphasis is on accessibility through the prism of the CRPD and the relevant measures that the countries under it, including Bulgaria, are obliged to implement.

Secondly, the dispersion of the subject matter in several normative acts stands out - ZHU, the Spatial Planning Act, the Protection against Discrimination Act, the Condominium Management Act and the State Budget Act of the Republic of Bulgaria for 2020. This is done in order to establish the powers of the competent administrative bodies and the administrations to them, related to the accessible environment of the persons with disabilities. Emphasis is also placed on the legal symbiosis between the owners of the elements of the accessible environment in the urban areas and the competent executive-administrative body.

Next, important Regulations related to the accessible environment are analyzed, the basic one being Ordinance № 4 of 2009 on design, implementation and maintenance of constructions in accordance with the requirements for accessible environment for the population, including people with disabilities.

#### **4. Access to justice and legal protection of persons with disabilities**

##### **4.1. Access to justice and legal protection of people with disabilities in international instruments**

"Access to justice" is an evolving concept in international law and refers to the right to effective access to systems, procedures, information and places used in the administration of justice. In this sense is Art. 13 of the Convention on the Rights of Persons with Disabilities.

##### **4.2. Analysis of the current legislation in Bulgaria related to ensuring access to justice for people with disabilities**

The Constitution of the Republic of Bulgaria guarantees the equality of citizens before the law, non-discrimination and equal access to justice in separate provisions. According to the established general clause for appeal of the administrative acts in art. 120, para. 2 of the CRB, the citizens may appeal against all administrative acts that affect them, except those explicitly indicated by law.

As far as the procedural legislation in Bulgaria is largely codified, the specific rules for exercising the above constitutional rights can be found in the Administrative Procedure (APC), Criminal Procedure (CPC), Civil Procedure (CPC) codes. They have been studied in detail.

For the first time, the Bulgarian legislator introduced the topic related to access to justice and legal protection of people with disabilities in the PDA, separating it into a separate section five. It provides that every person with a disability who has serious difficulties in exercising his or her rights in carrying out specific legal actions should have the right to a supported decision-making, which is determined by law, by providing support measures.

## **Chapter X**

### **Administrative and legal aspects of the criteria for national representation of organizations of and for people with disabilities. Funding in the field of disabilities**

#### **1. Organizations of and for people with disabilities**

The criteria for national representation of organizations of and for people with disabilities are legally regulated in the People with Disabilities Act and in the Rules of Procedure of the National Council for People with Disabilities, the procedure for recognition of national representation of organizations of and for people with disabilities and control over compliance with the criteria of national representation. In the current Law on People with Disabilities we find legally established definitions of “Organizations of People with Disabilities” and “Organizations for People with Disabilities” in § 1, item 11 and item 12 of it, respectively. Organizations of people with disabilities are organizations in which more than half of the members are people with disabilities and are led by people with disabilities. Organizations for people with disabilities are organizations created to provide services to and for people with disabilities and which take on an advocacy role on behalf of people with disabilities. In this point the criteria for national representation - general and special and the procedure for recognition or refusal of recognition of national representation are examined.

#### **2. Administrative and legal regime of financing and control in the field of disabilities**

##### **2.1. Historical and legal analysis of the regulation on financing and control in the Bulgarian legislation**

In this part the financing and control according to CRB, PRSIDPA (revoked) and IPDA (revoked) are considered. The very legislative function of the National Assembly, proclaimed in Art. 62, para. 1 of the Constitution is important in view of the adoption of the separate laws in which the mechanisms for financing and control in the field of disabilities exist. One of the main powers of the National Assembly is the annual control over the state budget.

For its part, the Council of Ministers, as a body of the executive power, has been assigned the leading authority for the implementation of the state budget for the respective year (Article 106 of the CRB). For municipalities, the Constitution stipulates that they have an independent budget, which is a guarantee and a condition for local self-government.

##### **2.3. Legal concepts related to disability funding and control**

This section focuses on doctrinaire concepts of "public finance", "administrative control" and "financial control".

#### **2.4. Financing and control in the current legislation of the Republic of Bulgaria**

The special legislation for people with disabilities regulates the matter of financing and control, and in particular People with Disabilities Act and Personal Assistance Act. In the People with Disabilities Act the matter of funding is separated in Chapter Six, while in the Personal Assistance Act it is separated in Chapter Seven, and in Chapter Eight attention is paid to control. Funding is provided from the state budget, municipal budgets, national projects and programs, the European Structural and Investment Funds (ESIF) and projects and programs funded by other international financial institutions and donors.

Coordination in the field of management and control of public relations arising in the system of public funds from ESIF was achieved through the adoption of Management of Funds from the European Structural and Investment Funds Act (MFESIFA).

Funding is also provided by donations from local and foreign individuals and legal entities.

### **Chapter XI**

#### **Liability related to the rights of persons with disabilities in the Bulgarian law**

##### **1. Administrative penal liability in the field of disabilities. Types of compositions of administrative violations. Administrative penalties - imposition and appeal**

###### **1.1. General**

Administrative liability finds basic regulation in the Administrative Violations and Sanctions Act. It regulates the general rules for administrative violations and sanctions, the procedure for establishing administrative violations, for imposing and enforcing administrative sanctions. Through its legal norms, Administrative Violations and Sanctions Act provides the necessary guarantees for the protection of the rights and legitimate interests of citizens and organizations. Administrative liability, also called administrative penal liability, is the implementation of sanctions provided for culpable non-performance or poor performance of administrative obligations.

A feature of the administrative sanction is its legal framework. Administrative Violations and Sanctions Act regulates only the general provisions and principles of the administrative penal substantive law, without including in its composition special norms that refer to the individual administrative violations and penalties. AVSA does not have a special part unlike the Criminal Code.

###### **1.2. Compositions of administrative violations, regulated in the People with disabilities Act**

People with Disabilities Act, and in particular Chapter VII, legally regulates the administrative penal provisions relating to issues related to the legal regulation in the field of disabilities.

### **1.3. Compositions of administrative violations, regulated in the Personal Assistance Act**

A peculiarity of the Personal Assistance Act is that we find compositions of administrative violations in Chapter VIII, entitled only "Control".

### **1.4. Compositions of administrative violations, regulated in the Social Services Act, which enters into force on 01.07.2020.**

Chapter XI of the SSA contains the provisions on administrative penal liability.

### **1.5. Compositions of administrative violations, regulated in Protection Against Discrimination Act**

The administrative violation regulated by the Protection Against Discrimination Act is the following: any direct or indirect discrimination based on sex, race, nationality, ethnicity, human genome, citizenship, origin, religion or belief, education, beliefs, political affiliation is prohibited, personal or social status, disability, age, sexual orientation, marital status, property status or any other grounds established by law or in an international treaty to which the Republic of Bulgaria is a party. Accordingly, any discrimination is an administrative violation, which is sanctioned in the manner prescribed by this law.

### **1.6. Compositions of administrative violations regulated in the Health Act**

The Health Act, Chapter VIII, regulates administrative penal provisions relating to issues affecting the field of disability.

## **2. Criminal liability in the field of disabilities. Types of compositions**

Criminal liability is considered by criminal law science. It arises only from a specific crime committed. It is important to note, in view of the specifics of disabilities, that in criminal law the insane do not bear criminal responsibility.

In the special part of the Criminal Code we find compositions of crimes of interest for the present study.

## **3. Civil liability in the field of disabilities**

Civil liability is an institution of civil law. In Bulgarian law, civil liability is of two types - contractual and tort. Liability is contractual if a contractual obligation has been breached, and tortious if the obligation not to harm another has been breached. The main regulation of both types of liability is in the Obligations and Contracts Act (OCA).

## **Chapter XII**

### **People with disabilities and their rights in the European Union**

## **1. Development of European disability policy**

### **1.1. A brief historical overview of the emergence of the European Union**

The idea of European integration found its first formal realization in 1951 with the creation of the European Coal and Steel Community (ECSC). The next decisive step was taken in Rome with the creation of the European Economic Community (EEC, later renamed the EC) and the European Atomic Energy Community (Euratom).

The Treaty of Maastricht, establishing the European Union, was signed on 7 February 1992. It builds the European Union on three pillars, namely the European Community, the Common Foreign and Security Policy and Justice and Home Affairs.

### **1.2. Development of the European policy towards people with disabilities**

Historically, disability policy in the European Union has been based on the notion of their inclusion rather than respect for them as people who have the same rights as everyone else. The European Union's influence has been limited mainly to drafting recommendations, resolutions and opinions and has been supported by action programs.

It should be noted that on 23 December 2010, the Convention was ratified by the European Union, and this is one of the first international legal acts of its kind to which the Union is bound as a supranational integration community of states.

## **2. European framework for the UN Convention on the Rights of Persons with Disabilities**

### **2.5. Overview of the European Union Framework for the Convention on the Rights of Persons with Disabilities**

In the European Union, following its adoption of the UN Convention on the Rights of Persons with Disabilities, a Framework has been established to promote, protect and monitor the implementation of the Convention. The Convention is a powerful tool to assist people with disabilities, local communities and governments in exploring ways to implement the rights of people with disabilities through the development and implementation of legal, policy and practical measures. As a party to the Convention on the Rights of Persons with Disabilities, the EU has established such a framework on matters of EU competence, including EU law and policy - non-discrimination, passenger rights, EU funding and others, and EU public administration - staff selection, access to documents and more. The EU framework complements the national monitoring frameworks that are responsible for promoting, protecting and monitoring the Convention in EU Member States. The framework became operational in 2013. The European Union's framework consists of the European Parliament, the European Ombudsman, the EU Agency for Fundamental Rights and the European Disability Forum.

### **2.6. European Parliament**

The European Parliament (EUROPEAN PARLIAMENT) is considered to be the most democratic institution of the European Union because it directly represents the peoples of the

Member States and the voice of the people of the EU, it is the directly elected legislative institution of the EU.

There is the Disability Intergroup of the European Parliament. It is an informal group of Members of the European Parliament (MEPs) of all nationalities and most political groups who are interested in promoting disability policy in their work in the European Parliament as well as at national level.

## **2.7. European Ombudsman**

The European Ombudsman (EUROPEAN OMBUDSMAN) is an independent and impartial body. We find norms related to it in the Charter of Fundamental Rights of the EU (Article 43) and in the TFEU. According to Art. 228 of the Treaty on the Functioning of the European Union, the European Ombudsman elected by the European Parliament is empowered to receive complaints from any citizen of the Union or from any natural or legal person residing or established in any of the Member States concerning cases of maladministration. administration in the actions of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union in the performance of its functions.

## **2.8. EU Agency for Fundamental Rights**

It is important to note that in the field of human rights, and in particular those with disabilities, there is the European Union Agency for Fundamental Rights (EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS - FRA). The Agency was established by Council Regulation (EC) № 168/2007 of 15 February 2007. It provides independent, evidence-based recommendations to decision-makers at European and national level, thus contributing to better informed and targeted debates, policies and legislation in the field of fundamental rights. The Agency advises the EU institutions and national governments on fundamental rights issues, in particular in the following areas: discrimination, access to justice, racism and xenophobia, data protection, victims' rights and the rights of the child. The European Union Agency for Fundamental Rights supports the more effective promotion and protection of fundamental rights throughout the EU.

## **2.9. European Disability Forum**

There is a well-established tool for influencing processes at EU level, and hence at national level, through the EUROPEAN DISABILITY FORUM (EDF). The European Disability Forum is an independent non-governmental organization for people with disabilities that protects the interests of more than 80 million people with disabilities in Europe. It was set up in 1996 by member organizations to ensure that decisions at European level on people with disabilities are taken with and by people with disabilities.

## **3. Fundamental rights of people with disabilities in the European Union**

### **3.10. A brief analysis of the European system of human rights protection outside the European Union**

In Europe, the Universal Declaration of Human Rights, adopted by the UN General Assembly on December 10, 1948, on fundamental human rights, is particularly strong and meaningful. The Declaration is the first significant achievement of the world organization in this field and the first global record of rights held by all human beings. The European system for the protection of human rights also includes two acts that are important for human rights - the European Convention for the Protection of Human Rights and Fundamental Freedoms (since 1950) and the European Social Charter (since 1961). They have been adopted by the Council of Europe (it is not an EU institution, but an international organization of European countries).

### **3.11. Fundamental rights of people with disabilities in the European Union**

At present, there is a single legal instrument at EU level dedicated to fundamental rights, and that is the Charter of Fundamental Rights of the European Union. The Charter brings together in a single legal instrument all the civil, personal, economic, political and social rights enjoyed by EU citizens and persons residing in its territory. There is no doubt that there is some duplication of rights contained in the Charter and the ECHR, but it should be borne in mind that the rights enshrined in the Charter can only be applied within the EU.

### **3.12. Right to life**

The right to life is fundamental in the international legal system for the protection of human rights. It guarantees the highest human good - human life, which is a condition and prerequisite for the existence of the entire system for the protection of fundamental rights. The right to life is enshrined in Art. 10 of the Convention on the Rights of Persons with Disabilities.

### **3.13. Protection of personal data**

As of 25 May 2018, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data applies and repealing Directive 95/46 / EC (General Data Protection Regulation). The information also includes information relating to disability.

### **3.14. Right to education**

The right to education is also provided for in the Convention on the Rights of Persons with Disabilities (Article 24). States Parties recognize the right to education of persons with disabilities. With a view to exercising this right without discrimination and with equal opportunities, they provide an inclusive education system at all levels and training opportunities throughout the life of persons with disabilities.

### **3.15. Healthcare**

In the Convention on the Rights of Persons with Disabilities, the right to health care is also given as a fundamental right (Article 25). States Parties that have adopted the CRPD recognize the right of persons with disabilities to access the highest attainable standard of health care



without discrimination on the basis of disability. They shall take appropriate measures to ensure that persons with disabilities have access to gender-sensitive health services, including medical rehabilitation.

### **3.16. Work and employment**

The right to work of persons with disabilities is also guaranteed by the Convention on the Rights of Persons with Disabilities (Article 27). States Parties recognize the right to work of persons with disabilities on an equal footing with all others, including the right to livelihood through freely chosen or accepted employment in the labor market and in a work environment that is open, non-discriminatory and accessible. For people with disabilities.

### **3.17. Social protection**

The Convention on the Rights of Persons with Disabilities also provides basic guarantees for an adequate standard of living and social protection for persons with disabilities (28). This means that the countries that have adopted the CRPD provide adequate food, clothing and housing and continuously improve the living conditions of people with disabilities.

### **3.18. Access to justice**

The requirements of the Convention on the Rights of Persons with Disabilities to ensure access to justice for persons with disabilities, including those with intellectual disabilities or mental illness, stem from a social understanding of disability. The Convention requires the parties to provide reliable mechanisms to enable and facilitate the effective participation of persons with disabilities in the judiciary and procedures, in all procedural capacities.

## **4. Harmonization of the Bulgarian legislation with the legislation of the European Union in the field of disabilities**

The main requirement in the process of Bulgaria's integration into European structures is related to the introduction of the *acquis communautaire* in the Bulgarian national legislation. In 2000, the Council of Ministers approved the amended National Program for the Adoption of the *Acquis*, which is the main coordinating document for the actions of the state administration in harmonizing Bulgarian legislation with European legislation.

Due to the fact that the Convention on the Rights of Persons with Disabilities is part of the law of the European Union and is also in force for Bulgaria, its incorporation into Bulgarian law is being considered. Important for the progress of the Bulgarian legislation on its alignment with the European one is the Action Plan, containing measures for bringing by the Republic of Bulgaria the regulations and policies in the field of people with disabilities in accordance with the provisions of the Convention on the Rights of Persons with Disabilities (2013 -2014). It was adopted by Decision № 868 of the Council of Ministers of 12 October 2012.

## **Chapter XIII**

### **Conclusion (Improvement of legislation)**

After the present work, the areas in which the Bulgarian legislation and the legal theory will be developed with regard to the administrative-legal regime regarding people with disabilities should be noted .

When considering the legal concepts related to the field of disabilities, we do not find a legal definition of the concept of "administrative regulation in the field of disabilities".

In the presentation of the present analysis we found that the public relations related to the exercise of the rights of people with disabilities and the terms and conditions for the provision and use of personal assistance are a set of legal norms that are regulated in an administrative manner. Therefore, I believe that the Bulgarian legislator needs to introduce a legal concept of "administrative regulation in the field of disabilities."

In my opinion, the Bulgarian legislator needs to amend § 1 of the Additional Provisions of the People with Disabilities Act by adding a legal term for "women and or girls with disabilities". I believe that such a legislative approach will clarify the image of women and / or girls with disabilities and will fill the gaps in the law on their fundamental rights, and in particular access to healthcare.

The Bulgarian legislation regulates the relevant bodies of the executive power in the field of disabilities. However, it is crucial to ensure effective and well-functioning mechanisms for the fuller and more necessary implementation of the functions of those bodies involved in the integration of people with disabilities, thus eliminating existing discriminatory practices. . Therefore, *de lege ferenda* the Bulgarian legislator needs to amend the provision of Art. 86a, para. 2 of the Health Act, which refers to the Public Council for Patients' Rights under the Minister of Health in the part concerning the change of the name from the National Council for Integration of People with Disabilities (before) to the National Council for People with Disabilities ( now).

It is also important to join the Commission for Protection against Discrimination as its members and people with disabilities who have acquired the appropriate education and experience in the field of protection of the rights of disadvantaged people. This proposal follows from the Commission's practice of complaints or alerts concerning disabilities. In order to optimize the People with Disabilities Act, our legislator needs to explicitly provide for Coordinators for the Rights of People with Disabilities to be people with disabilities themselves, as they best understand the need to guarantee their rights.

I believe that it is necessary to provide the Agency for People with Disabilities and the Register of Persons with Disabilities, engaged in self-employment.

In order to optimize the PDA, the name of the Supervisory Board should be renamed the Supervisory Board. The term "control" is consistent with the legislation, theory and practice of management and it refers to certain types of control activities, in view of its scope and manner of implementation.

The Bulgarian legislator, *de lege ferenda* , must explicitly provide for independent experts with experience in the field of the rights of people with disabilities to participate in the

Supervisory Board. In this way, greater control over the implementation of the Convention on the Rights of Persons with Disabilities would be exercised.

In my opinion, the Bulgarian legislator, in order to optimize the law, should explicitly provide for independent experts with experience in protecting the rights of people with disabilities to participate in the National Council for People with Disabilities. This would avoid conflicts of interest.

On the topic related to the judiciary, I believe that in order to optimize the legislation, the Bulgarian legislator should add to the programs of the National Institute of Justice to include training programs not only for working with people with disabilities, but also for people with disabilities who have obtained the relevant master's degree in Law and have won a competition for appointment to the judiciary. A priori, the competition system for appointment to the judiciary itself must be adapted to the individual needs of applicants with disabilities (physical) in order to protect their rights and legitimate interests.

I believe that it is important *de lege ferenda* to set up an ombudsman with powers only on issues related to the rights of people with disabilities. In this way, an adequate system will be built to serve the protection of the legitimate interests of persons with disabilities and the role of the general ombudsman will be overcome - to have fragmented powers in every sphere of public life.

Regarding the medical expertise, the author considers that the composition of TEMC and NEMC should include lawyers who have obtained a master's degree in law and have legal capacity, with some experience in the field of disability, to monitor the legality of their decisions, respectively to be familiar with the latest changes in the legislation related to medical expertise and to give expert opinions on it. More *de lege ferenda*, significant changes are needed in the Ordinance on medical expertise, concerning the definition of lifelong disability for a wider range of diseases that are not subject to change. Of course, the Bulgarian legislator will introduce the relevant changes in the Social Security Code and the Health Act.

In my opinion, in order to optimize the provisions related to the individual needs assessment, it is necessary for the Bulgarian legislator to provide together with the employee who prepares objective findings on the existing functional deficits of a person with a disability to work and a person with medical education. An argument in support of the proposal is the lack of in-depth knowledge of the social worker about the medical characteristics of each type and degree of disability and, accordingly, the lack of a real objective assessment of the need to support the person with a disability. It is necessary to provide that for some disabilities there is a progressive deterioration of the condition, which requires various support measures.

Changes are also needed in the individual needs assessment of people with disabilities. It is necessary to specify the provision of Art. 22, para. 1 of the PDA, exhaustively listing the information on the basis of which the individual needs assessment is prepared, as it is possible for vicious practices to occur.

In the field of health protection for people with disabilities, it is important that this group of people is aware of the healthcare system, as well as their patient rights. In my opinion, the Bulgarian legislator needs to supplement the provision of Art. 93, para. 5 of HA. providing, in addition to the patients, within three days of notification of the results of the inspection for establishing administrative violations to be received by the persons entitled to submit complaints or signals, defined in para. 1 of the same article. This proposal is made with a view to greater clarity and precision in the protection of the rights of the patient, respectively one with a disability.

I believe that in order to optimize the Bulgarian legislation it is necessary to regulate part of the training of medical professionals (eg doctors) to include work with people who have different types and degrees of disabilities. In this way, healthcare professionals will provide adequate healthcare when they encounter patients with disabilities in their practice, as during some medical interventions (eg cervical mammography), people with disabilities need special technical modifications, as well as and from the comprehensible for them assimilation of the information about their state of health.

After the analysis of the Health Act, which is related in particular to mental disabilities, we join the proposed in theory proposal for the creation of a special normative act regulating the complex legal relations in the field of mental health.

The Bulgarian legislator should introduce separate provisions in the People with Disabilities Act regarding the right to health of women and girls with disabilities, as it is a special law in the field of disabilities, and CRPD in its art. 6 pays special attention to women with disabilities. It is still necessary for our legislator to make the relevant additions to Art. 2, item 2 and item 5 of the Health Act, as the principles are basic rules of conduct which guide the state, the citizens and the respective organizations responsible for women with disabilities. Item 2 should be supplemented with the expression "including those with disabilities" to the provision of accessible and quality health care, with priority for children, pregnant women and mothers of children up to one year. And item 5 should be supplemented by expanding the scope of the types of disabilities, in addition to physical and mental to add intellectual and sensory difficulties, as in the legal concept of "people with disabilities" in Art. 1 of CRPD and § 1, item 1 of the Additional Provisions of PDA. It is also necessary to create a section in the fourth chapter of the Health Act, dedicated to the health protection of women and girls with disabilities, as they are a vulnerable group in society and are often subject to double discrimination - gender and disability. Also, women with disabilities have an increased risk to their health than women without disabilities. For example, physical injuries can lead to a lack of exercise and therefore to weight problems. The risk of osteoporosis, heart disease, high blood pressure and diabetes are also linked. Social isolation associated with disability and illness includes the risk of depression as well as emotional, physical and sexual abuse. In addition, there are social and physical barriers, such as doctor's offices, gynecological offices or early detection centers (eg mammography centers), which are inaccessible or not adapted to the needs of women with disabilities. Another major problem is the lack of knowledge that women with disabilities and their guardians or families have about basic preventive health care. And in practice, social constraints or the existence of cultural prejudices do not lead to support for the

reproductive rights of women with disabilities. The topic of healthcare is also about prevention and rehabilitation, as an integral part of the right to a certain degree of independence.

In my opinion, the Bulgarian legislator needs to take into account the type and degree of disability of a person when granting targeted assistance for balneotherapy and / or rehabilitation services and to grant such more than once a year. For example, in some injuries (muscular dystrophies) over time there is a deterioration of the condition and the need for rehabilitation is palpable.

Education as a legal right is an important factor in the development of people with disabilities. Therefore, they need to be aware of current trends in inclusive education. In my opinion, the Bulgarian legislator needs to introduce a legal definition of the term "socialization" in the PSSEA. This proposal is related to the nature of man and in particular to one with a disability, as an equal member of society and his interaction with other members of the team, as well as the possibility of setting legal boundaries as an indicator of behavior. It is also important to make the relevant amendments to the provision of Art. 200, para. 5 of the PSSEA, individualizing the disability according to its species diversity, in order to avoid subsequent contradiction with the principle of equal treatment in preschool and school education.

In the framework of the analysis related to the regulation of special schools, and in particular those in which students with sensory disabilities - hearing impaired or visually impaired - are educated, we believe that they need to be closed or restructured. We draw arguments for this proposal from international practice, which has proven that separate education further harms children with special educational needs. Also, the fact that children with sensory disabilities are educated separately from their peers is a sign of segregation. Children from special schools find it difficult to get out of their dependence on the normatively provided social benefits, unlike those who have graduated from general education schools. Clear deadlines and financial resources should be set for the closure of special schools. In our opinion, these financial resources need to be redirected to other schools.

I believe that the Bulgarian legislator needs to clarify the provision concerning the lack of repetition of the class for students with special educational needs. By making a requirement here, before the student with SLN is exempted from repeating the class, there must be an assessment by a specific person for whether the type and degree of disability of the student meets this need. In this way, conflicts of interest in legal relations will be avoided - students with SLN and students without, teachers and students without SLN, students with SLN and teachers.

The Bulgarian legislator needs to make significant changes in the Higher Education Act by introducing rules on the manner and duration of exams (including state exams in certain specialties) that students with disabilities take during their studies at higher education institutions. This will depend on the type and extent of the damage. In this way, the right of persons with disabilities to access higher education will be fully guaranteed.

In the field of labor law, *de lege ferenda* should consider creating a special act on the employment of people with disabilities, following the example of countries such as

Luxembourg, the Netherlands, Austria and Croatia, in order to fully deploy the regulation and attract the public attitude towards respect for the right to work of persons with disabilities. The use of the union "or" in the Public Procurement Act, which serves as a separator of specialized enterprises from cooperatives of people with disabilities, is impressive, while in the People with Disabilities Act, the legislator uses the union "and". I believe that our legislator needs to differentiate in the PDA also the specialized enterprises from the cooperatives through the union "or", as the two legal figures are not identical, evident from the definition for them in the previous lines (§ 1, item 46 of the PPA).

Bulgarian legislation regulates a number of ways of financing and control in the field of disabilities. However, it is crucial to ensure effective and well-functioning funding mechanisms to cover all activities (health, education, etc.) concerning people with disabilities. It is also necessary for the control to be strictly exercised. Therefore, *de lege ferenda*, it is necessary in Chapter Seven of the People with Disabilities Act to change the name to "Control and administrative penal responsibility", adding the relevant provisions on the control exercised by the designated bodies (such as the Minister of Labor). and social policy to exercise comprehensive control under PDA). An argument for this stems from § 27 of the People with Disabilities Act, which provides that he is responsible for the implementation of the law.

The author also believes that under the defined national programs and especially in the implementation of the respective projects it is necessary to legally establish bodies outside the system of public administration to exercise control over the spending of funds. The aim is to avoid vicious practices in illegal infringements. These bodies also need to have the relevant education and experience.

The author considers that it is necessary to add the concept of "administrative criminal liability" to Chapter Eight of the Personal Assistance Act, entitled "Control", as the chapter itself provides for such liability.

Bulgaria's membership in the European Union requires a good knowledge of both the law of the Union and the rich practice of its court. Therefore, in this paper we have looked at the EU legal framework relating to people with disabilities, as well as their rights in the Union.

#### **Author's publications on the topic of the dissertation**

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