



TO HUMAN RIGHTS COUNCIL

**Submission for Universal Periodic Review (Third Cycle) of the
Republic of Serbia**

At the 29th session of UPR Working group

Submitted by

MENTAL DISABILITY RIGHTS INITIATIVE - MDRI-S

an affiliate of

DISABILITY RIGHTS INTERNATIONAL

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Mental Disability Rights Initiative – Serbia (MDRI-S) would like to thank the Human Rights Council for the opportunity to send written submission addressing the Universal Periodic Review (third cycle) of the Republic of Serbia. We hope that our comments will be valuable for recommending to Serbia measures for improving current situation in human rights.

Disability Rights International (DRI) is an international human rights organization dedicated to the rights and full participation in society of people with disabilities. DRI documents abuses and promotes international awareness and oversight of the rights of people with disabilities, and it trains and supports disability rights and human rights activists worldwide to promote rights enforcement and service-system reform. DRI is based in Washington, DC with regional offices in Mexico, Serbia, and Ukraine.

Mental Disabilities Rights Initiative of Serbia (MDRI-S) is an affiliate of Disability Rights International. As a recognized advocacy organization in Serbia, MDRI-S promotes citizen participation, awareness and oversight of the rights of persons with disabilities, and leads the process of development of disability rights advocacy and self-advocacy movement in Serbia. MDRI-S covers the issues of the most marginalized and stigmatized people and its special focus is on children and adults who are at risk of or who are already residing in social and mental health institutions. MDRI-S priority areas are equal recognition of persons with mental disabilities before the law, protection from violence, abuse, ill-treatment and torture, deinstitutionalization, and community living. As a member of the National Preventive Mechanism for Torture (NPM) set up under the OPCAT in 2012, MDRI-S systematically monitors the position of persons deprived of liberty in residential social institutions.

Mental Disability Rights Initiative MDRI-S

Address: Bulevar kralja Aleksandra 171, 11000 Belgrade, Serbia

Phone/fax: +3811138 37 204, +381113837205

Email address: mdri.serbia@gmail.com

Website: www.mdri-s.org, <http://www.driadvocacy.org/>



Submission related to Thematic list of recommendations at the second cycle of the UPR for Serbia, namely Theme F4 Persons with disabilities, Theme F13: Violence against women

Theme: F4 Persons with disabilities

- **132.6. Continue to enable women and the disabled and provide them a greater role in society (Kuwait);**
Source of position: A/HRC/23/15 - Para. 132

Theme: F13 Violence against Women

- 132.35. Redouble efforts to combat all forms of violence against women and adopt policies on education and awareness-raising in this area (Spain);
Source of position: A/HRC/23/15 - Para. 132
- 132.37. Give further attention to the assistance available to victims of violence against women, especially in the field of psycho-social support (Slovenia); **Source of position: A/HRC/23/15 - Para. 132**

Women with disabilities in residential and psychiatric institutions are at increased risk of abuse, sexual assaults, rape by other clients and/or staff because of their specific vulnerability. In addition, they are victims of forced abortions, arbitrary separation from a child, and administration of contraceptives without informed consent or understanding. All of this constitutes inhuman and degrading treatment and it can amount to torture as recognized by the Special Rapporteur for torture.

In 2016, MDRI-S developed a separate monitoring and interview guide for documenting violence against girls and women with mental disabilities in residential institutions¹. MDRI-S staff conducted several group and individual interviews with over 30 women with disabilities, conducted monitoring missions in five residential institutions, and talked to staff. The results show that women with disabilities in residential institutions are exposed to physical, psychological, sexual and gender based violence. Due to their very specific position, and due to isolation from outside world (segregation, isolation, lack of privacy,

¹ Developed as part of the project “Deinstitutionalize and End Violence against Women with Disabilities in Custodial Institutions” implemented by MDRI-S and supported by United Nations Trust Fund to End Violence against Women and Girls, 2016-2018



depersonalization, inaccessible information), majority of women is accepting violence as an inevitable part of their daily lives in institution. Furthermore, they do not know to whom and/or how to report violence, especially when violence is committed by the institution's staff. There are no established mechanisms for complaints and appeals in institutions, including complaints against the institution and its employees. Even when they are formally in place, neither clients nor their family members have information about such options. In addition, mechanisms for protection from violence in institutions are neither in place nor effective and operational.

Also, the information about reproductive health to residents by the institution staff is scarce or does not exist. The risk of abuse and lack of adequate response mechanisms are higher if the woman is deprived of legal capacity. Sexual abuse and other complex forms of violence in the context of detention are grave violations of human rights. While conducting monitoring visits to residential institutions, MDRI-S learned from women that they are administered contraceptives, but also that they have abortions or are forcibly separated from the child after birth thus denying these women right to motherhood. Women with disabilities who are under guardianship are not informed nor asked about contraceptives, but medical staff (gynecologist) recommends and prescribes type of contraceptives to which the guardian consent. In some cases, when women are administered contraceptives pills, they are regarded as part of the therapy, so the guardian is only informed about it, while women are not aware about taking contraceptives. Women with disabilities and staff alike confirmed that girls and women in residential institutions are not asked or informed about contraceptives.

Throughout several contacts with organizations working in anti-trafficking, we learned that girls and women with disabilities who have been victims of trafficking were not provided with adequate support in mainstream drop-in shelters or support services as they are inaccessible and the staff lacks training on specific position of women with different disabilities. As a rule, they are placed in residential institutions where they are exposed to increased risk of abuse. In this area, also, there are no available data or research on the issue.

Recommendations:

- 1) Prohibit administration of contraceptives and abortions without informed consent of a woman with disabilities – guardian's consent cannot be used as a basis for such practices;



- 2) Develop functional and meaningful complaint mechanisms and measures for protection from institutional violence, especially violence perpetrated by the staff members;
- 3) Prohibit use of restrictive measures, such as isolation or restraint, on persons with disabilities, especially women and men held in residential institutions and women who survived violence;
- 4) Incorporate protection from violence against women with disabilities in gender and disability policies.
- 5) Intensify efforts for deinstitutionalization process in Serbia

132.86. Consolidate the constitutional and legislative framework to prevent discrimination against persons with disabilities (Iraq);

Source of position: A/HRC/23/15 - Para. 132

Information on measures taken and their impact to address effectively discrimination against persons with disabilities.

According to annual reports of the Commissioner for Protection of Equality², persons with disabilities are among the most at-risk groups to be discriminated since they are exposed to discrimination in almost every aspect of their life, including access to justice, access to health, education, employment, and political participation. Because of exclusion, discrimination, and poverty, more than 11,000 children, youth and adults with disabilities in Serbia are placed in large residential and psychiatric institutions. As documented by DRI and MDRI-S, this group is to a high extent exposed to violence and abuse.³ Although comprehensive reform processes in social protection, education, health, judiciary and fundamental rights have been present in the Republic of Serbia in the previous decade, the position of persons with mental disabilities⁴, especially those placed in residential and psychiatric institutions have not improved significantly and they benefited less from the reforms. Despite the government's efforts and on-going reforms, institutionalization of persons with mental disabilities remains dominant "service" offered by the state, and the system does not yet offer satisfactory

² Commissioner for Protection of Equality, Reports, available at: www.ravnopravnost.gov.rs

³ Eric Rosenthal, Laurie Ahern et al, Torment not Treatment: Serbia's Segregation and Abuse of Children and Adults with Disabilities, Disability Rights International, 2007, <http://www.driadvocacy.org/wp-content/uploads/Serbia-rep-english.pdf>; Dragana Ciric Milovanovic et al, The Hidden and Forgotten: Segregation and Neglect of children and adults with disabilities in Serbia, Mental Disability Rights Initiative MDRI-S, 2013, <http://www.mdri-s.org/wp-content/uploads/2013/10/the-hidden-and-forgotten-2013-12-17.pdf>

⁴ Term mental disabilities is used as a unified term for intellectual, cognitive and psycho-social disabilities



alternative solutions. Segregation of persons with mental disabilities through placement in closed institutions represents severe form of discrimination given that majority of them are placed in institutions due to their disability.

Institutionalization of persons with disabilities is discrimination on the ground of disability, but it should be emphasized that women and children are in worse position and are exposed to double and multiple discrimination due to their gender and age.

Over 80% of all institutionalized children in Serbia are children with disabilities. We would like to inform the Council on unequal access to education for children with disabilities who are placed in residential institution. Not only it constitutes violation of child's right and discrimination based on disability, exclusion from education denies possibility of desegregation, inclusion, contact and interactions with peers without disabilities, and it represents poor preparation for community living.

During May-July 2015, MDRI-S conducted a research on the position of institutionalized children with disabilities in education system in Serbia⁵ and the results show that over 56% of children with disabilities of primary-school age in residential institutions are completely excluded from education system, while others attend schools for children with disabilities⁶. Not one child from institutions is attending mainstream school. The educational position of children in institutions varies across different institutions and reflects opinion and attitudes of the institution's management and expert team. The institutions' management and expert teams explain this by complex or severe intellectual disabilities of children, that "they do not have the potential for education," or "are not educable" – an approach and practice that violates national legislation and international child's rights and equality standards.

While *de jure* equality is ensured, *de facto* inequality is in practice and noticeably **absent is the accountability** for the exclusion from the education system.

Deprivation of legal capacity and denial of access to rights

⁵ The methodology included desk-research, in-depth interviews with expert teams and the management of five big residential institutions for children with disabilities and two small group homes, as well as in-depth interviews with management and staff of schools for children with disabilities and focus groups with mainstream primary schools. The research is conducted under the project "Children with disabilities in residential institutions as victims of multiple discrimination" funded by the European Union under the Civil Society Facility 2013.

⁶ Biljana Janjic and Kosana Beker, Exclusion and segregation of children with disabilities in residential institutions from education, MDRI-S, Belgrade, 2016



Many people with mental and psychosocial disabilities, including elderly people, are involuntary confined in psychiatric institutions and no progress has been made towards deinstitutionalization. There are concerns about reports of the use of coercive treatment.”⁷ Treatments, such as isolation and restraint have still been applied in residential institutions.

Persons with disabilities, especially persons with intellectual, cognitive and psychosocial disabilities, are often deprived of their legal capacity. Serbia has one of the most restrictive guardianship systems affecting all areas of person’s life. It denies decision making power, and it is directly linked to deprivation of liberty and loss of power over personal assets of the individual. This practice brings them in the status of “civil death”, since deprivation of legal capacity means that they cannot exercise any of guaranteed rights by themselves. The position of persons placed in residential and psychiatric institutions is even worse, they are usually placed in institution with consent of their guardian, and cannot exercise any right, including the right to leave institution and live in the community, without guardian’s consent. Institutions are usually far away from their place of origin and they have very scarce contacts with outside world. The residents are not free to move unless they do not have their guardians’ approval, nor do they have any kind of power to decide about their everyday lives.

Recommendation:

- 1) Adjust and harmonize the legislation and practice that will ensure that deprivation of legal capacity is not used as a basis for deprivation of liberty of persons with mental disabilities

According to data gathered from centres for social work in 2014⁸, 28,306 people in Serbia were under guardianship, while 67% of them are adults whose guardian is usually a relative or a familiar person⁹. In 14% of cases, people are under direct guardianship meaning that the duty of a guardian is delegated to an employee of the center for social work.

⁷ European Commission, Serbia 2016 Progress Report, 9 November 2016, Brussels, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf

⁸Kosana Beker and Tijana Milosevic, Legal Capacity –Practice and Laws in Serbia in 2016, MDRI-S, Belgrade, 2016, <http://www.mdri-s.org/wp-content/uploads/2017/01/Sudska-praksa-i-zakoni.pdf>

⁹Synthesized report on the work of social welfare centers in Serbia in 2014, the Republic Institute for Social Protection, Belgrade, 2015, <http://www.zavodsz.gov.rs/PDF/izvestaj2015/CENTRI%20ZA%20SOCIJALNI%20RAD.pdf>



After a drastic increase in the number of people under guardianship in 2011 (33.9% compared to the previous year), in the following years the number of people under guardianship does not change significantly. Nevertheless, it's constantly increasing.

Table 1: Number and age structure of persons under guardianship

	2010.		2011.		2012.		2014.	
		%		%		%		%
Children and youth (up to 26)	6.162	35,4	11.025	40,8	11.267	39,2	10.954	38,7
Adults	8.672	48,4	11.212	41,4	11.852	41,3	11.747	41,5
Older persons (65+)	3.049	17,2	4.803	17,8	5.611	19,5	5.605	19,8
Total	17.883		27.040		28.730		28.306	

Changes of the Law on non-contentious proceedings in May 2014 brought some changes in the procedure for deprivation and reinstatement of legal capacity. One of the major changes is introduction of the mandatory periodic review of the court's decision of deprivation of legal capacity. However, these changes are not sufficient.

During 2016, MDRI-S conducted research¹⁰ on current practices regarding deprivation of legal capacity. Results show that disability is predominant reason for deprivation of legal capacity while there are no significant differences based on gender and age. Data from this research¹¹ show that there were 5.280 proceedings on legal capacity in the three years' period (2013-2016) and in that period, 90% of cases (4.739 persons) ended in full or partial deprivation of legal capacity, which shows that the guardianship practice is still prevalent in Serbia. It should be considered that this is not the total number, because ten courts (out of 66) have not sent their data.

The number of legal capacity reinstatements is increasing, which is very encouraging, while the number of full legal capacity deprivations has decreased by 10% in comparison to research conducted in 2012. Although such trends are encouraging and they can infer some important steps to changes, the results expressed in real numbers show that there were only 66 persons whose legal capacity was fully restored, and 276 persons with partial legal

¹⁰Kosana Beker and Tijana Milosevic, Legal Capacity –Practice and Laws in Serbia in 2016, MDRI-S, Belgrade, 2016

¹¹ Data received from 56 basic courts, out of 66.



capacity deprivation, which is still a very small number of the total persons under guardianship in Serbia¹². Persons with intellectual disabilities (40%) are mostly affected by such practice, then persons with psychosocial disabilities, while the number of elderly with dementia has been increasing in the guardianship proceedings.

Women with disabilities are more at risk regarding deprivation of legal capacity when it comes to the motherhood. Instead of providing adequate support to parenting, mothers with disabilities, especially intellectual, psychosocial and cognitive disabilities are pre-assessed as incapable and imposed additional conditions including ownership of a property, employment, marital status, support by the extended family, etc. which are all conditions not examined or put before women without disabilities. All these conditions also lead to presumption of lack of capacity to take care of a child on the grounds of disability. Single mothers with disabilities are in particularly vulnerable position, because they are not provided any additional support and their single parenting is observed as a condition for separation from a child.

Persons under guardianship in Serbia are denied the right to marry and the right to vote. Namely, persons deprived of legal capacity are explicitly deprived of their voting rights according the Constitution of the Republic of Serbia (article 18 – Every citizen who is of legal age and has legal capacity can vote and be voted on), and consequently the same provision exists in every electoral law¹³.

In conclusion, the Republic of Serbia has not acted upon recommendations of the CRPD Committee, Commissioner for Human Rights of the Council of Europe, the European Commission about abolishing plenary guardianship, reforming legal capacity law and practice, and ensuring procedural safeguards.

Recommendations:

- 1) Abolish plenary guardianship and reform the guardianship system over adults, especially prohibit discriminatory provisions for deprivation of legal capacity on the grounds of disability;
- 2) Harmonize legislation and practice in equality before the law for persons with disabilities and ensure alternatives to guardianship and supported decision-making models.

¹²Kosana Beker and Tijana Milosevic, *Legal Capacity –Practice and Laws in Serbia in 2016*, MDRI-S, Belgrade, 2016

¹³ Law on the Election of the President of the Republic, Law on Electing Members of Parliament