

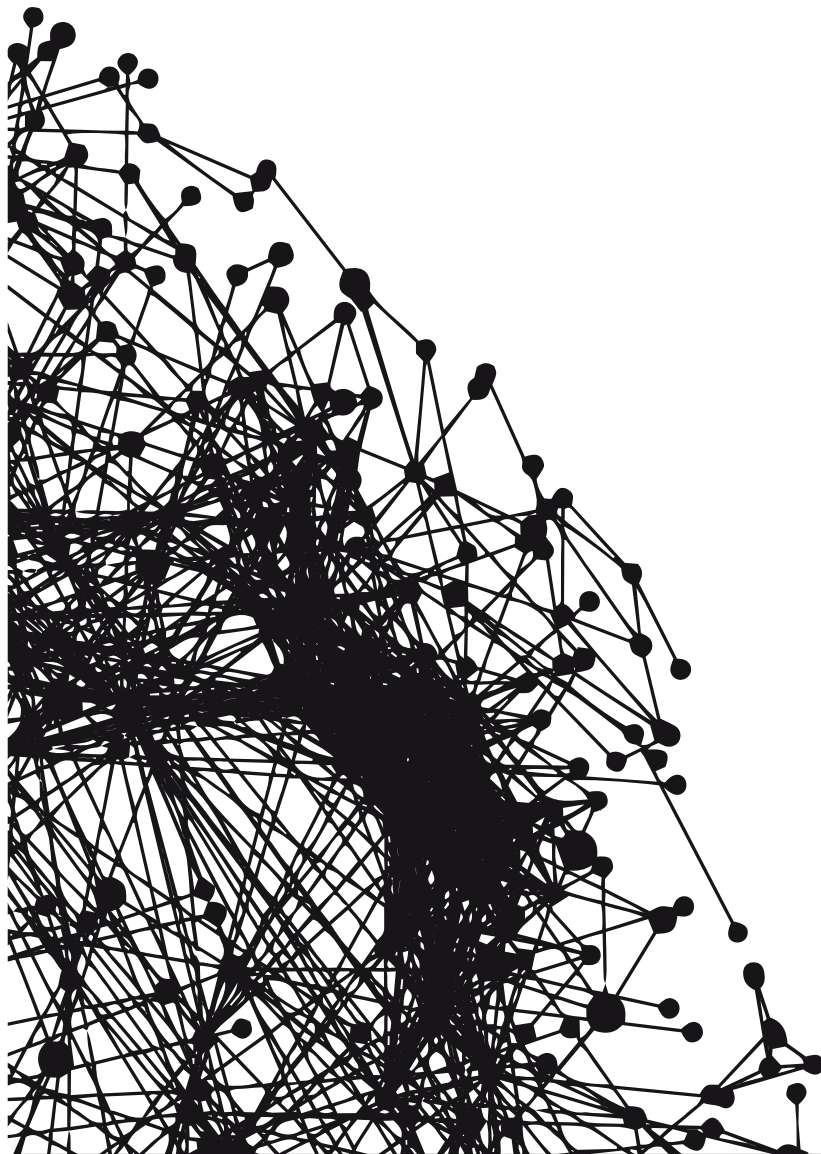
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Eva Vaništa Lazarević, Aleksandra Đukić,
Aleksandra Krstić - Furundžić, Milena Vukmirović

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PROTECTION OF PERSON WITH DISABILITIES: IMPLEMENTATION OF ACCESSIBILITY STANDARDS

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ABSTRACT

*This paper is based on the analysis of several international conventions and rules, as well as national regulations dealing with protection of rights of all members of community, especially preventing all potential forms of discrimination and with special focus on people with disabilities. Application of the European accessibility concept [i] would achieve the promotion of a new social model that would completely transform the relation towards the persons with disabilities. The concept suggests essentially different approach – treating the community as a whole, and thus all its needs and needs of each community member as one, making no difference among individual groups within the overall population, but provides the solutions that meet the conditions to fulfil the need of each individual member and the community as a whole. **Terms:** accessibility, access to all, inclusion, inclusive design, universal design, values/directions, principles, standards/norms/technical regulations, legislation. **Theoretical frame:** historical overview (international – national compatibility)*

Keywords: Disability, human rights, discrimination, international contract, “soft law”

INTRODUCTION

The development of our society, raising of democratic and social standards, and the process of European integration necessarily affect the appreciation of new rules, the elimination of all forms of discrimination and application of standards that were not, until recently, thought of.

Speed of these processes depends on many factors, particularly the level of social wealth, but primarily on the dynamics of changes in consciousness and approach, respecting differences and necessity of social dialogue in decision-making and strategic choice, and all the other social priorities.

Special attention must be given to the elimination of all forms of discrimination, particularly in relation to people with disabilities. Implementation of the European concept for accessibility [i] would promote a new social model that would completely

change the attitude toward the persons with disabilities. The concept suggests providing for the needs of all categories of users and does not distinguish between the groups in the total population. The Rule Book [ii] would significantly improve the criteria which define the conditions and manner of use of space and would create the conditions for people with disabilities to become, not the passive and permanent addicts on welfare they were previously, but active participants in prehensile analysis, it is possible to consider all types of work on adaptation and it is possible to make long-term plans, selection of priorities and a proper defining and dynamics of individual works, and thus rational use of financial resources, and as a rule, significant savings. Implementation of standards of accessibility is one of the priorities for financing from EU funds, so that with appropriate approach, defined strategies and specific projects it is possible to apply and get adequate resources for the implementation of works.

The society is obliged to guarantee to persons with disabilities equal opportunities and provide access to community resources such as health care and social welfare, education, new technologies, sport and leisure activities. The European Union, like other developed regions in the world, transferred its activities over the last ten years from the philosophy of paternalism and outdated approaches based on compassion and perception of abilities of persons with disabilities, and from focusing on rehabilitation of individuals who need to fit into society, to global philosophy to transform society in order to include and adapt to the needs of all people, including people with disabilities. The change in approach and acceptance of the fact that in a modern democratic society all populations are equal members of the community, encourage the development of inclusive design and accessibility standards consistently.[i]

Discrimination that people with disabilities face is sometimes based on prejudice, but more often people with disabilities are actually ignored and forgotten because of the lack of social awareness and the need of the community to care of all its members. The final result is the intensification of existing and creation of new barriers.[ii] Also, people with disabilities who are members of the ethnic minorities, according to research, are discriminated against because of disability, but also because of their ethnicity [iii]. Researchers suggest that disabled women are further discriminated.

The Constitution of the Republic of Serbia has a special chapter, Human and minority rights and freedoms. Article 18 defines that "Human and minority rights guaranteed by the Constitution shall apply directly. The Constitution provides, and as such, are directly implemented human and minority rights, ratified international treaties and laws. The law may prescribe the manner of exercising these rights only if it is expressly provided in the Constitution, or if it is necessary to exercise the rights of an individual because of his nature, whereby the law in any case should not affect the essence of the guaranteed right. Provisions on human and minority rights are interpreted in favour of promoting values of a democratic society, pursuant to valid international standards of human and minority rights, as well as the practice of international institutions which supervise their implementation." In Article 19 it is

said that "Guarantees of inalienable human and minority rights in the Constitution have the purpose of preserving human dignity and achieving full freedom and equality of all individuals in a fair, open and democratic society based on the rule of law." Further, the Article 21 defines the prohibition of discrimination, "Before the Constitution and the law all are equal. Everyone has the right to equal protection of the law without discrimination. Any discrimination, direct or indirect, on any grounds, particularly on race, sex, nationality, social origin, birth, religion, political or other opinion, property status, culture, language, age or mental or physical disability is prohibited. Not to be considered as discrimination are the measures that Republic of Serbia may introduce to achieve full equality of persons or groups of persons who are substantially in an unequal position compared to other citizens." The Constitution of the Republic of Serbia is very liberal, but it is necessary that all the laws, technical and other regulations consistently apply the constitutional norms, thus ensuring compliance with constitutional norms and guarantee the equality of all citizens [iv].

"*Accessibility* is a general term describing the degree of availability of a certain product, equipment, service and environment to the larger group of users. It can be seen as the *ability to access* a specific function, system or entity. The concept of accessibility should not be confused with the utility, which describes the extent to which a particular product (device / appliance / equipment, service, environment) can be used by the designated user. In a narrow sense, the notion of accessibility is usually used with a focus on people with disabilities and their right of access to buildings, often with the use of assistive technology"[iv]. Accordingly, to perform certain activities the minimum dimensions of the space in which it is possible to independently move the wheelchair or wheelchair with small children, with toys, with or without accompaniment need to be taken into account.

"*Accessibility* is the result of the application of technical solutions in the design and construction of buildings, where people with disabilities and reduced mobility are provided with unobstructed access, movement, stay and work in these buildings on an equal basis with others. *The mandatory elements of accessibility* are the elements for designing and constructing, which determine the size, features, installations, appliances and other equipment of the building to ensure access, movement, residence and work of persons with disabilities and reduced mobility with the same quality as other persons."[v]

Architectural concepts, in relation to the results of user requirements, analyze and review the conditions of space, objects and surfaces that are used in order to determine the possibilities and limitations under which the certain quality of use can be achieved.

ON ACCESSIBILITY IN SERBIA

It is evident that the accessibility as a topic is insufficiently and inadequately represented in our educational system, and we are very rarely faced with any other types of information in this area. It is also evident that there are no significant

differences between groups in knowledge and information about accessibility, and that continuous education on these topics is necessary to everyone.

The lack of information can be seen in all aspects of accessibility, starting from the knowledge of vocabulary, through knowledge of the standards and the law in this area to the practical recognition of the situation and recognition of the segments of accessibility in the surroundings. There is a particular lack of the awareness of the need to solve problems in this area, as well as the ignorance of the legal obligation to take this issue into account. It is important to devise a way to systematically monitor and track developments in the environment and practices in order to prevent errors in a timely manner and in order to increase the possibility of learning from practice. Given the lack of information about accessibility, it can be assumed that this topic is unknown to the general public (it still leads to the assumption that citizens insufficiently participate or do not participate in the process of planning and creation of the environment [vi]).

As policy makers and experts, in regard to the priorities of the previous dominant social models, did not pay enough attention to this issue, it can be assumed that the arbitrary implementation of the legislation in the aforementioned areas was applied in practice, which led to the realization of the insufficiently accessible environment. [vii]

PROTECTION OF PERSONS WITH DISABILITIES WITHIN INTERNATIONAL LAW

Protection of persons with disabilities within international law is regulated by: international agreements which contain legal norm obligatory for the states and by “soft” law drawn up based on the international documents which are not legally binding. The largest number of agreements on human rights does not explicitly address the position of persons with disabilities, but provides protection to all individuals without any discrimination. Just in recent times special agreement exclusively dedicated to the protection of these persons have been concluded. The most important among them is the UN Convention on the Rights of Persons with Disabilities adopted in 2006. Protection of persons with disabilities is completed and more detailed regulated by the “soft” law which includes a number of documents adopted by the United Nations, the Council of Europe and the European Union.

Serbia has signed and ratified almost all international conventions and after adoption of the new constitution (in 2006) by adopting appropriate legislation it has established the necessary legal framework for the respecting of the rights of persons with disabilities.

NORMATIVE POWER OF THE EUROPEAN UNION

One of the objectives which the EU seeks to promote in international affairs is the promotion of norms. To this end, it does not come by use of oppression, but by the words of Ian Manners, by using of its normative power. In the academic debate,

the nature of normative power is historically interpreted as the “power over opinion”, the “power of idea” that is the “ideological power”. This interpretation is added by Manners own understanding of the normative power as the ability of actors to shape (export) the dominant representations on “what is normal” in the international affairs.

“Normative difference” of EU, by which it differs from other actors in the international affairs, is the consequence of the historical context of its creation, as well as of the fact that it represents a hybrid political creation which, if we consider its institutions, is positioned halfway between the international organization and the state.

This is exactly why the EU has conditioned the development of own relationships with other actors by their willingness to accept the norms and principles included in establishing Agreements. Democratic values, establishment of the rule of law and respect for human rights and freedoms are “normative basis” of EU. Manners identifies five key “norms” within the common legal and political *acquis* of EU (fr. *acquis communautaire* and *acquis politique*). These are, in order:

1. Peace as the supreme value, as announced by Robert Schuman’s declaration and the preamble of the founding agreements
2. The idea of freedom, announced in the preamble of the Agreement on European Union
3. Democracy
4. The rule of law, and
5. Respect for human rights and fundamental freedoms.

In addition to the basic norms, there are four supporting of “lower in the order of importance” which Manners has stated. These are: social solidarity included in the Article 2 of the Agreement on EU, Decree on anti-discrimination included in Article 13 of the same Agreement and the decrees on the protection of minorities included in the Copenhagen Criteria and the Concept of good governance.

CONCLUSION: ACCESSIBILITY / GUIDELINES AND PRINCIPLES

An important step in solving the problem of discrimination against persons with disabilities was the adoption of the International convention on the rights of persons with disabilities (based on general UN instruments on human rights and freedoms). The basic principles of this Convention are as follows: (a) respect for inherent dignity, individual autonomy including the freedom of own choices and independence of persons; (b) prohibition of discrimination; (c) full and effective participation and inclusion in society; (d) respect for differences and acceptance of persons with disabilities as part of human diversity and humanity; (e) equality of opportunities; (f) accessibility;(g) equality between women and men; (h) respect for the evolving capacities of children with disabilities and respect for the rights of children with disabilities to preserve their identities.

Design for All [viii] is the design for diversity of people, social inclusion and equality; a holistic approach constituted as creative and ethical set of principles intended for planners, architects/designers, manufacturers, administrative and political leaders. It aims to ensure all people equal opportunities to participate in all aspects of society, by whose aim is necessary that the built environment, buildings of everyday life, services, culture and information must be accessible, convenient for use for all social groups and appropriate in terms of the principle of respect for human diversity. It represents an integral methodology which is being applied and interpreted in various fields and disciplines in order to achieve established and proclaimed ethical values.

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[ⁱ] Ibid. Tačka 4. str. 7.

[ⁱⁱ] Ibid. Tačka 5. str. 7.

[^v] <http://en.wikipedia.org/wiki/Accessibility>

[^v] Pravilnik o tehničkim standardima pristupačnosti iz 2012. godine, član 3, tačke 7) i 9), “Sl. Glasnik RS, br. 19/2012, od 13.3.2012. godine. (Na osnovu člana 201. tačka 2) Zakona o planiranju i izgradnji (“Službeni glasnik RS”, br. 72/09, 81/09 - ispravka, 64/10 - US i 24/11) <http://www.pristupacnost.org/wp-content/uploads/2012/03/Pravilnik-o-tehnickim-standardima-pristupacnosti.pdf>

[ⁱ] Пројекат “Препознавање концепта универзалног дизајна и дизајна за све у планирању и изградњи окружења”, реализован од стране Центра Живети исправно уз подршку Мисије ОЕБС-а у Србији, Комисије за демократију амбасаде САД, Министарства за рад и социјалну политику, Покрајинског секретаријата за архитектуру, урбанизам и градитељство, Покрајинског секретаријата за рад, запошљавање и равноправност полова, Покрајинског секретаријата за привреду и Фонда за отворено друштво. See more: www.czuns.org

[ⁱⁱⁱ] Vasiljević, D, Karabegović T. i Cvetić M. Dostupnost za sve, Beograd: Arhitektonski fakultet, 2010, str. 24-25.