

review paper
submitted: 31. 03. 2023.
accepted: 27. 04. 2023.
UDK 342.72/.73(497.11)
343.85:343.41(497.11)

Aleksandar MIHAJLOVIĆ*

APPLICATION OF THE PRINCIPLE OF EQUALITY IN THE PROCESS OF IMPACT ASSESSMENT OF REGULATIONS AND PUBLIC POLICY DOCUMENTS IN THE REPUBLIC OF SERBIA

Summary

Impact assessment of regulations and public policy documents is regulated by the Law on the Planning System of the Republic of Serbia and the accompanying Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents. Impact assessment as an analytical process aims to determine the potential negative as well as positive effects that a regulation or a public policy document can cause on certain segments of society. In this paper, the author's focus is on the social impact assessment in connection with the implementation of the provisions of the Law on Prohibition of Discrimination which introduces the rule that a public authority, when preparing a new regulation or a public policy document of importance for the realization of the rights of socioeconomically disadvantaged persons or groups of persons, makes an impact assessment of their compliance with the principle of equality. This provision introduced by the latest amendments to the Law on Prohibition of Discrimination, as an umbrella anti-discrimination law in the Republic of Serbia, contributes to the development of the human rights impact assessment.

Key words: principle of equality, impact assessment, public policies, regulations.

1. INTRODUCTION

The Law on the Planning System of the Republic of Serbia from 2018 (hereinafter: LPS RS) for the first time uniquely regulates the elements of the planning system, which include: 1. planning documents; 2. planning system participants; 3. public policy system management process; 4. process of aligning the content of planning documents with the content of other planning documents and regulations; 5. linking public policy adoption and

*PhD Candidate, University of Niš, Faculty of Law, aleksandarmihajlovic91@yahoo.com, ORCID: 0000-0001-8309-7896.

implementation process with the medium-term planning process (LPS RS, 2018, art. 2, p. 1, p. 2). One of the elements of the public policy system management process is the impact assessment as an analytical process that evaluates the impact of public policies and regulations on various segments of social life, including their preparation, implementation, and a period after their termination. The impact assessment of regulations has been carried out in the Republic of Serbia since 2004, and it has been extended to public policy documents by the adoption of LPS RS.

The Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents (hereinafter: Regulation) elaborates in detail the steps of implementing the impact assessment of regulations¹ and public policy documents, with a special focus on the analysis of financial and economic impact, social and environmental impact, as well as governance impact and risk analysis.

The social impact assessment² aims to explain the effects of public policy options, i.e. solutions from regulations on different categories of the population, and the Regulation emphasizes that in that process sensitive categories of individuals or groups of individuals should be taken into account (Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents, 2019, art. 27, p. 1). According to the same act, this type of analysis is of particular importance in the areas of competitiveness, social protection, education, health, urbanism, spatial planning and construction, as well as in all other areas in which there is a direct or indirect impact on the population, including the area of gender equality, whereby special attention is focused on the gender that is less represented (Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents, 2019, art. 27, p. 2-3), and contributes to the achievement of adaptive state intervention (Vanclay, 2003, 6). An integral part of the Regulation is Appendix 7, which contains a set of questions that enables the most precise social impact assessment.

The latest amendments to the Law on the Prohibition of Discrimination from 2021, as a part of special measures, provide: „When preparing a new regulation or a public policy of importance for the realization of the rights of socioeconomically disadvantaged persons or groups of persons, the public authority shall make an impact assessment of a regulation or a public policy in which evaluates their compliance with the principle of equality.“ (Law on Prohibition of Discrimination, 2009, art. 14, p. 4). This novelty, introduced by the Law on Prohibition of Discrimination, specifies the obligation to conduct an impact assessment through the dimension of the principle of equality/non-discrimination, which in a certain

¹ Term the regulation in this context includes laws and by-laws.

² More details about different international methodologies for the social impact assessment: Bradaš & Sekulović, 2020a, 6-27.

way has been introduced previously by the LPS RS and the Regulation in the context of the social impact assessment. The significance of this provision is that this obligation derives from the umbrella anti-discrimination law, and it is applied to both central and local authorities when creating regulations and public policy documents.

The subject of this paper is the impact assessment of regulations and public policy documents regulated by LPS RS and the Regulation, in connection with the implementation of the aforementioned provision from the Law on Prohibition of Discrimination. The aim of the research is to determine, by applying the normative method through the analysis of these regulations, how the Law on Prohibition of Discrimination specifies the obligation to conduct an impact assessment in the context of protecting and improving the human rights of socioeconomically disadvantaged persons or groups of persons.

2. THE TERM OF PUBLIC POLICIES AND TYPES OF PUBLIC POLICY DOCUMENTS IN THE REPUBLIC OF SERBIA

In situations when certain social issues are recognized as problems and when there is a need for the action of governmental institutions in order to solve them, then the creation and implementation of specific public policies are approached (Jovanić, 2019, 20). LPS RS defines public policies as „courses of action of the Republic of Serbia, the Autonomous Province and local government unit, in specific areas, with a view to achieving desired goals in the society” (Law on the Planning System of the Republic of Serbia, 2018, art. 2, p. 1, p. 1). Based on this legal definition, we can emphasize several characteristics of public policies: 1. they represent a strategic framework for action both at the national and local levels, and all levels of the territorial organization can adopt public policy documents, while their mutual compatibility should be taken into account; 2. public policies are adopted in various areas of social life³; 3. with the help of public policies, the desired changes are achieved. The legal definition follows the theoretical considerations of public policies, through which we can also distinguish their following characteristics: they arise in the political decision-making process (Jovanić, 2014, 98); they are linked to the actions of state actors, primarily the executive power (government) (Flin & Asker, 2021, 62), although we

³ The Regulation recognizes 18 fields of planning and implementation of public policies, as a part of the Appendix 11: 1) Judiciary and the legal system; 2) Public security; 3) Defence; 4) Public administration; 5) Urban planning, spatial planning, and construction; 6) Competitiveness; 7) Mineral resources, mining, and energy; 8) Environmental protection; 9) Transport and communications; 10) Employment and social welfare; 11) Healthcare; 12) Sports; 13) Youth; 14) Education; 15) Agriculture and rural development; 16) Public information; 17) Culture; 18) Human rights and civil society (including religion and the diaspora). (Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents, 2019).

should not ignore other social actors who are to a certain extent involved in the decision-making process, and through which the government intervenes and regulates certain areas of social life that are recognized as priorities (Knit & Tosun, 2021, 27).

In order to achieve the general and special goals of public policies, regulatory measures (enactment of regulations - laws and by-laws), incentive, informative-educational, institutional-governance-organizational measures, as well as a provision of goods or provision of services by participants in the planning system, can be applied. These measures can be used independently or in combination with each other. The aforementioned classification of public policy measures is in accordance with LPS RS (Law on the Planning System of the Republic of Serbia 2018, art. 24, p. 2), and the same classifications are also found in theoretical discussions on public policies (Jovanić, 2019, 20).

Aiming to simplify how public policy measures can be combined to achieve the desired goals, we will use an example of combating discrimination, with a focus on the rights of persons with disabilities. This includes regulatory measures which have been implemented through the adoption of certain anti-discrimination regulations, such as: Law on Prohibition of Discrimination (2009), Law on Prevention of Discrimination against Persons with Disabilities (2006), Law on Professional Rehabilitation and Employment of Persons with Disabilities (2009) and Law on Movement with the Assistance of a Guide Dog (2015). The Law on Professional Rehabilitation and Employment of Persons with Disabilities stipulates that an employer who does not employ persons with disabilities in accordance with art. 24 of this law is obliged to pay the amount of 50% of the average salary per employee in the Republic of Serbia, according to the last published data of the state authority responsible for statistics, for each person with a disability that he did not employ. This represents an application of an incentive measure. As an informative and educational measure, the Ministry of Labor, Employment, Veterans and Social Affairs, in cooperation with the National Organization of Persons with Disabilities of Serbia, launched the „Serbia Without Barriers“ Campaign in 2020. As an institutional-governance-organizational measure, an independent state body, the Commissioner for the Protection of Equality, was established, and as measures to ensure the provision of goods and services, we can mention the installation of appropriate ramps to ensure unimpeded access to certain facilities for persons with disabilities, the procurement of appropriate teaching materials needed in the process education, movement with the help of a guide dog for blind persons.

LPS RS introduces fourteen principles that should be respected in the process of managing public policies, namely: the cost-effectiveness principle, the fiscal sustainability principle, the realism principle, the relevance and reliability principle, the consistency and conformity principle, the planning continuity principle, the proportionality principle, the preventive and the precautionary principle, the principle of equality and non-discrimination, the coordination and cooperation principle, the transparency and partnership principle, the principle of responsibility, the time period principle and the integrality and sustainable growth and development principle.

LPS RS defines a public policy document „as a planning document whereby planning system participants set or elaborate already established public policies in accordance with their respective mandate”, and according to the degree of generality, the following types of these documents are distinguished: strategy, program, policy concept and action plan (Law on the Planning System of the Republic of Serbia, 2018, art. 10).

In addition to public policy documents, LPS RS recognizes development planning documents and other planning documents. Development planning documents include: Development plan, Investment plan, Spatial Plan of the Republic of Serbia and other spatial plans, general urban plan, and Development Plan of the Autonomous Province and development plan of local government unit. Other planning documents are: the Action Plan for the Implementation of the Government’s Programme, the Government Annual Work Plan, the National Programme for the Adoption of EU *acquis*, medium-term plans and financial plans.

3. TERM AND TYPES OF IMPACT ASSESSMENT

The process of planning and decision-making by individuals, business entities or the state leads to the emergence of various effects, both positive (desired) and negative (undesired). For example, a student may plan his free time so that he travels with his friends during the weekend or spends two days studying for an exam. With the first decision, the student gives himself pleasure and joy, but loses the necessary time for an exam preparation. With the second decision, the student gets the necessary time for additional study and successful passing of the exam, but will miss the opportunity to be with dear people. Transferred to the field of the state and its obligations, it is necessary to carry out a constant process of planning, analysis and making various decisions. For example, in order to suppress domestic violence, the Republic of Serbia has taken a number of measures, adopting laws, implementing campaigns and educational materials, establishing certain institutions which goal is to suppress this negative social phenomenon; as a part of the implementation of public health policy and the prevention of certain diseases, the Republic of Serbia organizes preventive examinations and conducts promotional campaigns on the harmful effects of tobacco smoking. Each of these measures of state intervention have its own effects that have been considered when making decisions on their application.

LPS RS defines the impact assessment as „an analytical process conducted during public policy and legislation planning, formulation and adoption with a view to identifying change that should be achieved, their elements and cause and effect relationship, and the choice of optimal measures for achieving public policy goals (*ex-ante* impact assessment), during and after the implementation of adopted policies and regulations with a view to evaluating performance, and reviewing and improving the public policy and/or legislation (*ex-post* impact assessment)” (Law on the Planning System of the Republic of Serbia, 2018, art. 2, p. 1, p. 7). According to this legal definition, we can extract several basic

characteristics of impact assessment: 1. it is an analytical process that is carried out continuously; 2. as a continuous process, the analysis is carried out during the preparation of public policies/regulations, during their implementation, as well as after their termination, in order to evaluate the achievement of desired goals for which they were adopted, and based on this there are *ex-ante* and *ex-post* analysis; 3. it is equally implemented in relation to public policies and regulations (Bradaš & Sekulović, 2020b, 9).

It is important to note that in the methodological sense there is no essential difference between the impact assessment of public policies and regulations, the difference is reflected only in the subject of the analysis, so that on the one hand we have a public policy document, and on the other hand a specific regulation (in accordance with LPS RS, these are laws and by-laws (only regulations as a special piece of by-laws), other types of by-laws are not subject to impact assessment) (Dimitrijević & Vučetić, 2021, 87). The time sequence of the impact assessment implementation implies that it is first done to public policy documents and then it is carried out to regulations – laws and by-laws. In this way, the impact assessment of public policy enables the evaluation of whether it is necessary to implement a regulatory measure or a desired goal can be achieved through other measures, and then, if the analysis shows the necessity for a regulatory measure, then the impact assessment can be done.

Ex-ante impact assessment does not have to be carried out for public policy documents if they do not have a high impact on society and/or do not represent a high priority (this assessment is carried out based on the results of the impact test which is an integral part of Appendix 1 within the Regulation), and for regulations if they do not directly affect the realization of rights, obligations and legal interests of natural and legal persons (Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents, 2019, art. 6, p. 1). Also, this type of analysis is not carried out even in cases from art. 6 p. 2 of the Regulation⁴.

In addition to the distinction between *ex-ante* and *ex-post* analysis, the Regulation provides that according to the scope of implementation, *ex-ante* analysis can be basic and detailed. The scope of implementation depends on the level of impact and priority (determined by applying the impact test which is an integral part of Appendix 1 within the Regulation), as well as on the complexity and range of measures, including solutions contained in a public policy document and/or a regulation, while respecting the principle of

⁴ *Ex-ante* impact assessment will not be done in cases when the following documents are prepared: the Law on the Budget of the Republic of Serbia; public policy documents and regulations mitigating or eliminating the consequences of catastrophes, natural or other disasters, and emergency situations; public policy documents and regulations, at the national level, of importance for the defense and security of the Republic of Serbia and its citizens; regulations under the segment of their harmonization with an already adopted law, in such cases utilizing the impact analysis implemented for the given law when drafting the regulation; for an action plan implementing a planning document adopted within 90 days as of the date of adoption of the given planning documents.

proportionality and precaution (Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents, 2019, art. 8, p. 1-2). If an authorized proponent assesses that the foreseen measures contained in a public policy document or solutions from regulations have significant effects⁵ on certain segments of a society, then a detailed impact assessment is carried out (Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents, 2019, art. 8. p. 3). When it comes to regulations, it is important to mention that a detailed impact assessment of regulations in relation to gender equality and micro, small and medium enterprises is carried out when the test results⁶ indicate the necessity to carry out such an analysis (Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents, 2019, art. 8, p. 5).

If no significant effects are determined that the measures of public policy documents or solutions from regulations can cause, then the impact assessment is carried out by giving

⁵ Based on the art. 8, p. 4 of the Regulation, significant effects at the national level shall be: 1) expenditures above 0.1% of the budget of the Republic of Serbia for the previous year that the implementation of the public policy document, and/or regulation will cause for target groups and other stakeholders (e.g. for the harmonization of their behaviour and/or work in accordance with the requirements contained in the public policy document, and/or regulation); 2) changes above 10% at the annual level to revenues and expenditures, as well as income and expense in the budget of the proposing party, and thus the budget of the Republic of Serbia, of the budget at the disposal of the proposing party during the preceding fiscal year); 3) impact on over 200,000 citizens; 4) impact on more than 5% of entrepreneurs or legal persons under a given category of classification, according to criteria determined by the law regulating accounting, or on more than 20% of such persons within a given business activity, if the measures have a predominant impact on business operations within a given business activity; 5) impact on the market and competition conditions (e.g. introduction of barriers for the entry/and or exit from the market; limitation of competition; creation of preconditions for the privileged status of a given group of companies or other legal persons; impact on productivity or innovation; establishment of the prices or level of production; impact on the quality, level or availability of certain products and services, etc.); 6) introduction of significant reform, and/or systemic changes that affect a large number of natural persons, particularly in the fields of education, competitiveness, social welfare and healthcare; 7) transfers to citizens, such as support for vulnerable categories of the population (including persons with disabilities, members of minority groups, persons living below the poverty line, unemployed persons, etc); 8) implementation of public investments, particularly capital projects in accordance with the regulation on the contents, method of preparation and assessment, and the monitoring of the implementation and reporting on the implementation of capital projects.

⁶ Tests of impact assessment in relation to gender equality and micro, small and medium enterprises are available on the web presentation of the Public Policy Secretariat of the Republic of Serbia: <https://rsjp.gov.rs/sr/alati-za-sprovodjenje-analize-efekata/>, access: 25. 03. 2023.

precise answers to the questions contained in appendixes 2-10 which are an integral part of the Regulation, and otherwise, the impact assessment is performed through the implementation of all steps for the implementation of *ex-ante* analysis described in Chapter III of the Regulation (Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents, 2019, art. 8, p. 6).

The competent state authority⁷ that gives an opinion on the quality of the conducted *ex-ante* impact assessment, as well as on the assessment of an authorized proponent that an *ex-ante* analysis should not be carried out, or whether it is necessary to perform a basic or detailed *ex-ante* analysis, is the Public Policy Secretariat of the Republic of Serbia.⁸

4. APPLICATION OF THE PRINCIPLE OF EQUALITY IN THE PROCESS OF IMPACT ASSESSMENT

The Law on Prohibition of Discrimination stipulates that the public authority will conduct an impact assessment of regulations or public policy documents in the context of their compliance with the principle of equality in a case when a regulation or a public policy is important for the realization of the rights of socioeconomically disadvantaged persons or groups of persons (Law on Prohibition of Discrimination, 2009, art. 14, p. 4). Concurrently, this law stipulates that the conducted analysis should contain the following elements: 1. „comprehensive description of the situation in the area that is the subject of regulation with special reference to socioeconomically vulnerable persons and groups of persons“; 2. „assessment of the necessity and proportionality of the intended changes in regulations from the aspect of respecting the principles of equality and the rights of socioeconomically disadvantaged persons and groups of persons“; 3. „Risk assessment for the rights, obligations and legally based interests of persons and groups of persons in accordance with art. 14, p. 3 of this law“ (Law on prohibition of discrimination, art. 14, p. 5). As socioeconomically vulnerable persons or groups of persons, the law recognized specifically: persons with disabilities, members of national minorities, women, men, persons of different sexual orientation, gender identity, elderly persons and others, with special emphasis on the field of work and employment (Law on Prohibition discrimination, art. 14, p. 3).

⁷ The opinion of the Public Policy Secretariat of the Republic of Serbia on a proposed public policy document, and/or proposed or draft regulation may contain the assessment that: the impact analysis is complete, the impact analysis is partial, the impact analysis is insufficient, and unnecessary – there is no need for an impact analysis. The criteria used by the Public Policy Secretariat of the Republic of Serbia when issuing an opinion are listed in art. 49 of the Regulation.

⁸ The scope of work of the Public Policy Secretariat of the Republic of Serbia has been determined by the art. 38 of the Law on Ministries (Law on Ministries, 2020, art. 38).

By interpreting the provisions of the Law on Prohibition of Discrimination, we can conclude that the public authority is recognized as the bearer of the obligation to conduct an *ex-ante* analysis, which includes not only public authorities on the central level, but also authorities of autonomous provinces and local self-government units, as well as „public company, institution, public agency, other organization, or a natural person who is entrusted with the exercise of public powers, as well as a legal entity that is founded or financed by the Republic of Serbia, an autonomous province or a local self-government” (Law on Prohibition of Discrimination, 2009, art. 2, p. 1, p. 4). LPS RS stipulates that the Public Policy Secretariat of the Republic of Serbia issues an opinion on the quality of an *ex-ante* analysis done only by authorized proponents on the national rank, which does not include other authorities (autonomous provinces or local self-governments). This fact does not exclude the possibility that other authorities may contact the Public Policy Secretariat of the Republic of Serbia and/or the Commissioner for the Protection of Equality and request an opinion on the proper application of the principle of equality in the process of conducting impact assessment (Mihajlović, 2023, 43).

The Law on Prohibition of Discrimination stipulates that when analyzing the effects, a description of an analyzed situation in a specific area that has an impact on socioeconomically disadvantaged persons or groups of persons should be done. This determination is in accordance with the described steps of the implementation of the *ex-ante* analysis in accordance with the Regulation. Adequate monitoring of a concrete field by the competent public authority is extremely important for the realization of this first step of the analysis. The availability of accurate data enables a precise impact assessment which will be done successfully through the steps prescribed by the Regulation.

When considering the intended changes in regulations that may affect the principle of equality and the rights of socioeconomically disadvantaged persons or groups of persons, the Law on Prohibition of Discrimination provides that the necessity and proportionality of the changes, as well as risk assessment, should be taken into account. This rule is in accordance with the application of the principles of public policy management system prescribed by the LPS RS, which include, among others, the principle of proportionality and the preventive and the precautionary principle.

Although the Law on Prohibition of Discrimination recognizes only a case of *ex-ante* analysis, an extensive interpretation of this rule does not limit the possibility that the application of the principle of equality can also be implemented during an *ex-post* analysis. This type of analysis makes it possible to evaluate the effects of a public policy document or regulation, focusing on the assessment of their efficiency and effectiveness in achieving concrete goals. Given the fact that LPS RS is *lex generalis* in relation to the Law on Prohibition of Discrimination when it comes to the rules of impact assessment, there is no obstacles that during the *ex-post* analysis of certain policies or regulations which affect the rights of socioeconomically disadvantaged persons or groups of persons, the impact

assessment can be done through the perspective of the principle of equality (Mihajlović, 2023, 43).

The Law on Prohibition of Discrimination and the Regulation recognize socioeconomically vulnerable persons or groups of persons in a formulation of an open clause, because an explicit enumeration of concrete groups makes a possibility that certain groups of people can be left out. Within Appendix 7 of the Regulation, which contains key questions for the social impact assessment, the following social groups are recognized as vulnerable: „poor and socially excluded individuals and groups, such as persons with disabilities, children, young people, women, people over 65, members of the Roma national minority, the uneducated (illiterate or functionally illiterate), unemployed, refugees and internally displaced persons and the population of rural areas and others sensitive social groups” (Appendix 7, Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents, 2019).

When applying the principle of equality/non-discrimination it is very important to mention the provisions of the Constitution of the Republic of Serbia related to the protection of human and minority rights, generally accepted rules of international law and confirmed international treaties in the field of human rights that are an integral part of the legal order of the Republic of Serbia and are directly applicable, as well as domestic anti-discrimination regulations. It is also important to emphasize the recommendations for improving the analysis of effects through a human rights perspective, which are contained in the concluding observations of the United Nations Committee on Economic, Social and Cultural Rights in connection with the Third⁹ and Second¹⁰ Periodic Reports of the Republic

⁹ Concluding observations on the third periodic report of Serbia, Committee on Economic, Social and Cultural Rights E/C.12/SRB/CO/3, 06. 04. 2022, in par. 7, the Committee on Economic, Social and Cultural Rights recommends the Republic of Serbia to systematize the application of impact assessment through the dimension of human rights in the process of preparing regulations and public policy documents in the field of economic, social and cultural rights.

¹⁰ Concluding observations on the second periodic report of Serbia, Committee on Economic, Social and Cultural Rights E/C.12/SRB/CO/2, 10. 07. 2014, in par. 7, the Committee on Economic, Social and Cultural Rights expresses concern about the lack of systematic collection and processing of desegregated data that would enable an accurate assessment of the fulfillment of economic, social and cultural rights in the Republic of Serbia, and recommends the use of appropriate indicators that can be used to monitor the level of enjoyment of economic, social and cultural rights. The Committee also recommends the application of the methodology for developing indicators prepared by the Office of the United Nations High Commissioner for Human Rights. This publication „Human Rights Indicators – A Guide to Measurement and Implementation” is available on the following link: https://www.ohchr.org/sites/default/files/Documents/Publications/Human_rights_indicators_en.pdf, access: 26. 03. 2023.

of Serbia on the Implementation of the International Covenant on Economic, Social and Cultural Rights.

5. CONCLUSION

The impact assessment of regulations and public policy documents is systematically regulated by the Law on the Planning System of the Republic of Serbia and the accompanying Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents. As an analytical process that examines the effects of public policy options and solutions from regulations, the analysis of effects is carried out continuously, both during the preparation of public policies or draft regulations, during their implementation, and after their termination.

The social impact assessment allows that the potential effects (positive and negative) that a regulation or public policy can have on different categories of the population can be perceived, and aims to minimize or completely eliminate negative consequences. The Public Policy Secretariat of the Republic of Serbia delivers opinions on the quality of conducted *ex-ante* analysis, based on the prescribed criteria, and gives recommendations for improvement which are addressed to an authorized proponent of a concrete document (in practice there are ministries which are mostly responsible for drafting legislation and public policy documents). In addition to prescribing the social impact assessment, LPS RS recognizes fourteen policy system management principles. The five of them are of a huge importance for respecting the principles of non-discrimination and human rights when formulating public policies and solutions in regulations, and they are: the principle of equality and non-discrimination, the proportionality principle, the preventive and the precautionary principle, the transparency and partnership principle and the integrity and sustainable growth and development principle.

The Law on Prohibition of Discrimination, as an umbrella anti-discrimination law, introduces the obligation to carry out an impact assessment when drafting public policies or regulations that may affect the rights of socioeconomically disadvantaged persons or groups of persons, in which compliance with the principle of equality is assessed, with special emphasis on the field of work and employment. The bearers of this obligation are public authorities at all levels of territorial organization, entities entrusted with the exercise of public powers, as well as legal entities that are in total or mostly financed from public funds.

This provision from the Law on Prohibition of Discrimination does not represent double rules regarding the impact assessment of regulations and public policy documents, in addition, it has a multiple advantages that are reflected in the following: it strengthens the effect of the provisions of LPS RS and the Regulation which are related to the social impact assessment, because it derives from the umbrella anti-discrimination law which goal is protection against discrimination; a wider circle of entities are recognized as bearers of the

obligation to conduct impact assessment. These entities are also on the local level of the territorial organization where the Public Policy Secretariat cannot issue an opinion on the quality of the conducted analysis; the evaluation of the impact assessment on the principle of equality can also be applied during the *ex-post* analysis, which is in accordance with the understanding of impact assessment as a continuous process of monitoring the effects of public policies and regulations.

Application of the principle of equality/non-discrimination during the preparation of public policies and regulations represents respect of a basic principle of the legal system, which means that everyone is equal before the constitution and laws and that certain personal characteristics must not be an obstacle for exercising rights and freedoms. The United Nations Committee for Economic, Social and Cultural Rights also pointed out the importance of impact assessment through the dimension of human rights through recommendations delivered to the Republic of Serbia, with special emphasis on the importance of collecting disaggregated data for better planning and monitoring the state of economic, social and cultural rights.

LITERATURE

Bradaš, S. & Sekulović, I. 2020a. *Analiza efekata na društvo javnih politika – pregled međunarodnih i domaćih metodologija sa kritičkim osvrtom*. Beograd: Fondacija Centar za demokratiju. <http://www.centaronline.org/userfiles/files/publikacije/fcd-analiza-efekata-na-drustvo-javnih-politika-pregled-metodologija.pdf> access: 26. 03. 2023.

Bradaš, S. & Sekulović, I. 2020b. *Vodič za analizu efekata javnih politika na društvo*. Beograd: Fondacija Centar za demokratiju. <http://www.centaronline.org/userfiles/files/publikacije/fcd-vodic-za-analizu-efekata-javnih-politika-na-drustvo.pdf> access: 25. 03. 2023.

Vanclay, F. 2003. International Principles For Social Impact Assessment. *Impact Assessment and Project Appraisal*, 21(1), pp. 5-12. DOI: 10.3152/147154603781766491

Dimitrijević, P. & Vučetić, D. 2021. *Menadžment javne uprave*. Beograd: Dosije Studio, SeCons – grupa za razvojnu inicijativu; Niš: Univerzitet u Nišu.

Jovanić, T. 2014. *Proces regulacije*. Beograd: Pravni fakultet Univerziteta u Beogradu, Centar za izdavaštvo i informisanje.

Jovanić, T. 2019. *Uvod u ekonomsko pravo*. Beograd: Univerzitet u Beogradu – Pravni fakultet, Centar za izdavaštvo.

Knil, K. & Tosun, Dž. 2021. *Javne politike: novi uvod*. Beograd: Dosije Studio, SeCons – grupa za razvojnu inicijativu; Novi Sad: Univerzitet u Novom Sadu.

Mihajlović, A. 2023. *Vodič za primenu procene uticaja propisa i javnih politika na socioekonomski najugroženije građane i građanke*. Beograd: A11 – Inicijativa za ekonomska i socijalna prava.

OHCHR, 2012. *Human Rights Indicators – A Guide to Measurement and Implementation*.

https://www.ohchr.org/sites/default/files/Documents/Publications/Human_rights_indicators_en.pdf access: 26. 03. 2023.

Flin, N. & Asker, A. 2021. *Upravljanje javnim sektorom*. Beograd: Dosije Studio, SeCons – grupa za razvojnu inicijativu; Novi Sad: Univerzitet u Novom Sadu.

REGULATIONS

Law on Prevention of Discrimination against Persons with Disabilities, „*Official Gazette RS*”, No. 33/2006 and 13/2016

Law on Prohibition of Discrimination, „*Official Gazette RS*”, No. 22/2009 and 52/2021

Law on Professional Rehabilitation and Employment of Persons with Disabilities, „*Official Gazette RS*”, No. 36/2009, 32/2013 and 14/2022-47

Law on Movement with the Assistance of a Guide Dog, „*Official Gazette RS*”, No. 29/2015

Law on Ministries, „*Official Gazette RS*”, No. 128/2020 and 116/2022

Law on the Planning System, „*Official Gazette RS*”, No. 30/2018

Regulation on the Methodology of Public Policy Management, Impact Analysis of Public Policies and Regulations, and the Content of Individual Public Policy Documents, „*Official Gazette RS*”, No. 8/2019

Concluding observations on the third periodic report of Serbia, Committee on Economic, Social and Cultural Rights E/C.12/SRB/CO/3, 06. 04. 2022. <https://digitallibrary.un.org/record/3969915> access: 26. 03. 2023.

Concluding observations on the second periodic report of Serbia, Committee on Economic, Social and Cultural Rights E/C.12/SRB/CO/2, 10. 07. 2014. <https://digitallibrary.un.org/record/782312> access: 26. 03. 2023.

INTERNET SOURCES

Tools for conducting impact assessment <https://rsjp.gov.rs/sr/alati-za-sprovođenje-analize-efekata/>, access: 25. 03. 2023.

Александар МИХАЈЛОВИЋ

Докторанд, Универзитет у Нишу, Правни факултет

ПРИМЕНА НАЧЕЛА ЈЕДНАКОСТИ У ПРОЦЕСУ АНАЛИЗЕ ЕФЕКТА ПРОПИСА И ДОКУМЕНАТА ЈАВНИХ ПОЛИТИКА У РЕПУБЛИЦИ СРБИЈИ

Апстракт

Анализа ефекта прописа и докумената јавних политика уређена је Законом о планском систему Републике Србије и пратећом Уредбом о методологији управљања јавним политикама, анализи ефекта јавних политика и прописа и садржају појединачних докумената јавних политика. Анализа ефекта као аналитички процес има за циљ да утврди потенцијалне негативне, као и позитивне ефекте које пропис или документ јавне политике може да изазове на одређене сегменте друштва. У раду је фокус аутора на анализи ефекта на друштво у вези са применом одредби Закона о забрани дискриминације које предвиђају да орган јавне власти приликом припреме новог прописа или јавне политике од значаја за остваривање права социоекономски угрожених лица или група лица доноси процену утицаја прописа или политике у којој процењује њихову усаглашеност са начелом једнакости. Ова одредба уведена последњим изменама и допунама Закона о забрани дискриминације, као кровним антидискриминационим прописом у Републици Србији, доприноси развоју анализе ефекта кроз димензију поштовања људских права.

Кључне речи: начело једнакости, анализа ефекта, јавне политике, пропис.