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POSITION OF PERSONS WITH DISABILITIES IN SERBIA

ZERO REPORT

POSITION OF PERSONS WITH DISABILITIES IN SERBIA – ZERO REPORT

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Dedicated to Gordana Rajkov (1944-2022), our colleague and friend, activist, the first Serbian National Assembly Deputy with a disability, and founder of the movement for independent living of persons with disabilities

01

INTRODUCTION

The Mental Disability Rights Initiative MDRI-S, since its establishment, has monitored and reported on the human rights of persons with intellectual and psychosocial disabilities, with a special focus on children with disabilities and persons with disabilities who live in social care institutions or are at risk of being placed in them.

This particular document presents findings in the form of a report on the position of all groups of people with disabilities in Serbia. The Zero Report was prepared with the support of Sweden within the program "Civil Society as a Force for a Change in Serbia's EU Accession Process – CS4EU" of the Belgrade Open School and the United Nations Team for Human Rights in Serbia.

In the preparation of the report, the structure of the United Nations Convention on the Rights of Persons with Disabilities, the first international legally binding document, was applied and was also drawn upon as a source of information, as were already existing relevant reports of state authorities and of independent institutions and civil society organizations, as well as the findings and recommendations of international bodies addressed to the Republic of Serbia.

The report focuses on several key areas – discrimination, accessibility, equal recognition before the law (legal capacity), independent living and be included in the community, personal mobility, education, health, work and employment, adequate standard of living and social protection, and participation in political and public life. Wherever possible and where the existence of adequate data allowed for it, special attention is paid to the position of children and women with disabilities, as multiply marginalized and discriminated groups.

1.1 Position of persons with disabilities across history

There are few historical sources that talk about the position of people with disabilities in different parts of the world and in different periods. Nevertheless, it is important to make an effort to reconstruct a picture of their life across history from the relatively small number of historical and archaeological sources, as this can significantly aid us in gaining an understanding of the relationship of society towards such persons in the present.

Archaeological findings from as far back as the Neolithic period indicate that there were people with very complex difficulties who lived to considerably advanced age. They could not have done so without the great support of the community. This may also be indicative of the attitude of prehistoric man towards people with disabilities, while at the same time it is often believed that people of these times may have thought that such persons with disabilities were endowed with magical powers.[1] Relics of such an understanding may be reflected in the belief, or expression, that people with disabilities are "angels on earth," a statement still often invoked.

The laws of Moses prescribe the obligation of the entire community to take care of those who are disadvantaged in any way (the poor, children without parents, those unable to work).[2] Similar statements can be found in legal documents from ancient Egypt, which prescribe the obligation of mercy towards the vulnerable, and that this holds for all believers.[3] Such attitudes have persisted to this day, and those who are dedicated to working with disabled people are often considered great humanitarians who do extremely difficult work out of charity.

In the times of classical antiquity, however, in Greece and Rome, infants with visible disabilities were often left to die, and those with milder forms of disability that were not apparent at birth or who acquired disabilities in the course of life were the responsibility of the family, not society, and were generally excluded from public and political life or were deprived of certain rights (inheritance, disposal of property, dealing with state affairs, etc.).[4] It would seem that the still contemporary practice of depriving certain persons with disabilities of their capacities for managing personal affairs, business, etc., and placing them under guardianship clearly has its roots in the Classical period.

The Middle Ages was an extended period of strive and discord, with frequent conflicts and epidemics. Therefore, the number of people with disabilities increased relatively. Yet at the same time, this period was marked by the influence of Christian teachings, which preached of mercy towards the sick and the weak. On the other hand, these same people were also stigmatized, punished, and abused under such leading doctrines, especially those who had mental illnesses that were often interpreted as a consequence of possession by the devil or of the sins of their ancestors. The Middle Ages was also an era that saw a kind of asylum for the "infirm" created alongside hospitals. Such institutional traditions emerged and existed both in Western Europe and in Byzantium, and these practices were also emulated in medieval Serbia. In the Serbian context, during the 13th and 14th centuries, the first asylums were created at certain monasteries where people with various types of disabilities, the old, and the sick were taken care of. Dušan's Code, in its Art. 28, prescribes the obligation of all monasteries to feed

1 Mihailović, Nataša et al., Položaj osoba sa invaliditetom kroz istoriju, (The Position of Persons with Disabilities across History), Zdravstvena zaštita, 2011, vol. 40, no. 5, p. 72-78..

2 Petrović, Jasmina, Pregled odnosa društva prema osobama sa invaliditetom kroz istoriju (An Overview of Society's Attitude towards People with Disabilities across History), Teme, vol. 36, no. 2, 2012, p. 865-866.

3 Ibid.

4 Petrović, Jasmina, Pregled odnosa društva prema osobama sa invaliditetom kroz istoriju (An Overview of Society's Attitude towards People with Disabilities across History), Teme, vol. 36, no. 2, 2012, p. 865-86.

the "paupers"[5] among them, and if they failed to do so, a strict sanction was prescribed for abbots and bishops – the removal of their title and position.[6] On the one hand, the existence of the asylum represented an important humanitarian function because such people in need received support without which they would not be able to survive, yet on the other hand, this also served to keep such persons off the streets, thus separating them from the community. The protection of the "poor and orphans" was ensured through the obligation of judges to visit the areas entrusted to them and ensure that their rights were not being violated.[7] This supposedly merciful way of treating persons with disabilities has in reality led to the widespread segregation and removal of these people from the wider community, practices which have persisted into the present day and are embodied by the existence of institutions for the accommodation of children and adult persons with disabilities.

The centuries that followed the Middle Ages did not bring much improvement to the position of these people – the 17th century was recorded as a time of great incarceration of marginalized groups, as well as an era of public display of people with impairments.[8] This was a generally accepted practice until the 19th century – the time of the establishment of institutional asylums, which despite their frequent and numerous flaws offered somewhat better living conditions for persons with disabilities rejected by society.

The 20th century was extensively marked by cruel treatment of people with disabilities – from sterilizations to mass murders based on eugenics. It was only after the Second World War that the position of people with disabilities gradually improved, yet with the traditional division of "us and them" still ever-present.

After the Second World War, and largely following the practices of the Soviet Union, a large number of homes for housing war orphans were established in Yugoslavia. The number of these homes decreased significantly after only a few years, however, as there was no longer a need to care for such a large number of children. What followed was a period of socialist self-management and social contract that lasted until the end of the eighties of the 20th century, when the first center for family accommodation was formed in Belgrade in 1963, which aimed to improve and expand family accommodation for children. With the beginning of the divisional or civil wars in the territory of Yugoslavia, during which unemployment and social insecurity significantly increased and alongside the impoverishment of families, inflation, sanctions, and a large number of refugees, many children with and without disabilities became abandoned and were sent to residential institutions. At the time, these children were classified according to age, disability, and behavioral problems.[9] In the second half of the 1990s, significant progress was made in reducing the total number of institutionalized children in regard to those children who had been held who were without developmental disabilities. Today, according to official figures, the number of children in institutions – including large institutions, small group homes, shelters, boarding schools, and institutions for adults with disabilities – has fallen by around 50% over the past 10 years. However, in the process Serbia has failed to resolve the situations of many children with developmental and other disabilities – many of whom have now reached adulthood – who were left out of the reform.[10]

5 The basic meaning of the word pauper is poor, but, given that the expression "ubog i siromah" (poor and infirm) is often found in medieval texts, it is assumed that the term pauper had a much broader meaning and that it included those who were weak, unable to work, widows, disabled people, etc.

6 Dušan's Code, Article 28, Belgrade: Srpska književna zadruga (Serbian Literary Cooperative), Prosveta, 1986, p. 60

7 Ibid, Article 179, p. 83

8 Petrović, Jasmina, Pregled odnosa društva prema osobama sa invaliditetom kroz istoriju (An Overview of Society's Attitude towards People with Disabilities across History), Teme, vol. 36, no. 2, 2012, pp. 865-86.

9 Žegarac, Nevenka, Editor, in: U Lavirintu socijalne zaštite: Pouke istraživanja o deci na porodičnom i rezidencijalnom smeštaju (Labyrinth of Social Protection: Lessons from Research on Children in Family and Residential Care), Faculty of Political Science, 2014.

10 Serbia's Forgotten Children, Disability Rights International and MDRI-S, 2021..

The project "Support for the deinstitutionalization and social inclusion of persons with mental disabilities and mental health problems" (IPA 2011), with support totaling 5.17 million euros, and known by the title "Open Arms," represented a next step, one that was primarily aimed at the deinstitutionalization of institutions for the accommodation of adult persons with intellectual and mental disabilities. In total, this project enabled 154 beneficiaries of accommodation services to leave such institutions, while most of the institutions involved in the project also developed transformation plans. However, primarily due to the lack of systemic and practical determination for real, concrete changes, the majority of beneficiaries who received support in the community during the project were eventually returned to institutions, which, despite the development of transformation plans, continue to function unchanged, with a constant number of beneficiaries.

The 1970s saw increased interest in the legal position of persons with disabilities, and the 1980s and 1990s saw the adoption of several important international documents.[11] People with disabilities themselves and the strong pressure of these people and their families gradually gave rise to the greatest idea of the movement of persons with disabilities – the social model, which was the ideological basis for, and finally culminated in, the adoption of the first internationally binding legal document, the UN Convention on the Rights of Persons with Disabilities from 2006.[12]

Over the centuries, it is documented that people with disabilities have been subjected to infanticide and starvation, they have been burned, shunned and isolated, strangled, plunged into boiling water, beaten, shackled and caged, tortured, gassed, shot, sterilized, incarcerated, and exploited for entertainment.[13] Such practices and attitudes have left an indelible mark on people's consciousness and, no matter how important the adoption of the Convention was and has been, the negative attitude towards people with disabilities that has lasted for thousands of years and the attitudes that were nurtured towards these people as poor and powerless, as those who are incapable of knowing anything and who cannot learn – these have survived into the present day.

1.2. Paradigm shift – Convention on the Rights of Persons with Disabilities

The Republic of Serbia is a signatory to the United Nations Convention on the Rights of Persons with Disabilities, which guarantees that persons with disabilities enjoy all human rights, equally with others. To enable easier understanding and application of this international treaty, the General Comments were drafted and are available, while for monitoring its implementation, the indicators of the Office of the United Nations High Commissioner for Human Rights (OHCHR) were drafted and are available.

11 Declaration on the Rights of Persons with Special Needs, UN General Assembly 1975; UN Resolution proposing to the Economic and Social Council the appointment of a special rapporteur to monitor violations of the human rights of persons with disabilities, 1984; UN Standard Rules for the Equalization of Opportunities for Persons with Disabilities, 1993.

12 Zakon o potvrđivanju Konvencije o pravima osoba sa invaliditetom (Law on Ratification of the Convention on the Rights of Persons with Disabilities), Official Gazette of the Republic of Serbia – International Commitments, No. 42/2009.

13 Marini, Irmo: The History of Treatment Toward People With Disabilities, In: Graf, Noreen M.; Marini, Irmo; Millington, Michael Psychosocial Aspects of Disability, 2nd Edition, Springer Publishing Company, 2017, pp. 4-28.

The Convention on the Rights of Persons with Disabilities [14] and its Optional Protocol were adopted on December 13, 2006, at a session of the United Nations General Assembly. It entered into force on May 3, 2008. So far, it has been ratified by 185 countries, among them the Republic of Serbia, on July 31, 2009.[15]

The importance of the Convention is not only that it is the first, legally binding international treaty on the rights of persons with disabilities, but also that it represents a complete paradigm shift in relation to people with disabilities. This means that the Convention guarantees that persons with disabilities enjoy all human rights, equally with others, and that discrimination on the basis of disability is prohibited. This advanced regard signifies a fundamental change in the treatment and respect of people with disabilities because they stand as subjects of law rather than as objects of protection and because it is based on the assumption of ability rather than on the assumption of incapacity. Art. 2 of the Convention prescribes reasonable accommodation, which is a principle that has not yet fully taken root, and implies appropriate modifications and adjustments necessary for the enjoyment of all human rights and freedoms on an equal basis with others. This approach should lead to the abandonment of the so-called medical model and the acceptance of the social model of disability, which enables a true human rights-based approach.

The General Comments[16] adopted by the UN Committee on the Rights of Persons with Disabilities were developed to aid in the interpretation and application of the key provisions of the Convention on the Rights of Persons with Disabilities. Thus far, seven such general comments have been adopted:

- General Comment No. 1 (2014) on Article 12: Equal recognition before the law;
- General Comment No. 2 (2014) on Article 9: Accessibility;
- General Comment No. 3 (2016) on Article 6: Women and girls with disabilities;
- General Comment No. 4 (2016) on Article 24: Right to inclusive education;
- General Comment No. 5 (2017) on Article 19: Right to independent living and be included in the community;
- General Comment No. 6 (2018) on Article 5: Equality and non-discrimination;
- General Comment No. 7 (2018) on Articles 4.3 and 33.3: Participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention.

The Committee on the Rights of Persons with Disabilities is currently working on drafting a general comment on the right of persons with disabilities to work and employment (Article 27) as well as the Guidelines for Deinstitutionalization.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has developed human rights indicators[17] as a key tool to facilitate the understanding and application of the provisions of the Convention. These indicators should improve the implementation of the Convention and the measurement of the fulfillment of human rights standards through enabling parties to:

14 https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html

15 Official Gazette of the Republic of Serbia – International Commitments, No. 42/2009.

16 General Comments are available at: https://www.ohchr.org/en/treaty-bodies/crpd/general-comments

17 Human rights indicators are available at: https://www.ohchr.org/en/disabilities/human-rights-indicators-convention-rights-persons-disabilities-support-disability-inclusive-2030#Indicators

- highlight the practical content of norms;
- measure progress;
- contribute to transparency and accountability; and
- strengthen monitoring of the recommendations of the Committee on the Rights of Persons with Disabilities;

Legislators, politicians and other decision-makers at all levels of government can benefit from these indicators in ascertaining what steps are needed to transform the respective legal, political, and budgetary frameworks. In addition, the indicators are meant to serve as a tool for any organization or body to assess the implementation of the provisions of the Convention by the state and to hold the Government accountable.

For a true understanding of the provisions of the Convention on the Rights of Persons with Disabilities, it is important to emphasize that it does not actually prescribe any new rights, but sets standards for the equal enjoyment of the existing corpus of human rights for persons with disabilities. Also, the essence of the Convention is that it emphasizes, in and of itself, that all the rights contained in it are interconnected, and that for full and equal participation in society, respect for all human rights is important, and that there is no more important or less important right and no more important or less important article of the Convention.

In 2009, the European Union acceded to the Convention on the Rights of Persons with Disabilities, thus introducing this international treaty into EU law, while making it both critically important and additionally binding for the Republic of Serbia, as a candidate country for membership.

1.3. Other important international documents

A number of international documents are important for the position of persons with disabilities, including the Charter of the United Nations (1945), the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights with Optional Protocols, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and the Convention on the Elimination of All Forms of Discrimination against Women.

As a member of the Council of Europe, the Republic of Serbia has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms,[18] as well as other European documents important for the position of persons with disabilities such as the Revised European Social Charter,[19] The Council of Europe Disability Action Plan 2006-2015,[20] and the new Strategy of the Council of Europe on the Rights of Persons with Disabilities 2017-2023.[21]

18 https://www.paragraf.rs/propisi/zakon-ratifikaciji-evropske-konvencije-ljudska-prava-osnovne-slobode.html

19 http://ravnopravnost.gov.rs/wp-content/uploads/2012/11/images_files_Revidirana_Evropska_socijalna_povelja_SE.pdf

20 https://rm.coe.int/1680595206

21 Council of Europe Disability Strategy 2017–2023, https://rm.coe.int/16806fe7d4

Of particular importance is the UN 2030 Agenda for Sustainable Development,[22] which seeks to encourage economic growth, eradicate poverty and discrimination against women, encourage overall education, etc., and whose goals reference disability in various sections related to education, growth and employment, and equality, as well as regarding data collection and the regular monitoring of this document.

1.4. Reporting and recommendations of international bodies

The Government of the Republic of Serbia has established a Council for Monitoring the Implementation of the Recommendations of the United Nations Mechanisms for Human Rights. The Platform of Organizations for Cooperation with United Nations Human Rights Mechanisms established by civil society organizations also monitors the implementation of the recommendations of international mechanisms and regularly reports on it. For this report, the recommendations sent by the Committee on the Rights of Persons with Disabilities are of particular importance. So far, thirty-two recommendations have been sent to Serbia. It is worrying that only one of them has been fulfilled in full, while 25 have been fulfilled partially.

In order to further facilitate cooperation with UN mechanisms for human rights, in 2014 the Government of the Republic of Serbia established a Council for Monitoring the Implementation of the Recommendations of United Nations Mechanisms for Human Rights.

The tasks of the Council are: to consider and monitor the implementation of the recommendations that the Republic of Serbia receives in the process of the Universal Periodic Review of the United Nations Human Rights Council and the recommendations of the United Nations treaty bodies – the Committee on Human Rights, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination , the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the Committee on the Rights of the Child, the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances; to propose measures for the implementation of received recommendations; to issue opinions on the progress of human rights in the reporting period; and to provide expert explanations on the state of human rights and the results achieved by implementing the recommendations.[23]

With the support of the OSCE Mission in Serbia and the UN Human Rights Team in Serbia, the Platform of Organizations for Cooperation with United Nations Human Rights Mechanisms was formed,[24] founded by civil society organizations recognizing the need and importance of a continuous and evidence-based reporting process to these bodies, as well as of the monitoring of the implementation of the recommendations that the mechanisms send to the Republic of Serbia.

In light of the position of persons with disabilities, of particular importance are the recommendations of the Committee on the Rights of Persons with Disabilities.[25] The Committee on

22 https://rsjp.gov.rs/wp-content/uploads/Agenda-UN-2030.pdf

23 https://www.minljmpdd.gov.rs/lat/savet-za-pracenje-un-preporuka.php

24 https://platforma.org.rs/

25 Concluding Observations on the Initial Report on Serbia, Committee on the Rights of Persons with Disabilities, 2016: https://platforma.org.rs/wp-content/uploads/2020/03/srpski-zakljucna zapazanja komiteta za prava osoba sa invaliditetom srb.pdf

the Rights of Persons with Disabilities has sent 32 recommendations to Serbia. Although a large number of them refer to systemic issues that need to be addressed continuously, with appropriate measures being taken regularly over a long period of time, it is worrying that only one recommendation, that listed in paragraph 62 – the ratification of the Marrakesh Treaty for enabling access to published works by persons who are blind, visually impaired, or otherwise unable to use printed materials, has been fully completed. Many important recommendations, such as those related to Article 19 (paragraph 40 of the Concluding Observations) have only partially implemented – the relevant deinstitutionalization strategy was adopted, but with numerous shortcomings – which are detailed below. According to the Analysis of the Implementation of the Recommendations of the Committee on the Rights of Persons with Disabilities in the Republic of Serbia,[26] at the time of its writing (2020), 25 recommendations had been partially implemented, several recommendations had not been implemented satisfactorily, and the recommendations from paragraphs 34 and 58 had not implemented. It is particularly worrying that the amendment of the Family Law and the harmonization of its provisions with Article 12 of the Convention have been delayed for several years. This law contains numerous anachronistic provisions that regulate the issue of the deprivation of legal capacity, which deprives people with disabilities of many rights, which will be discussed in greater detail later in this report.

Also significant in this context are the recommendations of the Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Prohibition of Discrimination against Women (CEDAW), the Committee against Torture (CAT), and the Committee on the Rights of the Child (CRC).[27]

In 2017, the Human Rights Committee sent the Republic of Serbia six recommendations[28] related to the position of persons with disabilities. While some of these have been partially fulfilled, those related to the deprivation of legal capacity, the recognition of the denial of reasonable accommodation as a form of discrimination, and the inclusion of disability as a basis for the criminal prosecution of those suspected of having committed hate crimes have yet to be met.

In 2014, the Committee on Economic, Social and Cultural Rights issued five recommendations[29] related to discrimination, unemployment, minimum wage, children without parental care, and education. None of these recommendations have been completely fulfilled, while especially important are those related to preventing the separation of children from their families by providing support in the community and not further accommodating such children in institutional protection.

The recommendations of the Committee on the Prohibition of Discrimination against Women were sent in 2019, eight of which referred to women with disabilities. As in the case of the recommendations of other international bodies, only some of these recommendations have been partially fulfilled, meaning the position of women and girls with disabilities and their protection is still unsatisfactory in the areas of education, health care, employment,

26 Tatić, Damjan, and Ivanka Jovanović, Analiza sprovođenja Preporuka Komiteta za prava osoba sa invaliditetom u Republici Srbiji (Analysis of the implementation of the Recommendation of the Committee on the Rights of Persons with Disabilities in the Republic of Serbia), 2. Publisher – NOOIS, 2020.

27 A review of all concluding observations and recommendations of the treaty bodies of the United Nations regarding the rights of persons with disabilities in the Republic of Serbia is available at the site of the Platform, at: https://platforma.org.rs/wp-content/uploads/2020/08/Radna-grupa-u-oblasti-prava-osoba-sa-invaliditetom.pdf

28 Ibid.

29 Ibid.

and political participation. Also referred to in these recommendations is the still-present practice of depriving such persons of legal capacity.

In 2015, the Committee against Torture sent the Republic of Serbia four recommendations[30] related to persons with disabilities. They have been only partially fulfilled, as restraints are still used in the relevant institutions, which operate without strict medical supervision, and without strict records.

In 2017, the Committee on the Rights of the Child sent its recommendations.[31] They refer to non-discrimination, the freedom of children from all forms of violence, children who are deprived of a family environment, the adoption of children, children with disabilities, and education. The recommendations related to the urgent reduction of the placement of children under the age of three in institutions, to the implementation of measures to reduce the number of children with disabilities in social welfare institutions, and to the improvement of data collection on children with disabilities, among other similar recommendations, have not yet been fulfilled.

The Committee on the Rights of Persons with Disabilities made the following recommendation to Serbia regarding Article 19 - Independent living and inclusion in the community:

- The Committee encourages the State Party to adopt a comprehensive strategy and measures for effective deinstitutionalization.
- The Committee recommends that the State party ensure that no investment is made for new institutions and that it allocate resources to enable all persons with disabilities to live independently and to have support in the community based on their own choice and preference.
- The Committee recommends removing barriers with a view to greater participation of organizations of persons with disabilities in the development of community-based services, especially at the level of municipalities.

1.5. Domestic legal framework

A large number of laws and by-laws, as well as strategic documents, are important for the position of persons with disabilities in the Republic of Serbia. In each of the chapters, their relevant provisions will be visited in more detail; here, they will only be indicated.

The Constitution of the Republic of Serbia[32] stipulates that everyone is equal before the Constitution and the law and that everyone has the right to equal legal protection, and it prohibits any discrimination, direct or indirect, on any basis, including mental or physical disability.

The Law on Prohibition of Discrimination[33] regulates the general prohibition of discrimination, forms and cases of discrimination, and the procedure for protection against discrimination; discrimination on the basis of disability is prohibited. The Law on the Prevention of Discrimination against Persons with Disabilities[34] regulates the general regime of the prohibition of discrimination on the basis of disability, special cases of discrimination against persons

30 Ibid.

31 Ibid.

32 Official Gazette of the Republic of Serbia, No. 98/2006 and 115/2021.

33 Official Gazette of the Republic of Serbia, No. 22/2009 and 52/2021.

34 Official Gazette of the Republic of Serbia, No. 33/2006 and 13/2016.

with disabilities, and the procedure for the protection of persons exposed to discrimination on the basis of disability, as well as indicates measures taken to promote the equality and social inclusion of persons with disabilities. This law also prohibits harassment, victimization, and invoking, inciting, and assisting in discriminatory behavior.

The Labor Law, [35] the Law on Professional Rehabilitation and Employment of Persons with Disabilities,[36] The Law on Healthcare Protection,[37] the Law on Fundamentals of the Education System,[38] the Law on Patients' Rights,[39] the Law on the Protection of Persons with Mental Disabilities,[40] the Law on Movement with the Help of Guide Dogs,[41] the Law on the Use of Sign Language [42], the Law on the Rights of Users of Temporary Accommodation Services in Social Protection,[43] and the Law on Planning and Construction[44] all contain anti-discrimination provisions against persons with disabilities.

Standing out alongside many other legal regulations that are important for the analysis of the position of persons with disabilities are the Family Law[45] and the Law on Non-monetary Proceedings, [46] which, among other things, regulate the deprivation of legal capacity and whose reform and improvement are necessary.[47]

1.6. Basic statistical data

According to the census data from 2011, 571,780 citizens were identified as persons with disabilities, representing about 8% of the total population. However, it should be added that the disability status of 119,482 citizens is unknown, which represents an additional 1.66% of the total population. Of the total number of people with disabilities, more than 58% are women, with men slightly lower, at almost 42%. The average age of people with disabilities is 67 years.

According to the data of the Republic Institute of Statistics, the estimated number of inhabitants of the Republic of Serbia in 2020 was 6,899,126.[48] The 2011 census included, for the first time, questions related to functional difficulties: people with disabilities, as well as their

35 Official Gazette of the Republic of Serbia, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – decision of the Constitutional Court, 113/2017, and 95/2018 – authentic interpretation.

36 Official Gazette of the Republic of Serbia, No. 36/2009, 32/2013, and 14/2022 – state law.

37 Official Gazette of the Republic of Serbia, No. 25/2019.

38 Official Gazette of the Republic of Serbia, No. 88/2017, 27/2018 – state law, 10/2019, 27/2018 – state law, 6/2020, and 129/2021.

39 Official Gazette of the Republic of Serbia, No. 45/2013 and 25/2019 – state law.

40 Official Gazette of the Republic of Serbia, No. 45/2013.

41 Official Gazette of the Republic of Serbia, No. 29/2015.

42 Official Gazette of the Republic of Serbia, No. 38/2015.

43 Official Gazette of the Republic of Serbia, No. 126/2021.

44 Official Gazette of the Republic of Serbia, No. 72/2009, 81/2009 – amendment, 64/2010 – decision of the Constitutional Court, 24/2011, 121/2012, 42/2013 – decision of the Constitutional Court, 50/2013 – decision of the Constitutional Court, 98/2013 – decision of the Constitutional Court, 132/2014, 145/2014, 83/2018, 31/2019, 37/2019 – state law, 9/2020, and 52/2021.

45 Official Gazette of the Republic of Serbia, No. 18/2005, 72/2011 – state law, and 6/2015.

46 Official Gazette of the Republic of Serbia, No. 25/82, 48/88, 46/95 – state law, 18/2005 – state law, 85/2012, 45/2013 – state law, 55/2014, 6/2015, 106/2015 – state law, and 14/2022.

47 Beker, Kosana, and Tijana Milošević, Katalog pravnih propisa Republike Srbije u vezi sa poslovnom sposobnošću (Catalogue of Legal Regulations of the Republic of Serbia related to Legal Capacity), MDRI-S, 2016..

48 Statistical Yearbook of the Republic of Serbia: 2021, Belgrade, The Statistical Office of the Republic of Serbia, 2021: https://publikacije.stat.gov.rs/G2021/Pdf/G20212054.pdf

parents or other family members reporting difficulties, related to sight, hearing, walking, memory/concentration, independence, and communication. There is not suitable space in this report to explain the methodology of the census and its limitations. However, it is important to point out that it is not possible to identify types of disability through census questions in the way it is usually carried out. Also, the very definition of disability in different organizations or countries differs, so there is no reliable, comparable data. For example, the World Health Organization views disability as an interaction between health status and limitations related to life activities and social inclusion, and estimates that currently over a billion people live in the world with some form of disability, which is about 15% of the total population.

Based on the results of the census, as well as a special study titled Persons with Disabilities in Serbia, authored by Milan M. Marković,[49] there are, for the first time in the country, more precise data on the number of persons with disabilities, as well as on the demographic, educational, economic, and other characteristics of these persons. According to the census data from 2011, 571,780 citizens were identified as persons with disabilities, which represents about 8% of the total population. As indicated above, however, it should be added that the disability status of 119,482 citizens is unknown, which represents an additional 1.66% of the total population. Of the total number of people with disabilities, more than 58% are women, with men accounting for slightly less than 42%. The average age of people with disabilities is 67 years.

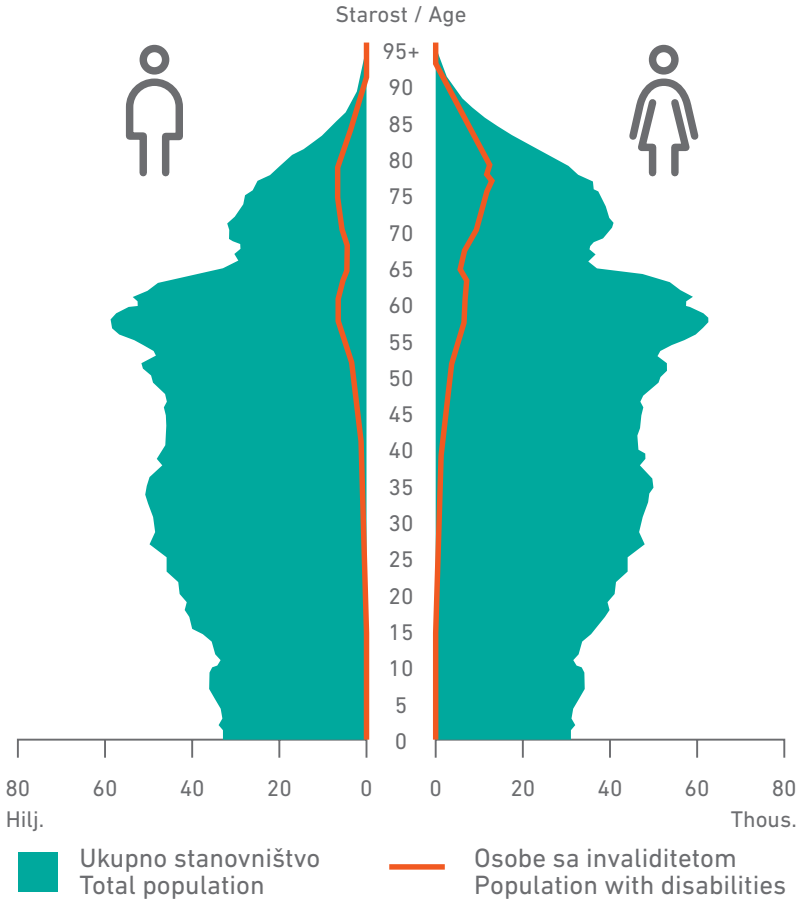
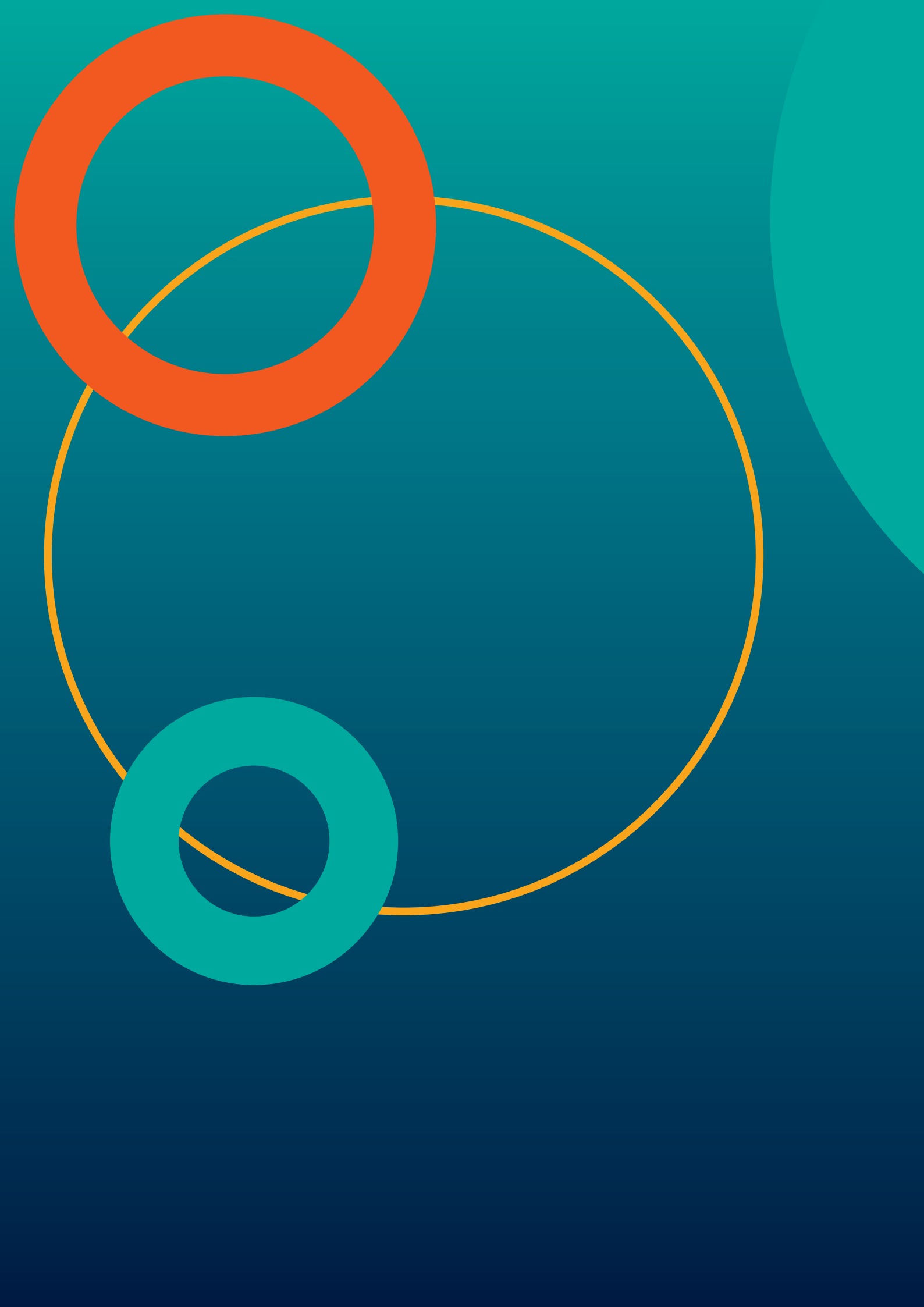


Chart 1: Total population and number of persons with disabilities, by gender and age, Census 2011.[50]

49 Marković, Milan M., Persons with Disabilities in Serbia, Belgrade, The Statistical Office of the Republic of Serbia, 2014: https://pod2.stat.gov.rs/ObjavljenePublikacije/Popis2011/Invaliditet.pdf

50 Statistical Yearbook of the Republic of Serbia: 2021, Belgrade, Statistical Office of the Republic of Serbia, 2021, p. 44: https://publikacije.stat.gov.rs/G2021/Pdf/G20212054.pdf



02

ARTICLE 5

EQUALITY AND NON-DISCRIMINATION

The Convention on the Rights of Persons with Disabilities expressly prohibits discrimination against them. In Serbia, in the reports of the Commissioner for the Protection of Equality, however, it is stated every year that persons with disabilities face numerous and varied problems in various areas of social life. Discrimination against persons with disabilities is prohibited by various legal regulations in Serbia, yet among the complaints of the Commissioner for the Protection of Equality complaints on this basis are the most frequent. Citizens with disabilities in the country often struggle with problems of accessibility, availability of information, and education, while women with disabilities represent a particularly affected group.

The essence of the Convention on the Rights of Persons with Disabilities is the prohibition of discrimination and effective legal protection against discrimination on any basis. In Art. 2 of the Convention, discrimination based on disability is defined as any difference, exclusion, or restriction based on disability which has the aim or effect of impairing or nullifying the recognition, enjoyment, or exercise, equally with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other area. It includes all forms of discrimination, including denial of reasonable accommodation. In the domestic legal framework, there is a general definition of discrimination, primarily in the Law on the

Prohibition of Discrimination, where in Art. 2, it is stated that "the terms 'discrimination' and 'discriminatory treatment' mean any unjustified distinction or unequal treatment, i.e., failure (exclusion, limitation, or priority), in relation to persons or groups as well as members of their families, or persons close to them, overtly or covertly, based on race, skin color, ancestry, citizenship, national or ethnic origin, language, religious or political beliefs, sex, gender, gender identity, sexual orientation, sexual characteristics, income level, property condition, birth, genetic characteristics, health condition, disability, marital and family status, convictions, age, appearance, membership in political, trade union, and other organizations, and other real or assumed personal characteristics."

The Committee on the Rights of Persons with Disabilities has expressed concern that there is no clear definition of discrimination based on disability in the legal regulations and that they do not include all forms of discrimination, above all in reference to the stipulation that the refusal to provide reasonable accommodation in all areas constitutes an act of discrimination.[51] In General Comment no. 6,[52] the Committee issued a broader interpretation of the definition of disability, listing four forms of discrimination: direct discrimination, when, in the same or in a similar situation, persons with disabilities are treated less favorably than other persons who do not have this personal characteristic; indirect discrimination, when adopted laws or policies put people with disabilities in an unequal position due to their personal characteristics; denial of reasonable accommodation, which constitutes discrimination if necessary and appropriate modifications and adjustments are necessary to ensure the equal exercise of human rights and freedoms for a person with disabilities, and these modifications are refused; and abuse, when unwanted behavior towards persons with disabilities occurs with the aim of violating the dignity of the person and creating a hostile, humiliating, or threatening environment. In connection with this type of discrimination, special consideration is necessary in regard to people with disabilities who live in residential institutions or psychiatric hospitals, and children with disabilities who attend special schools, for in a segregated environment there is a greater possibility that this type of discrimination will be manifested.

In 2021, the Law on the Prohibition of Discrimination in was amended, improving the law through expanding the list of protected personal characteristics; furthermore, segregation, incitement to discrimination, and sexual harassment are prohibited; also stipulated are the obligation of employers regarding access and the reasonable adaptation of the workplace, and the obligation of public authorities to assess the impact of regulations or policies and their compliance with the principle of equality when preparing a new regulation. Yet a key form of discrimination based on disability – the denial of reasonable accommodation in all areas – was not introduced; despite organizations of persons with disabilities submitting such a proposal, it was in the end rejected. The first version of the law had however already established the Commissioner for the Protection of Equality was as an independent body, with recent amendments expanding the powers of the Commissioner and ensuring continuity in the work of this institution.

51 Concluding observations on the initial report of Serbia (regarding Specific Rights (Articles. 5-30), 10: The Committee recommends that the State party review its legal framework with the aim of including a definition of discrimination based on disability that would explicitly apply to all forms of discrimination, as well as of including the concept of reasonable accommodation and ensuring that appropriate laws and regulations establish that the refusal of reasonable accommodation is a form of discrimination on the basis of disability. The Committee also recommends that the State party introduce an effective and proportionate remedy, including penalties as a deterrent..

52 Available at: https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-non-discrimination

Recently, Serbia adopted a new Strategy for the Prevention of and Protection against Discrimination for the period 2022-2030,[53] in which, with the aim of equalizing the opportunities for members of groups at risk of discrimination to enjoy freedom and all human rights on an equal basis with others, as well as with the goal of improving the efficiency of the system of preventing and protecting against discrimination in all areas and at all levels, the following priorities stand out: further harmonization of the legal framework with anti-discrimination standards; improving the social position of members of groups that are at risk of discrimination; strengthening intersectoral cooperation; the inclusion of the principles of equality and non-discrimination in all policies and laws; reducing social and other distances towards members of groups that are at risk of discrimination; improving mechanisms for protection against discrimination and mechanisms for cooperation with civil society organizations; strengthening the capacities and visibility of the Commissioner for the Protection of Equality; establishing an adequate system for collecting and recording data on the position of members of groups that are at risk of discrimination; and improving the competencies of public officials, holders of judicial functions, and other relevant actors in the systems for preventing and protecting against discrimination.

Despite the relatively high-quality legal framework, in the regular annual reports of the Commissioner for the Protection of Equality, the reason for which the greatest amount of complaints of discrimination have been filed has been discrimination,[54] or discrimination based on disability has been at the very top of the number of complaints.[55] It is problematic that the Commissioner does not regard as discrimination cases of denial of reasonable accommodation, stating that this definition does not exist in the domestic legal framework. However, it is very important to emphasize that with its ratification, the Convention on the Rights of Persons with Disabilities became part of our legal framework and must be directly applied. The Commissioner's reports state every year that people with disabilities face numerous and diverse problems in various areas of social life. When it comes to children with disabilities, they most often face discrimination in the fields of education and of health and social care, while for adults with disabilities, it is in the field of employment. Children and people with disabilities living in residential institutions are in a particularly bad position.[56] Women with disabilities, especially women living in social and health care institutions, are often exposed to multiple discrimination and face numerous obstacles in exercising their rights, as well as various types of gender-based violence. Too frequently, their reproductive and sexual rights are violated, they are denied the right to informed consent to certain medical measures, and in a large number of cases they suffer partner-based and other forms of gender-based violence (from other users of, and from employees in, institutions), while at the same time there is a lack of adequate protection and prevention.[57]

Due to the ongoing perpetuation of the practice of depriving persons with disabilities of their legal capacity and placing them under guardianship, these persons, who are the group most at risk of being subjected to this procedure, are deprived of many rights and prevented from

53 Strategy for the Prevention of and Protection against Discrimination for the period 2022-2030, Official Gazette of the Republic of Serbia, No. 12/2021.

54 Regular Annual Report of the Commissioner for the Protection of Equality for 2019 (2020).

55 Regular Annual Report of the Commissioner for the Protection of Equality for 2020 (2021) and the Regular Annual Report of the Commissioner for the Protection of Equality for 2021 (2022).

56 See reports from: Mental Disability Rights Initiative of Serbia MDRI-S – Serbia's Forgotten Children, 2021, The Hidden and Forgotten, 2012

57 Beker, Kosana, and Biljana Janjić, Guidelines for Service Providers: Accessible and Available Services for Women with Disabilities with the Experiences of Institutionalization, Belgrade, MDRI-S, 2021.

making decisions about their own lives, such as where and with whom to live, how they will dispose of their own property and income, while very often, after being deprived of legal capacity, they are placed in social welfare institutions and separated from society.

People with disabilities are also exposed to unequal treatment due to accessibility problems, not only because they are not provided with unhindered access to facilities, services, and transportation, but also because of information inaccessibility for people who cannot see, cannot hear, or have intellectual and/or mental disabilities.

In the following chapters, there will be further presentation on such discrimination and the problem of exercising rights in various areas such as education, health and social protection, access to justice and equal recognition before the law, participation in public and political life.

In its concluding observations addressed to the Republic of Serbia on Article 5 - Equality and non-discrimination, the Committee on the Rights of Persons with Disabilities stated the following:

- The Committee is concerned that the anti-discrimination legislation is not systematically applied, that legislation lacks a clear definition of disability-based discrimination and does not address all forms of discrimination.
- The Committee is concerned that neither the concept of reasonable accommodation, nor the recognition that the denial of such accommodation is a form of discrimination are explicitly included in anti-discrimination laws.

03

ARTICLE 9

ACCESSIBILITY

Accessibility permeates every segment of life and it is not possible to analyze it as part of the competence of a single establishment. Therefore, this report contains an analysis of the legislative, strategic, institutional, and practical frameworks of accessibility according to key areas that are defined, first of all, in the United Nations Convention on the Rights of Persons with Disabilities.

Ensuring accessibility is a basic prerequisite for the full and equal inclusion of people with disabilities in society. Article 9 of the Convention on the Rights of Persons with Disabilities refers to accessibility and it emphasizes that the States, as signatories to the Convention, are obliged to take appropriate measures to ensure access to the physical environment, transportation, and information and communications, including information and communication technologies and systems, as well as other benefits and services made available to the public.

There is no single definition of the concept of accessibility, but different definitions are contained in international standards, in which they are formulated in relation to what the specific standard refers to. These are: International standard ISO 9241-11:2018, 3.2.2.,[58] Standard ISO 21542:2021 Building construction – Accessibility and usability of the built environment,[59] ISO/IEC 2382-36:2019 Information technology,[60] ISO/IEC DIS 23859-1 Information technology – User interfaces – Part 1: Guidelines on how to make written text easy to read and easy to understand.[61]

58 https://www.electropedia.org/iev/iev.nsf/display?openform&ievref=871-01-01, accessed 12.03.2022

59 https://www.iso.org/obp/ui/#iso:std:iso:21542:ed-2:v1:en, accessed 12.03.2022

60 https://www.iso.org/standard/66692.html, accessed 12.03.2022

61 https://www.iso.org/obp/ui/#iso:std:iso-iec:23859:-1:dis:ed-1:v1:en, accessed 12.03.2022

In this context, it would also be pertinent to highlight the following European standards: European standard EN 301 549 V3.2.1 (2021-03) Accessibility requirements for ICT products and services),[62] European standard BS EN 17210:2021 Accessibility and usability of the built environment – Functional requirements.[63]

Accessibility relies on the concept of universal design and the concept of design for all. The concepts of universal design and design for all aim to ensure that objects, products, environments, programs, and services, to the greatest extent possible, can be used by all people without additional adaptation or reconstruction. Accessibility is the practical application of universal design or design for all.

Another relevant term that is further clarified in General Comment 2, indicated by the Committee on the Rights of Persons with Disabilities of the United Nations [64] and which is important to mention in the context of accessibility, is "reasonable accommodation." While accessibility refers to groups of people, i.e., to all people, reasonable accommodation means making something accessible to an individual. In the case of individuals who have rare forms of disabilities, which could not be taken into account when relevant standards were being written, or who do not use the methods, means, and ways made available to achieve accessibility, even the application of accessibility standards may not be sufficient to ensure accessibility. In such situations, reasonable adjustments can be applied.

For the sake of additional interpretation of what this article specifically obliges and with the aim of clearly presenting to the contracting states what obligations stem from Article 9 of the Convention, the United Nations Committee on the Rights of Persons with Disabilities adopted General Comment 2,[65] which describes in detail what accessibility is, any and all forms of accessibility that might exist, and which segments of the life of persons with disabilities, but not restricted only to persons with disabilities, are being referred to.

Ensuring accessibility in terms of physical environment, transportation, and information and communication, as well as of goods and services, is necessary to enable the full and equal inclusion of persons with disabilities in society. As indicated above, accessibility permeates every segment of life and it is not possible to analyze it as part of the competence of a single establishment. Consequently, this report contains an analysis of the legislative, strategic, institutional, and practical frameworks of accessibility according to key areas that are defined, above all, in the United Nations Convention on the Rights of Persons with Disabilities.

Particularly relevant in the field of accessibility in Serbia is the Law on the Prevention of Discrimination against Persons with Disabilities,[66] which in Article 13 recognizes discrimination in relation to the provision of services and the use of facilities and areas and prescribes that discrimination based on disability is prohibited in terms of the availability of services and access to facilities in public use and public areas. Discrimination on the basis of disability regarding the availability of services particularly includes: refusal to provide services to a person with a disability, unless the provision of a service would endanger the life or health of

62 https://www.etsi.org/deliver/etsi_en/301500_301599/301549/03.02.01_60/en_301549v030201p.pdf, accessed 12.03.2022

63 https://www.en-standard.eu/bs-en-17210-2021-accessibility-and-usability-of-the-built-environment-functional-requirements/, accessed 12.03.2022

64 https://www.ohchr.org/en/treaty-bodies/crpd/general-comments, accessed 12.03.2022

65 https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/033/13/PDF/G1403313.pdf?OpenElement, accessed 12.03.2022

66 Official Gazette of the Republic of Serbia, No. 33/2006 and 13/2016

a person with a disability or another person; providing a service to a person with a disability under different and less favorable conditions than those under which the service is provided to other users, unless providing the service under regular conditions would endanger the life or health of a person with a disability or another person; refusal to carry out the technical adaptation of the facility necessary to provide the service to a disabled user.

A particularly important part of the regulation is found in Article 33 of this law, which clearly prescribes the competence regarding the ensuring of accessibility, stipulating that local self-government units are obliged to take measures with the aim of making the physical environment, buildings, public areas, and transport accessible to people with disabilities.

This law also obliges the public authorities to enable a person with a disability who has permanent consequences of physical or sensory damage or illness to sign documents with the help of a stamp containing personal identity data or with the help of a stamp with an engraved signature in proceedings before those authorities. However, contradictory here is that this same article also contains a provision that states that documents that represent the form of a contract or some other legal transaction cannot be signed in accordance with paragraph 2 of this article, but rather in accordance with the regulations governing signature verification and document confirmation. This situation consequently called into question the validity and recognition of signatures with the help of seals with engraved signatures on numerous documents – while in practice it often happens that people who use this way of signing are forced to sign with their fingerprints. Following the later efforts of organizations of persons with disabilities, the Law was subsequently amended with Article 34a, which states that legal and natural persons are obliged to enable a person with a disability who has permanent consequences of a physical or sensory impairment or illness to gain access to services by signing, when necessary, with the help of a seal that contains personal identity information or with the help of a stamp with an engraved signature. Yet despite this amendment, due to the continued application of the provisions of the Law on the Certification of Signatures, Manuscripts, and Transcripts, it happens that signing in this way is at times not allowed, especially in regard to employment of the services of public notaries.

The law also defines measures for ensuring access to information in such a way that the bodies of state administration, territorial autonomy, and local self-government responsible for culture and media are obliged to take measures with the aim of making information and communication accessible to people with disabilities through the use of appropriate technologies, and especially the daily communication of information intended for persons with disabilities using the appropriate technology of simultaneous written text. Here, the particular phrase “communicating information also intended for persons with disabilities” raises pertinent questions, because as it is phrased it could lead to the interpretation or be understood to mean that not all daily information is intended for persons with disabilities and that there is a special type of information for persons with disabilities, a type that is potentially different from the general information that is intended to everyone, suggesting that the obligation and amount of provided accessible information could be narrowed.

In regard to the punitive measures prescribed by this law, although there is a prescribed penalty for refusing to provide a service, the question arises as to whether the inaccessibility of the facility where the service is provided or the inaccessibility of the service itself is considered a refusal to provide the service, potentially leaving open the possibility for the inaccessibility to be used as excuse for not providing the respective service.

The Republic of Serbia also regulates the issue of accessibility in sections of other laws, the overview of which is presented in the following table:

Field of regulation	Legal regulations
Accessibility of the built environment and traffic infrastructure	Law on the Prohibition of Discrimination[67] Law on Planning and Construction[68] The Rulebook on Technical Standards of Planning, Designing and Construction of Buildings which ensure Unhindered Movement and Access to Persons with Disabilities, Children and the Elderly[69] Law on Movement with the Help of a Guide Dog[70] Rulebook on the conditions and manner of using public facilities in the field of health care by a person who moves with the help of a guide dog[71] Law on Road Traffic Safety[72] Law on Railways[73] Law on the Transportation of Passengers in Road Traffic[74] The Air Transport Act[75] and the Road Transport Act[76] do not contain provisions on accessibility
Accessibility of information and communication	Law on Public Information and Media[77] Law on Electronic Media[78] Law on Electronic Communications[79] Law on Public Media Services[80] Law on Electronic Administration[81]

67 Official Gazette of the Republic of Serbia, No. 22/2009 and 52/2021.

68 Official Gazette of the Republic of Serbia, No. 72/2009, 81/2009 – amendment., 64/2010 – Decision of the Constitutional Court, 24/2011, 121/2012, 42/2013 – Decision of the Constitutional Court, 50/2013 – Decision of the Constitutional Court, 98/2013 – Decision of the Constitutional Court, 132/2014, 145/2014, 83/2018, 31/2019, 37/2019 – state law, 9/2020, and 52/2021.

69 Official Gazette of the Republic of Serbia, No. 22/2015.

70 Official Gazette of the Republic of Serbia, No. 29/2015.

71 Official Gazette of the Republic of Serbia, No. 87/2015.

72 Official Gazette of the Republic of Serbia, No. 41/2009, 53/2010, 101/2011, 32/2013 – Decision of the Constitutional Court, 55/2014, 96/2015 – state law, 9/2016 – Decision of the Constitutional Court, 24/2018, 41/2018, 41/2018 – state law, 87/2018, 23/2019, and 128/2020 – state law.

73 Official Gazette of the Republic of Serbia, No. 41/2018.

74 Official Gazette of the Republic of Serbia, No. 68/2015, 41/2018, 44/2018 – state law, 83/2018, 31/2019, and 9/2020.

75 Official Gazette of the Republic of Serbia, No. 73/2010, 57/2011, 93/2012, 45/2015, 66/2015 – state law, 83/2018, and 9/2020.

76 Official Gazette of the Republic of Serbia, No. 46/95, 66/2001, 61/2005, 91/2005, 62/2006, 31/2011 i 68/2015 – state laws.

77 Official Gazette of the Republic of Serbia, No. 83/2014, 58/2015, and 12/2016 – authentic interpretation.

78 Official Gazette of the Republic of Serbia, No. 83/2014, 6/2016 – state law, and 129/2021.

79 Official Gazette of the Republic of Serbia, No. 44/2010, 60/2013 – Decision of the Constitutional Court, 62/2014 and 95/2018 – state law.

80 Official Gazette of the Republic of Serbia, No. 83/2014, 103/2015, 108/2016, 161/2020, and 129/2021.

81 Official Gazette of the Republic of Serbia, No. 27/2018.

Field of regulation	Legal regulations
Accessibility of information and communication	Law on Electronic Document, Electronic Identification and Trust Services in Electronic Business[82] Law on the Use of Sign Language[83] Law on the Ratification of the Marrakesh Treaty to Enable Access to Published Works by Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled[84] Rulebook on universal service[85]
Accessibility of services and products	Law on Public Procurement[86]
Tourism and hospitality services	Law on Tourism[87] Law on Hospitality Services[88] Rulebook on the conditions and manner of performing hospitality activities, the manner of providing hospitality services, the classification of hospitality facilities and minimum technical conditions for arranging and equipping hospitality facilities[89]
Culture	Law on Culture[90] Law on the Library and Information Service[91] Law on Copyright and Related Rights[92] Law on Museum Activity[93]
Education	Law on Textbooks[94] Law on the Fundamentals of the Education System[95]

82 Official Gazette of the Republic of Serbia, No. 94/2017.

83 Official Gazette of the Republic of Serbia, No. 38/2015.

84 Official Gazette of the Republic of Serbia – International commitments, No. 1/2020.

85 Official Gazette of the Republic of Serbia, No. 24/2012.

86 Official Gazette of the Republic of Serbia, No. 91/2019.

87 Official Gazette of the Republic of Serbia, No. 17/2019.

88 Official Gazette of the Republic of Serbia, No. 17/2019.

89 Official Gazette of the Republic of Serbia, No. 48/2012 and 58/2016.

90 Official Gazette of the Republic of Serbia, No br. 72/2009, 13/2016, 30/2016 – amendment, 6/2020, 47/2021, and 78/2021.

91 Official Gazette of the Republic of Serbia, No. 52/2011 and 78/2021.

92 Official Gazette of the Republic of Serbia, No. 104/2009, 99/2011, 119/2012, 29/2016 – Decision of the Constitutional Court, and 66/2019.

93 Official Gazette of the Republic of Serbia, No. 35/2021 and 96/2021.

94 Official Gazette of the Republic of Serbia, No. 27/2018.

95 Official Gazette of the Republic of Serbia, No. 88/2017, 27/2018 – state law, 10/2019, 27/2018 – state law, 6/2020, and 129/2021.

Field of regulation	Legal regulations
Education	Law on Adult Education[96] Law on Higher Education[97] The Rulebook on standards and procedures for the accreditation of higher education institutions[98] contains three important standards for greater accessibility of higher education institutions
Healthcare provision	Law on Healthcare Protection[99] Law on the Rights of Patients[100]
Social protection	Law on Social Protection[101]
Sport	Law on Sport[102]
Gender equality	Law on Gender Equality[103]
Risk situations and humanitarian disasters	Law on Disaster Risk Reduction and Emergency Situations Management[104]
Equality before the law and access to justice	Key changes are expected in the Law on Civil Procedure and the Family Law and in the Constitution of the Republic of Serbia
Personal freedom and security	Law on the Execution of Criminal Sanctions[105]
Participation in political and public life	Law on Election of Members of Parliament[106]

Table 1: overview of legislation in the Republic of Serbia relevant to the field of accessibility

These numerous regulations obligate different actors to ensure, in different ways, accessibility for persons with disabilities and are more or less aligned with the standards of human rights and rights of persons with disabilities contained in the Convention. For example, the Law on the Use of Sign Language[107] is the most relevant for providing accessible information and accessible communication and it regulates the way of using sign language, the right to

96 Official Gazette of the Republic of Serbia, No. 55/2013, 88/2017 – state law, 27/2018 – state law, and 6/2020 – state law.

97 Official Gazette of the Republic of Serbia, No. 88/2017, 73/2018, 27/2018 – state law, 67/2019, 6/2020 – state laws, 11/2021 – authentic interpretation, 67/2021, and 67/2021 – state law.

98 Official Gazette of the Republic of Serbia, No. 13 /2019.

99 Official Gazette of the Republic of Serbia, No. 25/2019.

100 Official Gazette of the Republic of Serbia, No. 45/2013 and 25/2019 – state law.

101 Official Gazette of the Republic of Serbia, No. 24/2011.

102 Official Gazette of the Republic of Serbia, No. 10/2016.

103 Official Gazette of the Republic of Serbia, No. 52/2021.

104 Official Gazette of the Republic of Serbia, No. 87/2018.

105 Official Gazette of the Republic of Serbia, No. 55/2014 and 35/2019.

106 Official Gazette of the Republic of Serbia, No. 14/2022.

107 Official Gazette of the Republic of Serbia, No. 38/2015.

learn sign language, the right to use the service of a sign language interpreter, the manner in which the service of a sign language interpreter is employed, measures to encourage the application and improvement of the use of sign language through information and education in sign language, and other matters of importance for the use of sign language. However, the largest burden of providing interpreter services has been shifted to civil society organizations that represent the rights of deaf and hard of hearing people, and the question arises as to whether the organizations have the capacity to meet all the needs of deaf users, especially in light of the absence of a systemic determination of institutions to work on improving the conditions for the use of sign language to the degree that is necessary.

After submitting the Initial Report on the Implementation of the Convention on the Rights of Persons with Disabilities in Serbia, the Committee on the Rights of Persons with Disabilities observed numerous problems in the field of accessibility and made concluding observations and recommendations:

> The Committee is concerned about the lack of a national accessibility strategy or legislation with effective sanctions for non-compliance and about the low degree of accessibility of public buildings, institutions and services, and electronic mass media services in the State party.
>
> *(The Committee on the Rights of Persons with Disabilities on accessibility in the concluding observations sent to the Republic of Serbia)*

The Committee is concerned about the lack of a national accessibility strategy and legislation containing effective sanctions for non-compliance, as well as about the low level of accessibility of public buildings, institutions, services, and electronic media services in the signatory State party.

The Committee recommends that the Member State develop a comprehensive plan: to ensure accessibility with effective monitoring and a road map that will establish starting points for removing existing barriers; to promote universal design for all buildings, public services and public transport, as well as in regard to accessibility of information and media, especially electronic media, all in line with General Recommendation No. 2 on Accessibility. In this regard, the Committee recommends that the Member State: designate sufficient means to monitor the implementation of accessibility standards, supported by an updated national database on its territory; establish effective deterrent sanctions that may be imposed for non-compliance; increase subtitling and sign language translation in the media; and include organizations of persons with disabilities in this process. The Committee also recommends that the member state take into particular consideration the connection between Article 9 of the Convention and Goal 11, sub-goals 11.2 and 11.7., from the UN 2030 Agenda for Sustainable Development.

It is important to point out that the Republic of Serbia has not adopted or "developed a comprehensive plan for ensuring accessibility with effective monitoring and a road map that will establish starting points for removing existing obstacles" as recommended by the United Nations Committee on the Rights of Persons with Disabilities. Precisely because of the lack of a strategic framework for accessibility, individual initiatives generally do not lead to a significant improvement of accessibility either at the national or local level. A strategic framework is important for determining the current situation in terms of accessibility, preparing a plan for removing barriers and prioritizing facilities, information, communication, services, and

products according to the necessities of the functioning of persons with disabilities and their inclusion in society. Nonetheless, in the absence of other strategic documents, the following strategic documents must be mentioned, which in their integral forms contain sections related to accessibility:

In its concluding observations on this article of the Convention, the Committee on the Rights of Persons with Disabilities recommended to Serbia that:

- The signatory state develop a comprehensive accessibility plan, and ensure efficient monitoring of that plan, and a roadmap that sets benchmarks for the removal of barriers;
- Promote universal design for all buildings, public services, and public transport, and accessible information and social communication media, paying special attention to electronic media, in accordance with General Comment no. 2 (2014) on accessibility (Article 9).

In this regard, the Committee recommends that the State party:

- allocate sufficient resources to monitor the implementation of accessibility standards, with the support of an updated national database throughout its territory;
- establish enforceable, effective and dissuasive sanctions for non-compliance;
- increase the use of subtitling and sign language interpretation in the media;
- involve organizations of persons with disabilities in the process.

The Committee also recommends that the member state take into consideration the connection between Article 9 of the Convention and Goal 11, sub-goals 11.2 and 11.7., from the Sustainable Development Goals of the UN 2030 Agenda for Sustainable Development.

The Strategy for Improving the Position of Persons with Disabilities 2020 – 2024,[108] in the section addressing problem analysis, pays significant attention to accessibility, and accessibility is also an integral part of the indicators of the achievement of the three strategic goals.

The Strategy for the Development of the Public Information System in the Republic of Serbia for the period 2020-2025[109] recognizes as key problem in this area, within the analysis of the situation under point 4.2. Informing persons with disabilities and the unequal accessibility of media content to persons with disabilities, that there is not enough representation of persons with disabilities in the public sphere. It is also points out that it is necessary to fight against stereotypes in reporting on persons with disabilities, as well as that non-compliance with media obligations regarding non-discriminatory, inclusive reporting has been observed. The ensuring of the conditions for adequate information provision to persons with disabilities and their equal access to media content are emphasized as a priority for which appropriate measures must be taken. Also envisioned are an analysis of the availability of media content for people with disabilities, the introduction of media content for people with disabilities, and greater accessibility of media content.

108 Official Gazette of the Republic of Serbia, No. 44/2020.

109 Official Gazette of the Republic of Serbia, No. 11/2020.

One of the principles on which the Culture Development Strategy of the Republic of Serbia from 2020 to 2029 is based is the improvement of mutual understanding and the equal inclusion of sensitive groups in cultural life, as well as the wide availability of culture and equal and active participation in cultural life. Within Special Objective 2 – Improvement of the system of investment in cultural institutions and protection of cultural heritage, it is stated that "special attention should be paid to investment in removing physical barriers and facilitating access to cultural institutions for persons with disabilities." The introduction of planned investment and regular maintenance of institutions, while ensuring accessibility for people with disabilities, are envisioned. The strategy is particularly concerned with equal participation in culture, and emphasizes the policy of equal opportunities and the inclusion of all social groups in cultural life. It is stated that for people with disabilities, in addition to removing physical barriers, it is also important to adapt cultural content. The strategy further foresees the adaptation of domestic film and audiovisual content for people with disabilities, as well as the creation of a plan for the acquisition of library units and equipment for people with visual impairments.

The competent ministry that would be most relevant for issues of accessibility of the built environment and transport infrastructure is the Ministry of Construction, Transport, and Infrastructure, which is recognized in the Strategy for the Improvement of the Position of Persons with Disabilities 2020-2024 and in the context of the implementation of the operational plan for accessibility for the period from 2020 to 2024. At the level of Vojvodina, the Provincial Secretariat for Energy, Construction, and Transport is responsible for issues of accessibility of the physical environment, and at the level of local self-governments, municipal and city secretariats or administrations for urban planning and construction, directorates for construction land, administrations for communal issues, and administrations for traffic and roads. The supervision of compliance with accessibility standards is intended to be carried out by the building and urban inspection authorities, but this rarely happens in practice. It is important to point out that only the Belgrade municipality of Vračar has adopted a Strategy for Improving the Accessibility of the City Municipality of Vračar for the period 2018-2025, with the accompanying Action Plan. Several municipalities in Serbia have formed local accessibility teams.

At the Department of Architecture and Urban Planning of the Faculty of Technical Sciences of the University of Novi Sad, as part of the Master's academic studies, there is a subject called Principles of Universal Design,[110] which is an elective course. At the Faculty of Architecture of the University of Belgrade, as part of the Master's academic studies, the subject titled Spaces for Seniors and People with Special Needs is also offered as an elective.[111]

The Government of the Republic of Serbia, with the support of the International Telecommunication Union, prepared and published in 2021 a Study on the evaluation of digital accessibility policies in the Republic of Serbia.

The Protector of Citizens, in cooperation with the Permanent Conference of Cities and Municipalities, the Team for Social Inclusion and Poverty Reduction of the Government of the Republic of Serbia, and the Accessibility Audit Association, established an award for contribution to the development of all forms of accessibility in local self-government units.

110 http://www.ftn.uns.ac.rs/1364340063/principi-univerzalnog-dizajna

111 http://www.arh.bg.ac.rs/programi/master-akademske-studije-arhitektura/master-akademske-studije-arhitektura-201819-i-godina/03-masa-11030-izborni-predmet-1-arhitektura-201819-masiu-11060-a/?pismo=lat

The translation service for Serbian sign language was established in 2010 by the City Organization of the Deaf in Belgrade (GOGB) with the support of the Ministry of Labor, Employment, Veterans, and Social Affairs, in order to achieve successful communication between deaf and hearing people and the inclusion of deaf people in the social life of the community. The work of the service has been improved since January 2022, when the National Interpretation Center for Sign Language started operating with a video relay service that is also available to deaf users 24 hours a day.

In practice, there are several reports and project initiatives related to accessibility, which focuses to the greatest extent on the physical accessibility of facilities.

The Republican Election Commission actively participates in improving the accessibility of polling stations. In the protocol on cooperation with the Center for Independent Living of Persons with Disabilities of Serbia, great attention is paid to ensuring greater accessibility of polling stations. Based on the Decision on assessing the accessibility of polling stations in the Republic of Serbia, the municipal/city administrations, i.e., the administrations of the city municipalities of the city of Belgrade: formed teams to assess the accessibility of polling stations which collected data on the accessibility of polling stations, i.e., the facilities where the polling stations are located; analyzed the collected data; and determined measures for improvement. The assessment of accessibility is planned to be carried out every two years, and the results should be published on the website of the Republic Election Commission. On the basis of the first analysis, the Republican Election Commission determined where more accessible polling stations could be realized for the elections scheduled for June 21, 2020, where possible. A total of 843 members of accessibility assessment work teams, whose work included 132 representatives of associations of persons with disabilities, assessed the accessibility of polling stations.[112]

In January 2020, the Ministry of Labor, Employment, Veterans, and Social Affairs – the Department for the Protection of Persons with Disabilities launched the "SERBIA WITHOUT BARRIER" Campaign, in cooperation with the National Organization of Persons with Disabilities of Serbia, the umbrella organization of the disability movement in the Republic of Serbia. The campaign was designed so that individual activities that are implemented to improve the position of people with disabilities take place under a common slogan and a recognizable visual identity, such as the installation of ramps on public facilities, the reconstruction and equipping of facilities for people with disabilities, and the marking of important dates of the disability movement, among other initiatives.[113]

The cities of Belgrade and Novi Sad and the municipalities of Vračar and Savski Venac have established a Mobility and Communication Support Service[114] for people with disabilities in order to increase the availability of services, information, and communication. As part of its functions, service information is provided (regarding water, electricity, changes on city transport lines...), available both in sound form and in sign language via the mobile phone application Info for everyone, which is available on the Google Play Store, as well as a free interpreter service for sign language and an SOS call center featuring sign language interpreters 24/7, in case of emergency, via a mobile application, alongside the provision of information in Braille. Citizens can report impediments encountered in public areas (raised sidewalk curbs, post structures, etc.) and at public institutions (absence of ramps) to the Service, which shall send reports to the competent authorities to ensure accessibility and unhindered movement.

112 The results of the accessibility assessment can be found at: https://www.rik.parlament.gov.rs/tekst/sr/3194/pristupacnost-birackih-mesta.php

113 https://www.minrzs.gov.rs/sr/aktuelnosti/kampanja-srbija-bez-barijera

114 https://vracar.rs/2020-10-22-servis-podrske-u-mobilnosti-i-komunikaciji/

The Interactive Map of Accessibility project, which was implemented by the Association for the Monitoring of Accessibility with the support of the Protector of Citizens, was intended to follow and provide feedback on the state of accessibility of facilities throughout Serbia, but it was discontinued due to a lack of resources.

The Association of the Forum of Disabled Youth in Kragujevac has created an app -accessible. info, which can be downloaded from the Google Play store and which contains information about the accessibility of facilities and parking spaces in Kragujevac, as well as regarding parking spaces in Niš and Belgrade.[115]

Association for Inclusion of Persons with Disabilities in Čajetina has analyzed the accessibility of 145 facilities in the area of Zlatibor.[116]

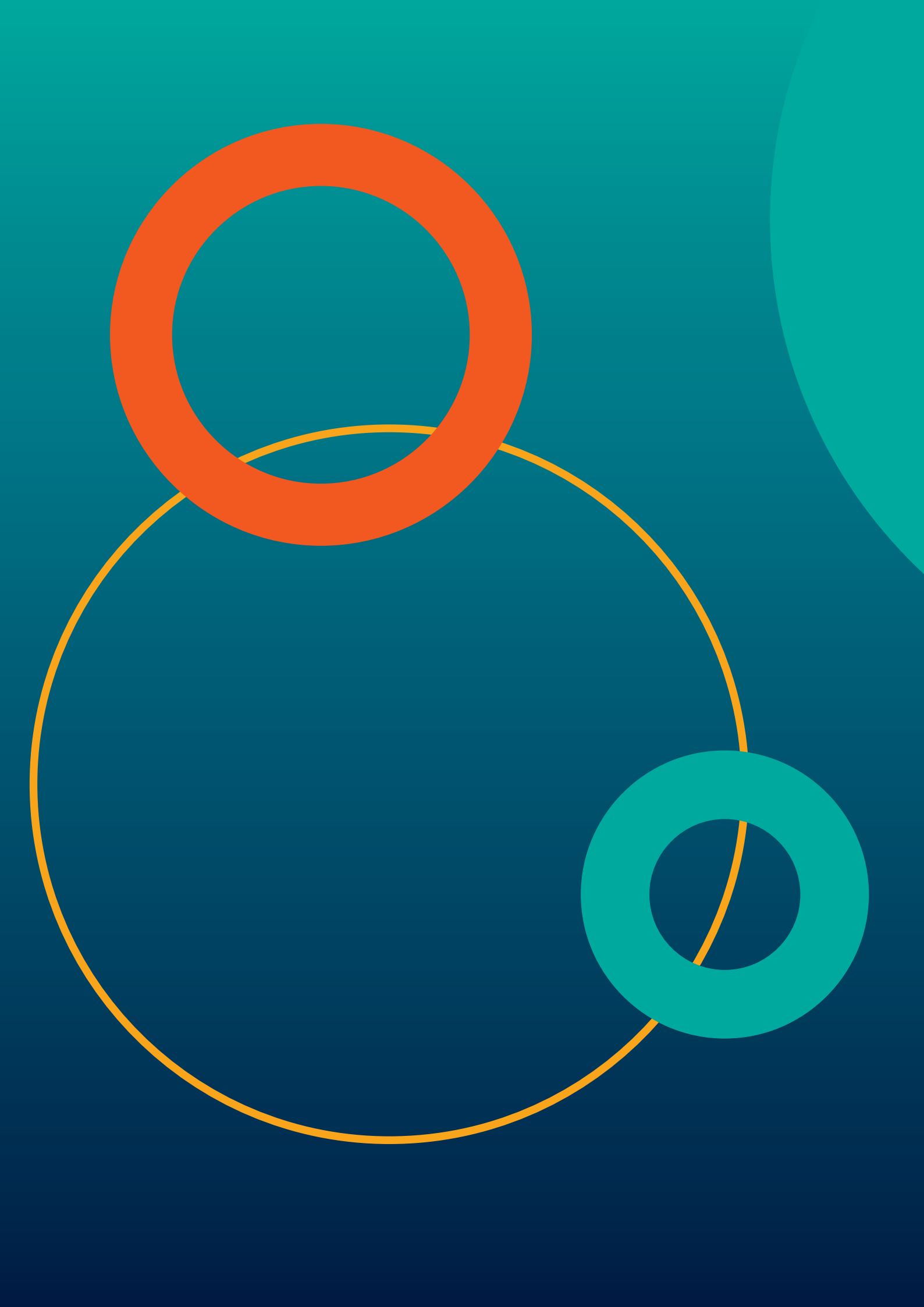
As part of the program Swiss PRO – Support of the Government of Switzerland to the development of municipalities through the improvement of good governance and social inclusion, in April 2019, the Assessment of the State of Electronic Administration in Local Self-Government Units was published.[117] The Assessment states that "No LGU (Local Government Unit) has ensured simple and easy access to information and services for persons with disabilities (PWD) in their communities. Nine LGUs have an interactive accessibility map for PWDs; however, these maps should be updated regularly. Only five LGUs have published an Accessibility Guide with information on facilities and infrastructure (ramps, etc.) for PWDs. There are almost no accessibility standards, legal framework, or information about relevant institutions – less than 10% (four-five) of LGUs have published any such information on their websites. Only seven LGUs have options for adapting the website for these groups of people with disabilities, such as font enlargement, two have sound options, while there are no examples of websites with a narrative description of existing visual presentations, i.e., photos, graphs, or images. Therefore, this is a key area for improvement in the coming period, also recognized in the LGU Action Plans."[118]

115 The map can be downloaded via the link: https://play.google.com/store/apps/details?id=com.pristupacnost.info

116 The results are published on the website of the Zlatibor Tourist Organization for the respective facilities, as well as on the website of the Alliance for Accessibility of Serbia, at the link: https://saps.rs/baza-pristupacnosti-zlatibor

117 Beker, Kosana, Lišenje poslovne sposobnosti: Zakoni i praksa u Republici Srbiji (Deprivation of Legal Capacity: Law and Practice in the Republic of Serbia), MDRI-S, 2014.

118 Ibid. 7.



04

ARTICLE 12

EQUAL RECOGNITION BEFORE THE LAW

Deprivation of legal capacity is one of the biggest human rights problems in today's Serbia, for without legal capacity a person cannot independently manage his/her life and is deprived of the enjoyment of many rights. The number of persons without legal capacity is increasing, even though the Republic of Serbia received a recommendation from the Committee on the Rights of Persons with Disabilities on how to resolve this practice.

Equality before the law (Article 12) and in access to justice (Article 13) are very important for persons with disabilities. Provisions of the Convention, especially Art. 12, establish a fundamentally new approach to the legal capacity of persons with disabilities, i.e., they stipulate that legal capacity cannot be limited or revoked only on the basis of disability.[119]

Legal capacity is fundamentally a legal concept and represents the ability of a person to acquire rights and obligations through his/her own activity, that is, by expressing his/her will. A person is regarded as becoming fully legally capable when he/she turns eighteen. A person with legal capacity can enter into contracts, consent to treatment, make decisions about where to live, dispose of his/her property, file lawsuits and appeals, enter into marriage, make decisions on recognition of motherhood or paternity, raise children, vote in parliamentary, presidential, and local elections or vote in a referendum, take out loans, etc. – i.e., undertake all legal actions that an adult can undertake in their daily life. Without legal capacity, an individual cannot independently manage his/her life. Independent management means making decisions on various issues in everyday life, which we as persons give legal force with

119 Beker, Kosana, Deprivation of Legal Capacity: Law and Practice in the Republic of Serbia, MDRI-S, 2014.

our signatures. However, legal capacity signifies much more than making decisions; it allows us to have control over our lives and to be able to plan them. Therefore, the loss of legal capacity essentially implies the loss of control over one's own life.[120]

With the provisions of the Convention on the one hand, and the centuries-old discriminatory practice towards persons with disabilities on the other, many doubts and misunderstandings have been raised in the contemporary landscape, leading the Committee on the Rights of Persons with Disabilities to issue a clarification of Art. 12 of the Convention in its first general comment.[121] This general comment, as well as other general comments of the Committee on the Rights of Persons with Disabilities, does not have legal force, but it is very significant because "determining the specific meaning of general legal rules prevents or resolves disputed issues or misunderstandings that may arise or have arisen in practice."[122] In General Comment no. 1, it is stated that Article 12 of the Convention guarantees equality before the law to persons with disabilities on an equal basis with others, and that this constitutionally implies that the contracting states are required to abolish the institution of complete deprivation of legal capacity and replace it with mechanisms based on providing support in decision-making. Paragraph 28 of the General Comment states that the state may restrict a person's legal capacity based on certain circumstances, such as bankruptcy or a criminal conviction. However, the right to equal recognition before the law and freedom from discrimination requires that, when the state restricts legal capacity, it must be on an equal basis for all persons. Limitation of legal capacity must not be based on personal characteristics such as gender, race, or disability, or have as its purpose or effect the different treatment of such persons. In the General Comment, the Committee also addresses and provides clarification on the difference between mental and legal capacity, which is often equated in practice. In the general comment, it is pointed out that according to Art. 12 of the Convention, "unreasonableness of mind" and other discriminatory labels are not justified reasons for the deprivation of legal capacity. Likewise, another very important change in the observation of persons with disabilities is emphasized – "deciding in their best interest" must be replaced by "determining the will," that is, the best interpretation of the will and inclination of the person him/herself. Also in the General Comment, the Committee reiterates that people with disabilities, like all other people, have the right to make mistakes when making decisions. By respecting all these principles, we actually allow people with disabilities a higher degree of autonomy.

Provisions related to legal capacity are found in the Constitution of the Republic of Serbia[123] and in the Family Law.[124] The Constitution guarantees every person a legal capacity that is acquired at birth and that cannot be taken away or limited, as well as the ability to make independent decisions (legal capacity), which is acquired upon reaching the age of maturity, which begins at the age of 18. The Family Law, however, retains very archaic provisions in complete contradiction with the Convention on the Rights of Persons with Disabilities. This Law stipulates that "a person of legal age who, due to an illness or disturbance in psychophysical development, is not capable of normal reasoning and is therefore unable to take care of him/herself and protect his/her rights and interests may be completely deprived of

120 Ćirić Milovanović, Dragana, and Lea Šimoković, Legal Capacity as a Basic Human Right, MDRI-S 2012: https://www.mdri-s.org/wp-content/uploads/2013/03/poslovna_sposobnost%20kao%20osnovno%20ljudsko%20pravo.pdf

121 General comment no. 1 of the Committee on the Rights of Persons with Disabilities, available in English at: //www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-1-article-12-equal-recognition-1

122 Gavrilović, Bojan: Opšti komentar protiv predrasuda (A General Comment against Prejudice), Peščanik, 2014: https://pescanik.net/opsti-komentar-protiv-predrasuda/

123 Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia No. 98/2006 an 115/2021, Article 37: https://www.paragraf.rs/propisi/ustav_republike_srbije.html

124 Family Law, Official Gazette of the Republic of Serbia No. 18/2005, 72/2011 – state law, and 6/2015: https://www.paragraf.rs/propisi/porodicni_zakon.html

legal capacity,"[125] as well as that "a person of legal age who, due to illness or impairment in psycho-physical development, by his/her actions directly endangers his/her own rights and interests or the rights and interests of other persons, may be partially deprived of legal capacity." [126] The same Law in Art. 85 stipulates that "parental rights can be extended even after a child has reached the age of majority if the child is incapable of taking care of him/herself and of protecting his/her rights or interests due to illness or disturbances in psycho-physical development, or if his actions endanger his/her own rights and interests."[127] Here it must be stated that people whose parental rights have been extended are in the same legal position as people who are completely deprived of legal capacity.

The procedure for deprivation of legal capacity is regulated by the Law on Civil Procedure.[128] Persons who are deprived of legal capacity are appointed a guardian, and this procedure is regulated by the Law on General Administrative Procedure.[129]

> "The Committee recommends that the State party harmonize its legislation with the Convention, with a view to replacing substituted decision-making with supported decision-making regimes that respect person's autonomy, will, and preferences, and to establish transparent safeguards."
>
> *(The Committee on the Rights of Persons with Disabilities on equal recognition before the law in its recommendations to the Republic of Serbia)*

The Committee on the Rights of Persons with Disabilities is in its General Comment no. 1 stated: "Legal Capacity is indispensable for the exercise of civil, political, economic, social and cultural rights. It acquires a special significance for persons with disabilities when they have to make fundamental decisions regarding their health, education and work. The denial of legal capacity to persons with disabilities has, in many cases, led to their being deprived of many fundamental rights, including the right to vote, the right to marry and found a family, reproductive rights, parental rights, the right to give consent for intimate relationships and medical treatment, and the right to liberty."[130]

The Committee on the Rights of Persons with Disabilities, in its Concluding Observations on the Initial Report of Serbia, sent a recommendation to the state to replace the regime of decision-making for another person (so-called substitute decision-making or guardianship) with a regime of supported decision-making, which respects the personal autonomy, will, and preferences of a person with a disability, and to establish a transparent protection mechanism.[131]

The Committee also expressed its concern over the fact that people with disabilities, especially those deprived of legal capacity, are still subjected to contraceptive treatments, abortion, sterilization, scientific research, electroshock therapy, or psychosurgical interventions against their will, and recommended the Republic of Serbia take all necessary measures to

125 Ibid, Article 146, para. 1.

126 Ibid, Article 148, para. 1.

127 Ibid, Article 85.

128 Law on Civil Procedure, Official Gazette of the Republic of Serbia, No. 25/82 and 48/88 and Official Gazette of the Republic of Serbia, No. 46/95 – state law, 18/2005 – state law, 85/2012, 45/2013 – state law, 55/2014, 6/2015, 106/2015 – state law and 14/2022, Articles 31-44.

129 Law on General Administrative Procedure, Official Gazette of the Republic of Serbia, No. 18/2016 and 95/2018 – authentic interpretation.

130 https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-1-article-12-equal-recognition-1, paragraph 8.

131 Concluding Observations on the Initial Report of the Republic of Serbia, paragraphs 21 and 22.

ensure the right to informed consent before any measure that could affect a person with a disability, regardless of their legal capacity. It is also recommended to support the decision-making regime of persons with disabilities, whenever necessary.[132]

Another special goal of the Strategy for the Improvement of the Position of Persons with Disabilities is to "ensure the enjoyment of the rights of persons with disabilities to legal capacity and family life on an equal basis with others and effective protection against discrimination, violence, and abuse."[133] Among other things, it is envisaged that this goal be achieved by abolishing the possibility of complete deprivation of legal capacity and extension of parental rights, establishing a decision support system instead of guardianship protection, creating conditions for persons with disabilities to enjoy the right to family life on an equal basis. Although the achievement of this goal would lead to the improvement of the position of persons with disabilities, i.e., the abolition of the institution of complete deprivation of legal capacity, and although the Government has formed several working groups whose purpose has been to develop amendments to the Family Law, the desired changes have not yet occurred. Also, in addressing a special problem, it should be highlighted that the Deinstitutionalization Strategy, while envisioning similar solutions, i.e., amendments to the Family Law which would abolish the complete deprivation of legal capacity, additionally focuses, in the fourth special objective, on the initiation of procedures for the re-evaluation of the legal capacity of persons who have already been deprived, as well as on increasing the number of persons who are partially deprived of legal capacity, or whose legal capacity has been restored.[134]

It is concerning that the number of persons deprived of legal capacity, i.e., placed under legal guardianship, is increasing from year to year, which can be seen from the following table:

	31.12.2018.	31.12.2019.	31.12.2020.
No. of persons under guardianship	12.940	13.164	13.436
No. persons placed under guardianship during the year	1.229	1.135	890
No. of persons withdrawn from legal guardianship during the year	737	788	802
Number of decisions on restoration of legal capacity		27	36
Guardian is a natural person (relative)	72%	73,7%	72,8%
Interim emergency guardian	28%	26,3%	27,2%
Placement in a social welfare institution	46%	45,3%	45%
Living in a family	41%	40,6%	39,8%
Other types of accommodation (foster families, health institutions, single households)	13%	14,1%	15,2%

Table 2: Persons under legal guardianship[135]

132 Concluding Observations on the Initial Report of the Republic of Serbia, paragraph, 37 and 38.

133 Strategija unapređenja položaja osoba sa invaliditetom u Republici Srbiji za period od 2020. do 2024. godine (Strategy for Improving the Position of Persons with Disabilities in the Republic of Serbia 2020-2024), Official Gazette of the Republic of Serbia, No. 44/2020..

134 Ibid.

135 Data from the Report on the Work of Centers for Social Work for 2018, 2019, and 2020, Republic Institute for Social Protection.

Unfortunately, in the reports of the Republic Institute for Social Protection, there is no detailed or disaggregated information on those adults under guardianship, not in terms of age structure or regarding the manner of disabilities, that is, there is no information on the reasons for why these persons are deprived of certain rights. Mental Disability Rights Initiative MDRI-S, has twice conducted research on judicial practice related to procedures for deprivation of legal capacity, and the documented answers to these questions can be found in the results of these studies, which will be shown in the following table, from which it can be seen that persons with intellectual and psychosocial disabilities are at the highest risk of being deprived of legal capacity:

	2012[136]	2016[137]
Type of Disability	Representation out of the total in %	Representation out of the total in %
Intellectual	45,3%	40,0%
Psychosocial	31,0%	33,0%
Combination/multiple disabilities	13,0%	
Dementia	7,5%	24%
Addiction	1,7%	3%
Not identified	1,0%	
Physical disability	0,4%	

Table 3: Deprivation of legal capacity according to type of disability

A special problem in Serbia is the frequent practice of temporary guardianship. Centers for social work are resorting to temporary guardianship with greater frequency, especially in regard to placing a person in an institution without his/her consent, which is then regarded as "voluntary," as based on the consent of the guardian/guardianship body. This status puts a person in an extremely unenviable position because, among other things, there is no obligation to regularly review legal capacity, as in cases of the deprivation of a person's legal capacity. Taking into account that this practice is usually used in cases of placement in a social or health institution, it represents a serious form of violation of the basic rights of citizens. The Special Rapporteur on torture drew special attention to this problem and appealed for the abolition of such practices.[138] The following table illustrates the frequency of this practice:

	31.12.2018.	31.12.2019.	31.12.2020.
Number of persons under temporary guardianship	10.991	9.721	10.492
No. persons placed under temporary guardianship during the year	5.390	4.844	5.203
The temporary guardian is a natural person	65%	75%	75,3%
Interim emergency guardian	35%	23,5%	20,3%

Table 4: Persons under temporary guardianship by type of status[139]

136 Lazarević, Snežana, Ćirić Milovanović, Dragana, and Lea Šimoković, Univerzalnost prava u praksi (Universality of Law in Practice), MDRI-S, 2012..

137 Beker, Kosana, and Tijana Milošević, Poslovna sposobnost : sudska praksa i zakoni u Srbiji 2016. godine (Legal Capacity: Judicial Practice and Laws in Serbia in 2016), MDRI-S, 2016..

138 Beker, Kosana, Perić, Sandra, and Lazar Stefanović, Smernice za centre za socijalni rad (Guidelines for Centers for Social Work), MDRI-S 2020.

139 Data from the reports of the Republic Institute for Social Protection for 2018, 2019, and 2020.

Due to all of the above, deprivation of legal capacity is one of the biggest human rights problems in today's Serbia. Centers for social work represent perhaps the most important link in the system of deprivation of legal capacity and guardianship. Although they do not make the decision on deprivation of legal capacity – it is the court which does so in civil procedure – their role is very important because they are the first to whom, in search of support, people with disabilities and their families turn. Research[140] conducted by the Mental Disability Rights Initiative MDRI-S documented worrisome findings about the reasons why the employees of the centers have suggested the initiation the deprivation procedure to respective families, or have even initiated it as a competent agency themselves. Certain employees, as a key reason for extending parental rights or depriving persons of legal capacity, were indicated as stating that such actions are a prerequisite for exercising rights and services related to social protection, such as, for example, receiving material benefits (other people's care and assistance, a family pension, child allowance, etc.), although gaining such benefits are not related to the deprivation of legal capacity.[141] Another reason cited was the use of community services and placement in a social welfare institution, even though people with disabilities have the right to community services, regardless of their legal status in terms of legal capacity.[142]

The research showed that over two-thirds of employees in centers for social work agreed with the statement that a person with a mental disability should be deprived of legal capacity in order to achieve protection and care after the death of a parent and protection from abuse by relatives and acquaintances. It is unclear on what grounds this approach is based, since deprivation of legal capacity does not provide any greater protection against fraud or other abuses, compared to the protections already provided by the provisions of the Criminal Code, as well as by many regulations in the field of civil law.[143] Medical treatment and care were also cited as a frequent reason for deprivation, although, if forced hospitalization is deemed necessary, it is possible to apply such an approach even if the person is not deprived of legal capacity.[144] A smaller number of employees in the centers even cited a medical diagnosis as a reason for initiating proceedings for deprivation of legal capacity, which is in complete contradiction to all international standards.[145]

Protecting the integrity of the person (Article 17)

Observation

The Committee is concerned that a legal guardian can authorize medical interventions, including sterilization, without the free and informed consent of the personwith disabilities.

Recommendation

The Committee recommends that the State party prohibit medical interventions without the prior consent of persons with disabilities and provide sufficient remedies and compensation to those subjected to such procedures.

140 Plazinić, Ljiljana, Istraživački nalazi o praksama centara za socijalni rad u vezi sa lišavanjem poslovne sposobnosti (Research Findings on the Practices of Centers for Social Work Regarding Deprivation of Legal Capacity), MDRI-S, 2020.

141 Beker, Kosana, Perić, Sandra, and Lazar Stefanović, Smernice za centre za socijalni rad (Guidelines for Centers for Social Work), MDRI-S 2020.

142 Ibid.

143 Ibid.

144 Ibid.

145 Ibid.

05

ARTICLE 19

LIVING INDEPENDENTLY AND BEING INCLUDED IN THE COMMUNITY

Independent living does not mean that people with disabilities can/should live alone and perform daily activities independently; rather, independent living means freedom of choice and control over one's own life, with respect for innate dignity and individual independence, and the enjoyment of this right is the core of human rights.

Article 19 of the Convention on the Rights of Persons with Disabilities recognizes the equal right of all persons with disabilities to independent living and inclusion in the community with freedom of choice and control over their lives. It is founded on the basic human rights principle that all human beings are born equal in dignity and rights, and that everyone's life has equal value.[146] General Comment No. 5 on Art. 19 of the Convention was issued to assist the contracting states in their implementation of Article 19 and the fulfillment of obligations from the Convention. It primarily refers to the obligation to ensure that every individual enjoys the right to an independent life and inclusion in the community. What is particularly important and thus emphasized in the General Comment is the connection of Article 19 with other provisions of the Convention. It is indicated that Article 19 is comprehensive and the application of other articles of the Convention must also be viewed in the light of the provisions

146 General Comment No. 5 on Art. 19 of the Convention on the Rights of Persons with Disabilities is available in English at: https://www.ohchr.org/en/treaty-bodies/crpd/general-comments; Translation into the Serbian language: Opšti komentar br. 5 Komiteta za prava osoba sa invaliditetom Član 19: Samostalan život i uključivanje u zajednicu, Nacionalna organizacija osoba sa invaliditetom Srbije (Independent living and inclusion in the community, National Organization of Persons with Disabilities of Serbia), 2017.

of this article. Given that this article of the Convention includes various rights (civil, political, social, cultural), it is therefore an example of the interconnectedness, mutual dependence, and indivisibility of all human rights. Indeed, the right to an independent life can be realized and enjoyed only if all other rights are realized.

The rights associated with the application of Art. 19 of the Convention on the Rights of Persons with Disabilities can also be found in other international treaties and conventions.[147]

As key obstacles to the full implementation of Art. 19, the Committee on the Rights of Persons with Disabilities cites: deprivation of legal capacity; inadequacy of social support in ensuring independent life in the community; inadequacy of budget allocations for personal assistance and individualized support; institutionalization; forced treatments and lack of deinstitutionalization strategies; constant investments in institutional protection regimes; negative attitudes and stereotypes; and a lack of adequate supervisory mechanisms. In light of the above, it is clear that these obstacles are present in many countries and that the Republic of Serbia is not alone in facing difficulties in implementing Article 19.

The significance of General Comment No. 5 also lies in that it precisely clarifies the terms used in the normative part of Article 19. This clarifies what independent living entails and details that this term does not mean that persons with disabilities can/should live alone and independently perform daily activities, but rather that independent living means freedom of choice and control over one's own life, with respect for inherent dignity and individual independence.

General Comment No. 5 also clarifies what exactly the right to inclusion in the community entails, which is access to all services that exist in the community and are available to everyone, as well as the existence and availability of support services for people with disabilities so that these people can be fully included in social life and the community.

The essence of Article 19 is also related to deinstitutionalization; that is, it implies living outside institutions of any kind.[148] This signifies that living independently and living in a community is not only a question of accommodation, but a question of autonomy and respect for the right to choose and to make decisions about one's own life.

Since the time when the Committee on the Rights of Persons with Disabilities made its concluding observations on the initial report of Serbia[149] the country has adopted the Strategy of Deinstitutionalization.[150] Its adoption is highly important and was long awaited, but there are numerous deficiencies inherent in this document. The strategy does not offer a comprehensive approach to deinstitutionalization that concerns all those places where children and adults with disabilities live, such as psychiatric hospitals, but is rather a document pertaining to an individual ministry, involving only social welfare institutions. Furthermore, the process

147 Such as: Universal Declaration of Human Rights, 1948, available in Serbian at the link: http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/02/Univerzalna-deklaracija-o-ljudskim-pravima-1948.pdf; Convention on the Elimination of All Forms of Discrimination against Women. Official Gazette of the SFRY – International Agreements, No. 11/81; Convention on the Rights of the Child, Official Gazette of the SFRY – International Treaties, No. 15/90, and the Official Gazette of the FRY – International Agreements, No. 4/96 and 2/97.

148 It refers, among other things, to small group homes, that is, to all those places where people with disabilities live, regardless of their size and capacity, in situation in which such persons do not have legal control over their own lives, yet the organization of these institutions' work is given greater attention than the needs of its users.

149 Concluding Observations on the Initial Report on Serbia, Committee on the Rights of Persons with Disabilities, 2016: https://platforma.org.rs/wp-content/uploads/2020/03/Zakljucna-razmatranja-Srbija-2016-CRPD_C_SRB_CO_1.pdf

150 Strategija deinstitucionalizacije i razvoja usluga socijalne zaštite u zajednici za period 2022–2026. godine (Strategy of Deinstitutionalization and the Development of Social Protection Services in the Community 2022-2026), Official Gazette of the Republic of Serbia No. 12/ 2022.

of developing the Strategy was not transparent – it is not known who participated in its development or who were the members of the working group, while civil society organizations that have many years of experience and expertise in this area were not seemingly involved in the development of the strategy. Of even greater importance, and cause for concern, is that the participation of the affected people themselves was not ensured by this process in accordance with Article 4, paragraph 3 of the Convention. In the text of the proposals of the strategy, it is clearly reflected that it does not take into account the perspective of people with disabilities, but rather above all the interests of the employees in the institutions. Instead of a clear determination to gradually close the institutions, the emphasis was primarily placed on their transformation, which are renamed into centers for the provision of services in the community, while as for the sections related to the development of services in the community, they are insufficiently precise, i.e., there are no precise and clear measures to prevent institutionalization. Measures related to children are sporadic, without a clear vision, and without recognition of the child's right to family life. The Strategy does not examine the position of women and girls, nor the specifics regarding the multiple discrimination and violence they are exposed to in institutions, in terms of both necessary support and deinstitutionalization. While the Strategy does contain several measures that envisage changes to the Law on Professional Rehabilitation and Employment of Persons with Disabilities and the adoption of appropriate by-laws that would facilitate the establishment of work centers and the transformation of institutions for the professional rehabilitation and employment of persons with disabilities, these forms of employment are not in accordance with Art. 27 of the Convention on the Rights of Persons with Disabilities. Additionally, the measures, indicators, and activities related to the issue of legal capacity, which is very important for persons with disabilities, are actually much better resolved in the Strategy for the Improvement of the Position of Persons with Disabilities 2020-2024.

The Republic of Serbia, especially when it comes to children, does not have a high rate of institutionalization. However, the number of people with disabilities living in social care institutions is not decreasing, people frequently live in such institutions for decades, and the most common reason for termination of housing remains death. On the other hand, in the last decade, Serbia has done much to deinstitutionalize children and develop the foster care system, though children with disabilities were largely left out of this reform, and they now make up close to 70% of all institutionalized children.

Based on requests for access to information of public importance sent to all social welfare institutions for housing children and persons with disabilities,[151] MDRI-S collected basic statistical data on their users on 31.12.2021. At this time, a total of 5,571 people were living in such institutions, 512 of whom were children. Of the total number of children living in institutions, 344 had developmental disabilities, representing 67.19%. Also, 29 children under the age of three were documented as being placed at institutions (5.66% of all children living in institutions), among whom the largest number of children were those with developmental disabilities – 21.

It should as well clearly be borne in mind that a certain amount of the youth, adults, and elderly with disabilities are also accommodated in health institutions / psychiatric hospitals, in addition to at so-called nursing homes, while some children with developmental disabilities are enrolled in special boarding schools, which represents a kind of pseudo-institutionalization.

151 In Serbia, there are 16 institutions for the accommodation of adults and elderly persons with mental or physical disabilities, 5 institutions for the accommodation of children and youth with disabilities, and 10 institutions for the accommodation of children without parental care and children with developmental disabilities.

The position of children with disabilities and adults and the elderly with disabilities in institutions were addressed in several of the reports carried out by the combined efforts of the Mental Disability Rights Initiative MDRI-S,[152] other civil society organizations, the Protector of Citizens, and the Commissioner for the Protection of Equality. It has been documented that in these institutions, children and adults are exposed to continuous segregation, neglect, and the application of restrictive measures, the misapplication of drugs, denial of medical treatment, and restrictions on their freedom of movement. The living conditions are poor, without privacy, meaningful activities, or the right to make even the simplest decisions about their own lives, while they are as well deprived of family life. Those who do have relatives in the community, over time, due to the length of their stay in the institution and the distance from their place of origin, often lose contact with them. Children living in institutions are not fully included in the education system, while adults living in them are not employed, and if work is performed by them, they do not receive compensation for their labor. Women and girls with disabilities are often multiply discriminated against – on the basis of gender, disability, and living in an institution itself, while they may be further exposed to specific forms of gender-based violence, such as forced abortions, being giving contraceptives without informed consent, sexual harassment, and sexual violence.[153] Life in an institution is especially dangerous for children because it endangers the child's mental and physical health, inevitably leading to a worsening of developmental difficulties. Placement in an institution leads to dehumanization and social isolation and does not contribute to habilitation or the development of skills that lead to inclusion in society. Treatment in such institutions, or the lack of proper care in them, leads to the worsening of disorders and endangers the health and life of the child.[154] Such practices were observed by the Committee on the Rights of Persons with Disabilities in its Concluding Observations, in which it recommended that Serbia ban all forms of coercive measures against adults and children with disabilities, including physical and chemical restraints, excessive antipsychotic therapy, and isolation, which are considered cruel, inhumane, or humiliating forms of treatment.[155]

"The Committee is concerned that, despite reports and recommendations by the national prevention mechanism for the prevention of torture, there are reports of the use of coercive measures, including physical and chemical restraints, and excessive antipsychotic therapy, and the prolonged isolation of adults and children with psychosocial and/or intellectual disabilities, considered as cruel, inhuman or degrading treatment. "

(Committee for the Rights of Persons with Disabilities on the absence of abuse or cruel, inhuman or degrading treatment or punishment in the concluding observations addressed to the Republic of Serbia)

152 All reports are available on the organization's website: https://www.mdri-s.org/public/documents/upload/tortura-i-zlostavljanje/Tortura%20i%20zlostavljanje%20u%20kontekstu%20osoba%20sa%20invaliditetom.pdf

153 Janjić, Biljana, Beker, Kosana, and Valentina Lepojević: Protection of Sexual and Reproductive Rights of Women with Mental Disabilities and Protection from Violence, MDRI-S, 2021: https://www.mdri-s.org/public/documents/upload/publications-in-english/Protection-of-sexual-and-reproductive-rights-of-women-with-mental-disabilities.pdf

154 Serbia's Forgotten Children, Disability Rights International and MDRI-S, 2021.

155 Concluding Observations on the Initial Report on Serbia, Committee on the Rights of Persons with Disabilities, 2016: https://platforma.org.rs/wp-content/uploads/2020/03/Zakljucna-razmatranja-Srbija-2016-CRPD_C_SRB_CO_1.pdf

Although the Committee on the Rights of Persons with Disabilities recommended to Serbia that it ensure that there will be no investment in new institutions in this context, the exact opposite is happening – for example, 800 million dinars (over 6,800,000 euros) were invested in the reconstruction and extension of the Kolevka home in Subotica).[156] According to available data, the Ministry of Labor, Employment, Veterans, and Social Affairs allocated 78 million dinars (over 660 thousand euros) for the renovation of the Institution for Children and Youth in Sremčica. On the website of the Public Investment Management Office, it is stated that for a project of works on the Veternik Institution, the contracted value is more than 403 million dinars (more than 3,400,000 euros).[157]

In Serbia, most of the services necessary for the independent life of persons with disabilities are regulated by the Law on Social Protection.[158] The law stipulates that services in the community are to be provided in the least restrictive environment, in order to enable beneficiaries of social protection to remain in the local community. More detailed standards for the provision and method of providing these services are defined by the Rulebook on more detailed conditions and standards for the provision of social protection services.[159]

According to the research Mapping social protection services and material support under the jurisdiction of local self-government units in the Republic of Serbia,[160] social protection services under the mandate of local self-governments in Serbia are not sufficiently developed, they are unevenly available, the number of service users is small, and the resources set aside and made available for these purposes are also insignificant, while certain services are characterized by instability and unsustainability. Among the services, the most widespread are daily services in the community, such as help/care at home for the elderly and adults, a personal companion for a child, and day care centers for children with developmental disabilities. All other services are present only in a small number of municipalities and cities and are underdeveloped. Certain services such as respite care and Family Outreach Workers have been established in a very small number of municipalities. The relevant document specifically emphasizes that support services for independent living for people with disabilities are extremely underdeveloped.

In regard to services for children and people with disabilities, the problem lies not only in the availability and distribution of services, but also in their design, i.e., in the expectation that the user adapts to the service, and not the other way around, i.e., that services are not developed based on an assessment of the support needs of people and children living in a certain local environment. Also, the services are segmented in relation to the user groups for which they are intended. For example, in some local governments, a home help service for children with developmental disabilities is being developed, while in some other municipalities, home help for the elderly, instead of there being one comprehensive support service that is adapted to the individual needs of the users, which could be used by all members of that community who need it.

156 Subotica: Dom "Kolevka" najsavremenija ustanova socijalne zaštite (The "Kolevka" home is the most modern institution of social care) (VIDEO), Vojvodina uživo, 16.03.2022: https://vojvodinauzivo.rs/subotica-dom-kolevka-najsavremenija-ustanova-socijalne-zastite/

157 http://www.obnova.gov.rs/cirilica/news/article/projekti-u-toku

158 Law on Social Protection, Official Gazette of the Republic of Serbia, No. 24/2011

159 Pravilnik o bližim uslovima i standardima za pružanje usluga socijalne zaštite (Rulebook on more detailed conditions and standards for the provision of social protection services), Official Gazette of the Republic of Serbia, No. 42/2013, 89/2018, and 73/2019

160 Matković, Gordana, and Milica Stranjaković, Mapiranje usluga socijalne zaštite i materijalne podrške u nadležnosti jedinica lokalnih samouprava u Republici Srbiji (Mapping Social Care Services within the Mandate of Local Governments and Material Support from Local Government Budgets in the Republic of Serbia), Belgrade, Social Inclusion and Poverty Reduction Unit of the Government of the Republic of Serbia, 2020.

Some services, such as day care centers, are formally regarded as community services because the building in which the service is provided is located in the city/village, but in essence they are not since the users are grouped/segregated according to their personal characteristics, such as in the case of day care centers for children with developmental disabilities, or for young people and adults with intellectual and mental disabilities.

An important remark of the Committee also refers to the situation that since services are currently standardized, their provision is very often tied to the place where they are provided. This is the case, for example, with the respite service because it is exclusively provided in the space provided by the service provider, instead of enabling the provision of this very important service in the user's own home/apartment, which would enable the user not to be separated from the familiar environment, to continue with all the usual activities (attending school, going to day care, meeting with neighbors, friends, etc.), while it would also lead to a significant reduction in the price of the service itself. The same is the case with the supported housing service, which in current conditions requires the user to be separated from the environment in which he/she lived until then and in which he/she already has a certain network of informal support, in order to exercise the right to support for independent living.

A very important service for people with disabilities to be able to lead an independent life and be included in the community is personal assistance. The Committee on the Rights of Persons with Disabilities in General Comment No. 5 indicates that a person with a disability must have control over the choice of an assistant, over the creation of the service itself, have sufficient funds made available for its financing, and must not be conditioned to use this service in association with another service (for example, that two people must live together to have access to a personal assistant).

According to Article 99 of the Rulebook on more detailed conditions and standards for the provision of social protection services, this service cannot be used by persons with mental disabilities because two conditions have been set: first, that the person can make decisions independently and second, that he/she is actively involved in the work of citizens' associations, political parties, sports clubs, "or other forms of social engagement," i.e., that the person is involved in a regular or part-time educational program. Such conditions represent a clear violation of the principle of equal rights and obligations from the Law on the Prohibition of Discrimination and the Law on the Prevention of Discrimination of Persons with Disabilities. Already from the first stated condition – the ability to make independent decisions, it can be concluded that this provision is discriminatory towards citizens who need support in making decisions, i.e., persons who are deprived of legal capacity. Direct discrimination is reflected in the unjustified putting of a group of people at a disadvantage based on a personal characteristic, in this case disability, and/or health conditions that affect the ability to make independent decisions. The second condition, employment and engagement in associations, political parties, sports organizations, and the like is also discriminatory. According to Article 25 of the Law on the Prohibition of Discrimination, discrimination based on belonging or not belonging to a political organization is prohibited. Even if the motives for introducing this condition were to facilitate the activity of persons with disabilities who participate in social activities by using the personal assistance service, this inherently leads to a large number of those who cannot be socially active due to the lack of personal assistance services being neglected. Indeed, if it were available to people with disabilities who were not active in the mentioned areas, the number of people with disabilities who would be socially active would thereby increase and the gap between people with physical and mental disabilities would decrease.

In the current situation, access to social services is not determined based on an individualized assessment[161] of the needs of persons with disabilities based on human rights and is not formulated as a right, but rather depends on the ability and will of local governments to establish services that are within their jurisdiction. Services such as personal assistance are allocated only by setting the condition that the person has already achieved another right in the field of social protection – increased allowance for care and assistance of other people, which is achieved by assessing the degree of disability. Therefore, there is legal uncertainty, since the person effectively loses the right (to personal assistance), despite his/her need for that right not even being assessed, yet he/she is denied the possibility of filing a complaint. In total, the personal assistance service is provided in only 17 local communities for 285 users. Allocations per user are different, depending on the funds that can be provided by the local community and depending on the number of hours approved for assistance (from 20 to 40 hours per week).[162]

As already emphasized, Article 19 of the Convention on the Rights of Persons with Disabilities is comprehensive and applies to all persons with disabilities, regardless of their legal capacity, manner of communication, and degree of difficulties they face. All rights must be guaranteed to all persons with disabilities, including persons with intellectual disabilities, who are often regarded as not unable to lead an independent life outside of institutions.

It is also emphasized that it is often the case that people with disabilities do not have access to all the information they need to be able to make a decision, and that, even when a person with disabilities has legal capacity, family members, local authorities or care providers, and other professionals often make decisions on their behalf.

As in other areas since the declaration of the pandemic, in the area of social protection, the users of services, as well as employees, have faced numerous problems and difficulties in exercising their rights. Thus, the representatives of organizations of persons with disabilities in the research conducted by the National Organization of Persons with Disabilities[163] documented that during the state of emergency, and still shortly after, their members could not access or use the services of day care centers, as they were closed. Only under pressure from the public was the movement of personal assistants eventually made possible during the "lockdown;" nonetheless, for a not insignificant amount of time, the users of this service were deprived of it, which created many problems for people with disabilities in their daily functioning.

The UN team for Serbia carried out a study on the consequences of Covid-19 on the position of vulnerable groups and groups at risk – causes, outcomes, and recommendations,[164] and reported similar findings – that the introduction of the state of emergency and accompanying lockdown measures led to many problems in accessing services in the field of

161 Waddington, L., & Priestley, M. (2021). A human rights approach to disability assessment. Journal of International and Comparative Social Policy, 37(1), 1-15. doi:10.1017/ics.2020.21

162 Data from the Center for Independent Living of Persons with Disabilities from Belgrade.

163 Tatić, Damjan: Ka inkluzivnom odgovoru na pandemiju: Uticaj pandemije COVID-19 na položaj osoba sa invaliditetom u Srbiji i preporuke za ostvarivanje i zaštitu prava ovih osoba u situacijama epidemiološkog rizika (Towards an inclusive response to the pandemic: The impact of the COVID-19 pandemic on the position of persons with disabilities in Serbia and recommendations for exercising and protecting their rights in situations of epidemiological risk), Belgrade, NOOIS, 2020

164 Posledice Kovid-19 na položaj osetljivih grupa i grupa u riziku – uzroci, ishod i ipreporuke, (Consequences of Covid-19 on the position of vulnerable groups and groups at risk – causes, outcomes, and recommendations), Belgrade, 2020.

social protection, such as personal assistance, personal companions, home help and other services that many people with disabilities depend on in their daily functioning.

The conclusions and recommendations from these reports indicate that the state clearly took certain measures with delay, and without taking into account the specifics of this population when planning measures aimed at the general population. One of the reasons for this is that the decision-makers did not enable the participation of people with disabilities or their representatives when devising virus protection measures. This indicates that in the future the state should develop and have ready pre-prepared protocols for dealing with crisis situations in order to ensure the smoother functioning of the lives of persons with disabilities in similar circumstances.

06

ARTICLE 20

PERSONAL MOBILITY

In order for people with disabilities to achieve the highest possible degree of independence, they require mobility aids, devices, and assistive technologies. In Serbia, there are often insufficient funds for the purchase of quality aids, and the criteria for exercising the right to funds from the state are sometimes unattainable.

The right to personal mobility, which is prescribed in Article 20 of the Convention on the Rights of Persons with Disabilities, also includes the obligation for the contracting states to enable persons with disabilities to achieve the highest possible degree of independence by, among other things, facilitating their access to "quality mobility aids, devices, and assistive technologies."[165] According to research conducted in 2021, people with disabilities in Serbia face multiple challenges in terms of purchasing, maintaining and replacing aids and assistive technologies that are necessary for their daily functioning and independent living. Namely, in a period of 5 years, between 2016 and 2020, on average, 63% of submitted requests for medical and technical aids provided from the funds of the compulsory health insurance were rejected by the medical commissions of the Republic Health Insurance Fund (RFZO).[166] Since in all the requests considered by the medical commissions, the original competent doctor or specialist doctor determined that there are indications for the use of the aid, and given that the medical commissions in their decisions on rejected requests do

165 Article 20 (b). Personal mobility. UN Convention on the Rights of Persons with Disabilities

166 Keravica, Radoš, Veljković, Milica, and Marina Mijatović, "Mladi sa invaliditetom u borbi za slobodu i pravo na samostalan život: Izveštaj o dostupnosti medicinsko-tehničkih pomagala za osobe sa invaliditetom u Srbiji" ("Young people with disabilities in the struggle for freedom and the right to an independent life: Report on the availability of medical and technical aids for people with disabilities in Serbia") (IM-PACT 21 2022).

not provide an explanation for the decisions that contradict the recommendations of the selected doctors, it can be concluded that the decisions are driven to a significant extent by restricted public resources and the goal of saving them, and not by enabling the highest possible degree of independence of a person with a disability. After a claim is denied, applicants for assistance do not have an effective appeals mechanism available to them.[167]

The indications on the basis of which users exercise their rights to aids are prescribed by the Rulebook on medical-technical aids that are procured from compulsory health insurance funds and are entirely based on medical diagnoses, as the Rulebook, in Article 3, which refers to indications, explicitly refers to the International Classification of Diseases.[168] These indications are not, however, based on an individualized needs assessment system based on human rights and aimed at achieving the highest possible degree of independence of a person with disabilities by improving their functioning. The use of the International Classification of Functioning should be considered as a more adequate tool to help determine the need to use certain aids and assistive technologies, as aids and assistive technologies are aimed at improving a person's functionality and not at treating a disability.[169]

The criteria for exercising certain rights are restrictive because, in addition to having a certain documented medical diagnosis, applicants for individual aids are at times expected to meet other criteria, such as having a driver's license or being employed or involved in the education system, a situation which is also confirmed by the testimonies of persons with disabilities listed in the aforementioned report:

> *The first obstacle in achieving the right to the light-active wheelchair that I needed was the possession of a driver's license, which as a sixteen-year-old girl with newly diagnosed paraplegia I could not have, while later there were no conditions for taking the test, which is often a problem for other disabled people, where they may not have their own vehicle – they are not financially able to provide it and then equip it with manual controls, because unfortunately, I am not aware of any driving school that provides such a vehicle intended for training people with disabilities. Therefore, I can freely say that this is one of the unrealistic and unnecessary conditions placed before us.* – Milica, 29-year-old woman[170]

The amounts determined for the procurement of aids from the RFZO funds are generally not sufficient for the procurement of quality aids that would enable persons with disabilities to reach the highest possible degree of independence and inclusion in the community. What's more, many people with disabilities state that the use of inadequate aids causes their health condition to deteriorate, and that for adequate aids they have to allocate significant personal funds that many times exceed the average salary in the Republic of Serbia, from which it can be concluded that access to quality aids is becoming a class issue/privilege. Relevantly, according to the results of the mentioned research, 62.3% of respondents indicated that they had allocated personal funds in order to acquire necessary aids, only 9% of users were

167 Ibid: Keravica, Veljković, and Mijatović (2).

168 Official Gazette of the RS, No. 5/2020, 42/2020 and 133/2020. Rulebook on medical and technical aids that are provided from compulsory health insurance funds https://www.paragraf.rs/propisi/pravilnik-o-medicinsko-tehnickim-pomagalima-koja-se-obezbedjuju-iz-sredstava-obaveznog-zdravstvenog-osiguranja-2020.html

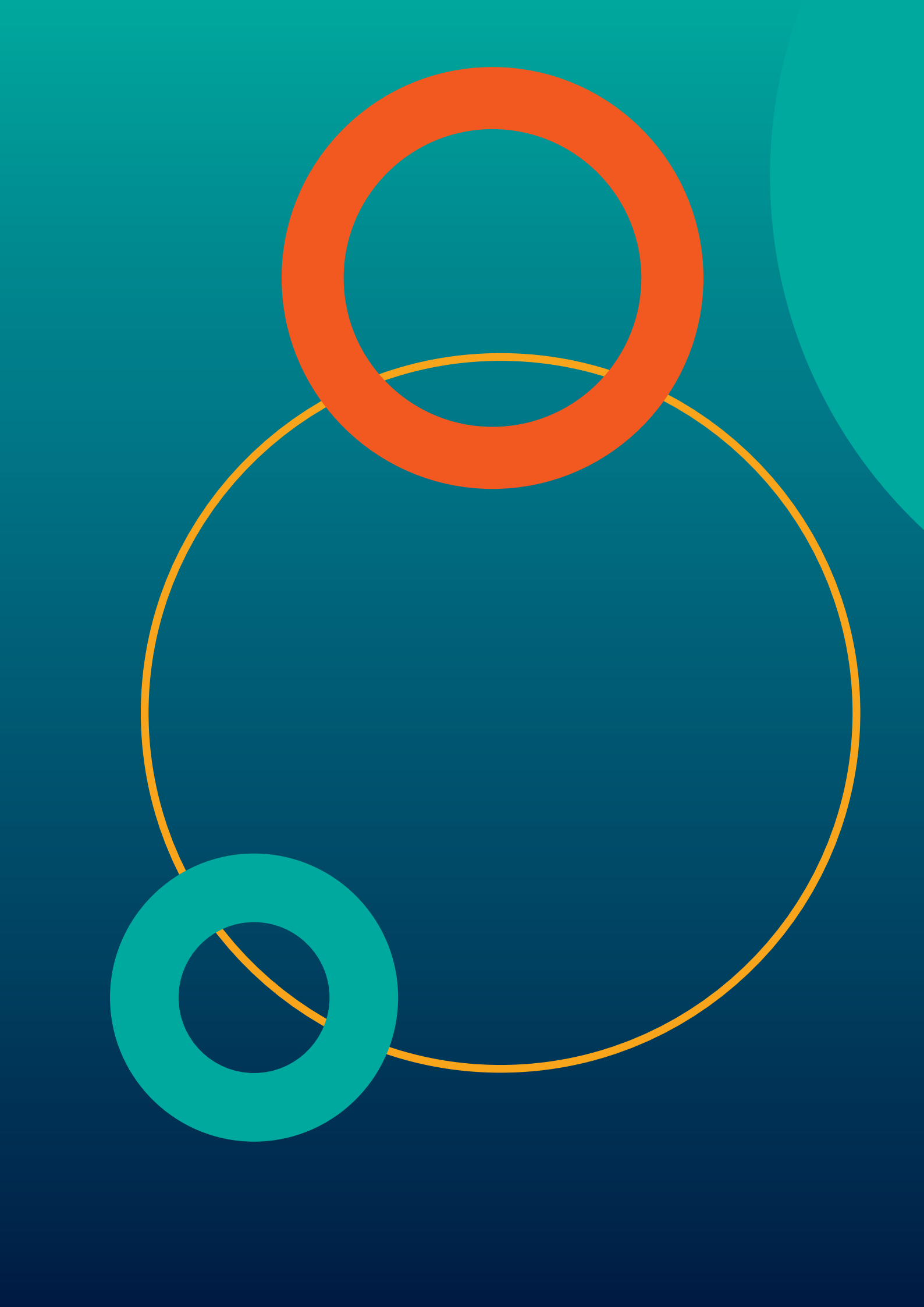
169 Yvonne Heerkens, Theo Bougie and Ellen Claus, 'The Use of the ICF in the Process of Supplying Assistive Products: Discussion Paper Based on the Experience Using a General Dutch Prescription Guideline' (2011) 35 Prosthetics and Orthotics International 310.

170 Keravica, Veljković, and Mijatović, "Mladi sa invaliditetom u borbi za slobodu i pravo na samostalan život: Izveštaj o dostupnosti medicinsko-tehničkih pomagala za osobe sa invaliditetom u Srbiji" ("Young people with disabilities in the struggle for freedom and the right to an independent life: Report on the availability of medical and technical aids for people with disabilities in Serbia") (IM-PACT 21 2022), p.57.

satisfied with the prescribed time limits after which they could replace their aids at the expense of the RFZO, only slightly more than one-third of the respondents were satisfied with the quality of the aids they used, and almost half of the respondents (45.5%) indicated requiring an aid that was not on the RFZO list[171] of aids at all.

It should also be noted that the list of aids accompanying the above-cited Rulebook does not include any series of aids and assistive technologies of the newer generation, those with uses and purposes other than for direct movement or medical purposes, such as communicators for persons with intellectual disabilities or different assistive technologies for deaf and blind persons.

171 Ibid.



07

ARTICLE 24

EDUCATION

Inclusive education must be understood as the basic right of every child as an individual, not the right of parents; it ensures the respect, inalienable dignity, and independence of the child and respects the individual needs and abilities of students to effectively join society and contribute to its development; inclusive education is a means to realize all other human rights.

The issue of education of persons with disabilities is contained in Article 24 of the Convention on the Rights of Persons with Disabilities. This article specifies that, in order to realize the right to education without discrimination and on the basis of equal opportunities, states are obliged to provide an inclusive system of education at all levels. General Comment No. 4 is important for understanding this article – The right to inclusive education, and its application.[172] The essence of Article 24 is that states should ensure that persons with disabilities are not excluded from the regular education system on the basis of disability, that all children have the right to free and compulsory primary education, that children with disabilities are not excluded from secondary or higher education because of their disability, and that the system is obliged to apply reasonable accommodation and provide individualized support to each child.

As mentioned above, inclusive education must be understood as the basic right of every child as an individual, not the right of parents; it ensures the respect, inalienable dignity,

172 General Comments are available at the link: https://www.ohchr.org/en/treaty-bodies/crpd/general-comments

and independence of the child and respects the individual needs and abilities of students to effectively join society and contribute to its development; inclusive education is a means to realize all other human rights.[173]

The education system in the Republic of Serbia consists of preschool (0-6.5 years), elementary school – lasting eight years in two cycles, high school, and university (institutions for higher education and faculties). The system is managed by the Ministry of Education, Science, and Technological Development.

Although the Constitution of the Federal Republic of Yugoslavia guaranteed the right to free and accessible primary education for all children, in Yugoslavia and later in Serbia there was a parallel education system – alongside the "regular" system, intended for children from the general population, there was also a so-called the system of "special" schools, in which children with developmental disabilities were enrolled, based on the decision of the relevant committee for categorization. Apart from special schools, i.e., schools for the education of children with developmental disabilities – as they are officially named now, there were also a large number of so-called special classes in regular schools. Plans and programs in special schools and classes were created specifically for each type of disability, and were significantly reduced compared to regular school programs. Categorization commissions could refer a child to a regular school, a special school, or make a decision that a child was "uneducable" and exclude such children completely from the education system.

Significant progress in terms of harmonization with human rights standards was achieved in 2009, when the Law on the Fundamentals of the Education System was adopted. Many call this law "the law on inclusion" because it guaranteed all children the right to compulsory and free preschool and elementary education, as well as free secondary education. Since then, the law has been amended several times, with a new one adopted in 2017, which itself has been amended and supplemented.[174] Within Article 7 of this law, the general principles of education and upbringing that are harmonized with the Convention are listed, and in this sense, point 3 is particularly important: "respect for human rights and the rights of every child, student, and adult and respect for human dignity; education and upbringing in a democratically organized and socially responsible institution in which openness, cooperation, tolerance, awareness of cultural and civilizational connections in the world, commitment to basic moral values, and values of justice, truth, solidarity, freedom, honesty, and responsibility are nurtured and in which full respect for the rights of children, students, and adults is ensured."

Students are guaranteed additional support, which is primarily reflected in the adoption of an individual educational plan (IOP1 – adjustment of the way of work and conditions in which educational and pedagogical work is carried out, learning the language in which educational and pedagogical work takes place; or IOP2 – adjustment of goals, content, and ways of realizing the teaching and learning program and the results of educational and pedagogical work[175]). In the case of the need to exercise rights to some other types of support, such as the right to a personal companion or the right to use assistive technology, adapted textbooks, etc., the opinion of the Inter-sector Commission is necessary, which also makes decisions on the need to adopt IOP2 as well as about the enrolling of children in schools for the education of children with developmental disabilities, for which parental consent is necessary.

173 Ibid.

174 Law on the Basics of the Education and Training System, Official Gazette of the Republic of Serbia, No. 88/2017, 27/2018 – state law, 10/2019, 27/2018 – state law, 6/2020, and 129/2021. https://www.paragraf.rs/propisi/zakon_o_osnovama_sistema_obrazovanja_i_vaspitanja.html

175 Ibid, Article 76.

Inter-sector commissions are formed at the level of local self-governments and, according to the currently valid Rulebook,[176] are to be comprised of five members – four permanent and one temporary. The permanent members of the commission are: representatives of the health care system (pediatricians, that is, specialists in general medicine for adults); a representative of the educational system (professional associate psychologist in preschool, primary, or secondary school); a representative of the social protection system (professional worker in social protection affairs); and a defectologist (a specialist in the special education of persons with disabilities) of the appropriate profile. The temporary member of the commission is a person who knows the child well, and this member is determined for each student individually from among the representatives of one of the mentioned systems. In relation to the first version of this rulebook, when a defectologist was not a mandatory, permanent member of the committee, this can be considered a step back in the legal framework, as both this rulebook and many other by-laws recognize the importance of special skills and knowledge for working with children with disabilities, special training in defectology, or special education in defectology ("defektologija," which translates in English to "defectology," is a term used in Serbian which represents the study of the principles and characteristics of the development of children with physical and mental disabilities and their training and upbringing).Yet according to the way in which these provisions were formulated, it seems that they were adopted in their entirety and uncritically at the suggestion of special education institutions and defectology professionals. It would appear that, through legislation in the field of education, this field is divided into three distinct parts: one focusing on pedagogical workers – students who do not have disabilities; one directed towards defectology professionals – children with developmental disabilities and disabilities; and one devoted to the field of adult education, the andragogic profession. Nowhere in the relevant documents is there any mention of teaching staff with disabilities and their employment.[177]

The percentage of children enrolled in preschool education in 2018 was 55.8%, and in 2019 66.4%, while the preparatory preschool program was attended by 97.6% of children in 2018, and 97.4% in 2019.[178] In the National Report on Inclusive Education,[179] there is information on the number of children from vulnerable groups who are included in preschool education and pedagogy programs, but there is no precise data on the number of children with disabilities. Only the children for whom an IOP was prepared are mentioned, and it can be assumed that these are the children who, due to difficulties in development, require the greatest level of support. In the 2017/2018 school year, there were only 687 such cases documented, i.e., 0.32% of all enrolled children. The reasons for the insufficient coverage of children lie in the inadequate network of preschool institutions, their insufficient capacities, and their unequal geographical distribution.[180] There is no available quantitative data on the number of children with disabilities included in preschool education, but it is worrying that in a statement

176 Rulebook on additional educational, health, and social support for children, students, and adults. Official Gazette of the Republic of Serbia, No. 80/2018 https://www.paragraf.rs/propisi/pravilnik-dodatnoj-obrazovnoj-zdravstvenoj-socijalnoj-podrsci.html

177 Analysis of the legislative and institutional framework of the Republic of Serbia in the field of education with the UN Convention on the Rights of Persons with Disabilities, report available at the link: https://www.czuns.org/predstavljamo-analizu-zakonodavnog-i-institucionalnog-okvira-republike-srbije-u-oblasti-obrazovanja-s-konvencijom-un-o-pravima-osoba-sa-invaliditetom/

178 Data available on the website of the Statistical Office of the Republic of Serbia: https://data.stat.gov.rs/AdvancedSearch?languageCode=sr-Cyrl

179 National Report on Inclusive Education in the Republic of Serbia for the Period 2015-2018, Ministry of Education, Science, and Technological Development, 2020 https://www.unicef.org/serbia/media/13706/file/Nacionalni%20izve%C5%A1taj%20o%20inkluzivnom%20obrazovanju.pdf

180 Ibid.

in the publication Preschool Education in Serbia[181] the programs of preschool pedagogy and education that are not compulsory are characterized as having a low level of fairness because the children with the greatest need for learning and the opportunities provided by preschool education are less included – among them children with disabilities.

Primary education coverage of children in Serbia in 2019 was 96.6%, and secondary education coverage was 87.4%.[182] There is no publicly available data on how many children with developmental disabilities are included in the regular education system (primary and secondary schools), and only in some research can data be found on the number of children who are educated according to an individual educational plan. However, if we know that the right to an IOP is given to "students who, due to social deprivation, developmental disabilities, learning difficulties, risk of early school leaving and other reasons, need additional support in education and upbringing,"[183] having this data would not indicate how many children with developmental disabilities are among this total number. In the Strategy for the Improvement of the Position of Persons with Disabilities in the Republic of Serbia 2020-2024, it is stated that in the 2016/17 school year, in primary and secondary schools, 9,285 students were educated according to individual educational plans of the type IOP-1 and 10,269 students were according to the type IOP-2 – these numbers include students with developmental disabilities, students with learning difficulties, and students from socio-economically disadvantaged backgrounds. In the 2017/18 school year, 10,582 students were educated according to IOP-1 and 11,771 according to IOP-2, while in the 2018/19 school year, 9,567 students were educated according to IOP-1, and 11,957 according to IOP-2[184]. One characteristic that stands out in the available data is that the number of children who are educated according to individual educational plans in secondary schools is many times smaller than in primary schools.[185] So, for example, in the 2018/2019 school year, 2.87% of the student population in primary schools was educated with the application of an IOP, while the share in secondary schools was a mere 0.73%.

Regulations in Serbia allow for enrollment in secondary schools for students from sensitive groups under affirmative action measures, in order to achieve full equality. Although the number of such students increases from year to year, there is a lack of data on how many children with disabilities are in this group. Also, the previously mentioned information about the exceptionally small number of students in secondary schools educated according to individual educational plans indicates that even when they are enrolled, students would not seem to receive adequate support. General Comment no. 4[186] precisely advises that care must be taken to remember that integration does not represent an automatic guarantee of the transition from segregation to inclusion.

There are 48 schools for the education of children with developmental disabilities in Serbia, yet they are unevenly distributed – there are regions with a fairly high concentration of such special schools, as well as those where there are none at all. Some of these schools are intended for students of all levels of pre-university education (from pre-school, through primary,

181 Baucal, Aleksandar, et al., Predškolsko obrazovanje u Srbiji: situaciona analiza i preporuke (Preschool Education in Serbia: Situational Analysis and Recommendations), 2016.

182 Data available on the website of the Statistical Office of the Republic of Serbia: https://data.stat.gov.rs/AdvancedSearch?languageCode=sr-Cyrl

183 Data available on the website of the Statistical Office of the Republic of Serbia: https://data.stat.gov.rs/AdvancedSearch?languageCode=sr-Cyrl

184 Strategija unapređenja položaja osoba sa invaliditetom u Republici Srbiji za period od 2020. do 2024. godine (Strategy for Improving the Position of Persons with Disabilities in the Republic of Serbia 2020-2024), Official Gazette of the Republic of Serbia, No. 44/2020.

185 National Report on Inclusive Education in the Republic of Serbia for the Period 2015-2018, Ministry of Education, Science, and Technological Development, 2020 https://www.unicef.org/serbia/media/13706/file/Nacionalni%20izve%C5%A1taj%20o%20inkluzivnom%20obrazovanju.pdf

186 General Comments are available at the link: https://www.ohchr.org/en/treaty-bodies/crpd/general-comments

to secondary), and some are specialized only for primary or only for secondary education. Some of these schools specialize only in a certain type of disability, while most of them are "multifunctional." A large number of these schools have their own boarding schools. Considering that if parents decide that their child should be educated in one of these special schools, and if there is no such school in their area, they are then forced to place their child in a boarding school at an early age, which represents a kind of institutionalization. In the 2021/22 school year, 4,119 children were enrolled in primary schools for the education of children with developmental and/or other disabilities, and 2,120 in secondary schools.[187] In this context, the findings from the Analysis of the Quality of Education in Schools and Departments for the Education of Children with Disabilities are worrying.[188] According to this research, the main findings were: that the effectiveness of education in the examined schools is questionable, primarily due to the ratio between the number of teachers and students (extremely small number of students per teacher), certain dysfunctionalities of school teams, and insufficient pedagogical and didactic training of the teaching staff; and that the structure of students has shifted since the introduction of inclusive education towards more complex and multiple disabilities, however, that the flow of students does not flow in the direction of their movement towards the regular system, but exactly the opposite – in the direction of the influx of children from regular to special schools and classes. The Analysis also mentions that in special schools there is an awareness of the importance of cooperation between regular and special schools/departments, but the realization of that cooperation is sporadic, and, one might say, merely cosmetic.

Despite this knowledge, changes were made to the text of the latest amendments to the relevant law and to the article on Resource Centers.[189] According to this article, an institution can acquire the status of a resource center (for providing professional support to children, students, and adults with developmental and other disabilities, their families, and other educational institutions). The rationale for promoting certain institutions to the status of resource centers is that they are schools that achieve exceptional results in the implementation of inclusive education and upbringing of children from vulnerable groups, children with developmental disabilities, and/or children of migrants or from marginalized families, and nine such special schools have received this designation.[190] This would correlate with the findings from the Analysis of the Legislative and Institutional Framework of the Republic of Serbia in the Field of Education with the UN Convention on the Rights of Persons with Disabilities,[191] which states that there are still many examples of automatic or tendentious directing of children to special education and measures at the local level that funnel preschoolers, students, and their families to special schools as resource or departmental centers/institutions to support education, including in the field of physical assistance and rehabilitation, which are a prerequisite for independent living.

187 Data available on the website of the Statistical Office of the Republic of Serbia: https://data.stat.gov.rs/AdvancedSearch?languageCode=sr-Cyrl

188 Analyses of the quality of education in schools and departments for the education of children with developmental disabilities, UNICEF, Ministry of Education, Science and Technological Development, 2015, available at the link: http://defektolozisrbije.org/wp-content/uploads/2016/05/UNICEF.pdf

189 Law on the Fundamentals of the Education System, Official Gazette of the Republic of Serbia, No. 88/2017, 27/2018 – state law, 10/2019, 27/2018 – state law, 6/2020 and 129/2021, Art. 54.

190 "Devet škola postale resursni centri za inkluzivno obrazovanje," ("Nine schools became resource centers for inclusive education"), daily paper – Danas, 30.03.2022., available at: https://www.danas.rs/vesti/drustvo/devet-skola-postale-resursni-centri-za-inkluzivno-obrazovanje/

191 Analysis of the Legislative and Institutional Framework of the Republic of Serbia in the Field of Education with the UN Convention on the Rights of Persons with Disabilities, report available at the link: https://www.czuns.org/predstavljamo-analizu-zakonodavnog-i-institucionalnog-okvira-republike-srbije-u-oblasti-obrazovanja-s-konvencijom-un-o-pravima-osoba-sa-invaliditetom/

In its recommendations on this article of the Convention, the Committee for the Rights of Persons with Disabilities recommended the following to Serbia:

- The Committee encourages the State party to identify concrete targetsin the Action Plan for Inclusive Education (2016-2020) to meet the inclusive education standards and requirements.
- Special attention should be given to children with multiple disabilities and pupils and students with disabilities living in institutions, as well as to the development of individual education plans and acccomodation of all types of disabilities.
- The Committee recommends that the State party take immediate steps to ensure that all persons with disabilities have access to inclusive and quality primary, secondary, and tertiary education, and that reasonable accommodation, in accordance with established individual education plans, is provided in mainstream education.
- The Committee recommends that teachers and other education professionals receive trainings on inclusive education and that all secondary and tertiary education facilities be accessible. The Committee stresses that denial of reasonable accommodation constitutes discrimination.

According to the research conducted by MDRI-S in 2016,[192] only 44% of primary school age children living in institutions were included in the education system. However, the analysis of the number of children included in the education system in individual institutions shows significant differences. One institution had over 80% of children of primary school age included in some form of education and represented an exception in the research, which led to a serious "distortion" of the general picture, because children from other homes were mostly excluded from the education system. According to the latest Report of the Republic Institute for Social Protection, in institutions for children and youth with developmental disabilities in 2020, 11.8% of children of primary school age were not included in education, and 30% of children had dropped out or did not attend school,[193] which indicates that the situation has changed little from 2016 until today, and that only about half of children with developmental disabilities living in homes are enrolled in schools. The Committee on the Rights of Persons with Disabilities also expressed its concern about the large number of children with developmental disabilities living in social care institutions in its Concluding Observations on the initial report of Serbia[194] and recommended that concrete goals be identified in the Action Plan for Inclusive Education in order to meet the standards and the requirements of inclusive education. Also, the Committee emphasized that special attention should be paid to children with multiple disabilities and pupils and students with disabilities living in institutions, as well as to the development of individual education plans and to reasonable accommodations for all types of disabilities. In addition, the Committee recommended that the State take immediate steps to ensure that all persons with disabilities have access to inclusive and quality primary, secondary, and higher education, and that reasonable accommodations in accordance with established individual education plans are provided in regular education, emphasizing that the refusal to make reasonable accommodations constitutes discrimination.

192 Janjić, Biljana, and Kosana Beker: Exclusion and Segregation of Children with Disabilities in Residential Institutions in the Education System, MDRI-S, 2016.

193 Report on the work of institutions for the accommodation of children and young people for the year 2020, Belgrade, Republic Institute for Social Welfare, 2021, p. 20. http://www.zavodsz.gov.rs/media/2161/izvestaj-o-radu-ustanova-za-smestaj-dece-i-mladih-za-2020.pdf

194 Concluding Observations on the Initial Report on Serbia, Committee on the Rights of Persons with Disabilities, 2016. https://platforma.org.rs/wp-content/uploads/2020/03/Zakljucna-razmatranja-Srbija-2016-CRPD_C_SRB_CO_1.pdf

Apart from the Law on the Fundamentals of the Education System, a large number of other laws and by-laws regulate pre-university education. They are not always compatible with each other, nor are they all compatible with the Convention on the Rights of Persons with Disabilities. For example, the Law on the Fundamentals of the Education System regulates the use of sign language, but none of the regulations related to the application of this law in the part related to attending classes in the mother tongue, i.e., in the first language,[195] mention sign language, nor has any program been developed for learning in it. In contrast, the Law on the Use of Sign Language[196] establishes two rights of sign language users: the right to learn sign language and the right to use the services of a sign language interpreter.[197] However, the Law does not explicitly recognize the right to study/education in sign language. Relatedly, Deaf people point out that their rights are denied to the greatest extent in education. This primarily refers to the inadequate role of Serbian sign language in the educational process of deaf people, i.e., to the still present problem that deaf students are not taught Serbian sign language, are not educated in Serbian sign language, and that the services of interpreters are still unavailable at all levels of education.[198] In the Report on the Position of the Deaf Community in Serbia in the Field of Media, Availability of Translation Services, and Education,[199] it is stated that a large number of deaf and hard of hearing children are educated in schools for the education of children with developmental disabilities. In these schools, the largest number of teachers are defectology educators, i.e., special education teachers, and representatives of the deaf community indicate that the quality of education in these schools is significantly lower than in regular education, since, among other things, they are taught by teachers who are not experts in the subjects they teach. A second remark refers to the situation that even in these schools, students are not provided with education in Serbian sign language, and that many teachers do not know it and do not use it in their classes. In the same report, it is stated that deaf students who attend regular schools are left practically without support and without real sensitization of the environment, which would involve familiarizing the teaching and professional staff as well as other students with the ways of communication and characteristics of the culture of the Deaf community, thereby enabling deaf students to more successful adapt and fit in within the environment of regular education.[200]

In regard to blind people, most technological resources are available at the individual level with funding from the Ministry of Labor, Employment, Veterans, and Social Affairs. Thanks to donations from the EU, other countries, and donor organizations, schools and universities, through international projects, have been providing technological resources, some made available through perpetual loan agreements, at their facilities.[201]

195 Law on the Basics of the Education and Training System, Official Gazette of the Republic of Serbia, No. 88/2017, 27/2018 – state law, 10/2019, 27/2018 – state law, 6/2020, and 129/2021, Art 5 https://www.paragraf.rs/propisi/zakon_o_osnovama_sistema_obrazovanja_i_vaspitanja.html

196 Official Gazette of the Republic of Serbia, No. 38/2015

197 Žižić, Desanka, and Mihailo Gordić, Analiza primene Zakona o upotrebi znakovnog jezika (Analysis of the Implementation of the Law on the Use of Sign Language), Belgrade, GOGB – Gradska organizacija gluvih Beograda (City Organization of the Deaf of Belgrade), 2019

198 Ibid.

199 Žižić, Desanka, Jovanović, Vera, and Uroš Mišljenović, Izveštaj o položaju zajednice Gluvih u Srbiji u oblasti medija, dostupnosti prevodilačkih usluga i obrazovanja (Report on the Position of the Deaf Community in Serbia in the Field of Media, Availability of Interpreting Services, and Education), Belgrade, Viribus Unitis Foundation, 2015.

200 Ibid.

201 Analysis of the Legislative and Institutional Framework of the Republic of Serbia in the Field of Education with the UN Convention on the Rights of Persons with Disabilities, report available at the link: https://www.czuns.org/predstavljamo-analizu-zakonodavnog-i-institucionalnog-okvira-republike-srbije-u-oblasti-obrazovanja-s-konvencijom-un-o-pravima-osoba-sa-invaliditetom/

The Law on Higher Education[202] prohibits discrimination on the basis of disability, regulates the right of persons with disabilities to higher education, accessibility, and the adaptation of the teaching process, the use of sign language, the adjustment of conditions for taking exams, the provision of assistive technological devices, participation in decision-making through representation in student parliaments, and affirmative measures for the enrollment of students, and for the most part is in line with the Convention. In the Strategy for Improving the Position of Persons with Disabilities in the Republic of Serbia 2020-2024, it is stated that the number of enrolled students with disabilities for the following academic years was, respectively: 2016/17, 197 students; 2017/18, 264 students; 2018/19, 271 students. The number of accessible faculties is currently 55, while 20 faculties provide textbooks for students in adapted formats (Braille, audio format). The question arises as to whether only those students with disabilities who were enrolled through affirmative measures were registered, but the numbers of students are, nonetheless, certainly an extremely small in relation to the number of persons with disabilities overall and in relation to the total student population.

Large systems such as the education system are difficult to change and adapt quickly. This was especially visible during the Covid-19 pandemic, during which the educational system was forced to adapt to the epidemiological situation. For a while, the students followed lessons by watching recorded lessons that were broadcast on the public service program. Parents of children with developmental disabilities were quick to point out that a fundamental problem with these lessons was that they were in no way adapted to students who are educated according to IOPs.[203]

Civil society organizations pointed out, in April 2021,[204] a number of problems: insufficient training of teachers in the use of online platforms and learning tools; confused organization of teaching often involving intertwined and shortened online and regular classes; inconsistent materials and obligations; insufficiently adequate materials and insufficient support to students for mastering the material; teacher overload, etc. It was also emphasized that access to education was practically impossible for children living in social protection institutions because these institutions were in a special mode of operation in order to prevent the spread of the virus.

Also, children with developmental disabilities who live with their own families or with foster families, whether educated in regular schools or schools for the education of children with developmental disabilities, encountered great difficulty in accessing education. In May 2020, the Center for Investigative Journalism (CINS) published an investigative story entitled "Some children with learning difficulties have been left without classes during Corona," by Teodora Ćurčić and Dina Đorđević.[205] The text was created on the basis of a questionnaire for

202 Law on Higher Education, Official Gazette of the Republic of Serbia, No. 88/2017, 73/2018, 27/2018 – state law, 67/2019, 6/2020 – state law, 11/2021 – authentic interpretation, 67/2021, and 67/2021 – state law https://www.paragraf.rs/propisi/zakon_o_visokom_obrazovanju.html

203 Tatić, Damjan, Ka inkluzivnom odgovoru na pandemiju: Uticaj pandemije COVID-19 na položaj osoba sa invaliditetom u Srbiji i preporuke za ostvarivanje i zaštitu prava ovih osoba u situacijama epidemiološkog rizika (Towards an inclusive response to the pandemic:
The impact of the COVID-19 pandemic on the position of persons with disabilities in Serbia and recommendations for exercising and protecting their rights in situations of epidemiological risk), Belgrade, NOOIS, 2021, p. 68-70.

204 Saopštenje Zabrinjavajuća ocena ministra Ružića – brojni problemi u obrazovanju dece tokom pandemije su naša realnost (Announcement of Minister Ružić's concerned assessment – numerous problems in children's education during the pandemic are our reality), Belgrade Center for Human Rights, 2021. Available at: http://www.bgcentar.org.rs/zabrinjavajuca-ocena-ministra-ruzica-brojni-problemi-u-obrazovanju-dece-tokom-pandemije-su-nasa-realnost/

205 Ćurčić, Teodora and Dina Đorđević, Pojedina deca sa poteškoćama u učenju ostala bez nastave tokom korone (Certain children with Learning Difficulties were Left without Classes during Corona), CINS, May 14, 2020. Available at: https://www.cins.rs/pojedina-deca-sa-poteskocama-u-ucenju-ostala-bez-nastave-tokom-korone/

parents that was distributed through social networks. Taking into account all the limitations (representativeness of the sample, the limitation that the questionnaire was more likely to be filled out by parents who were dissatisfied, etc.), due attention must still be paid to the bulk of these data: one out seven students with developmental disabilities attending either a regular school or a special school according to an individual educational plan (IOP) did not participate in classes at all (either due to the lack of technical capabilities of the students themselves, or because there was no contact between the school and the students); in as many as 57 cases (out of 98 students for whom the questionnaires were filled out), the IOP was very difficult to implement, and in only 16 cases did the parents state that the individual education plan had been implemented without any problems, with the students receiving adequate support from their teachers and schools.

Of particular concern is that, at the end of November 2020, the Ministry of Education, Science, and Technological Development sent professional instructions to schools for the education of students with developmental disabilities,[206] but these were formulated with insufficient precision, leading to the schools interpreting them such a way that they could fully suspend classes, i.e., to provide and organize only the so-called day care center services, due to the epidemiological situation. The question arises why it could be considered that the epidemiological situation in such special schools, which have significantly fewer students than regular ones and which feature classes with an incomparably smaller number of students, would call for such different measures, while these were applicable in the case of regular schools.

Overall, although the legal framework in Serbia is relatively aligned with Article 24 of the Convention on the Rights of Persons with Disabilities and with contemporary human rights standards, there are still many problems at the level of its implementation. For example, even after more than a decade of applying new relevant regulations, there is still a lack of adequate support for children with developmental disabilities, there are not enough pedagogical assistants in schools, and the service of a personal companion is financed from the social protection system, yet such a service, and others like it, depends on the relative development of the local community, so that it is not available to all children who need it. In the publication Mapping social protection and material support services under the jurisdiction of local self-government units in the Republic of Serbia[207] it is stated that in 2018 this service was provided only in 76 local self-government units, and that it was available to children of preschool, elementary, and high school age. A total of 1762 users were documented in all of Serbia. It is especially worrying that in many of these municipalities the service has only recently been created, meaning it has only started being provided in the last 6 months, as well as that it is not available to users throughout the year in a large number of municipalities. There are still many examples of the automatic or tendentious referral of children to special education institutions/centers and other measures at the local level that direct preschoolers, students, and their families to special schools as resources or departmental institutions for educational support.[208]

206 The mentioned original instruction is not currently available on the Internet, but a supplemental one is, which was intended to clarify the first instruction and resolve doubts. However, it also had no effect on the establishment of classes in the so-called special schools. It is available at: https://www.mpn.gov.rs/wp-content/uploads/2021/03/Dodatno-uputstvo-za-skole-za-ucenike-sa-smetnjama-u-razvoju-muzicke-baletske-skole-2.pdf

207 Matković, Gordana, and Milica Stranjaković, Mapiranje usluga socijalne zaštite i materijalne podrške u nadležnosti jedinica lokalnih samouprava u Republici Srbiji (Mapping Social Care Services within the Mandate of Local Governments and Material Support from Local Government Budgets in the Republic of Serbia), Belgrade, Social Inclusion and Poverty Reduction Unit of the Government of the Republic of Serbia, 2020.

208 Analysis of the Legislative and Institutional Framework of the Republic of Serbia in the Field of Education with the UN Convention on the Rights of Persons with Disabilities, report available at the link: https://www.czuns.org/predstavljamo-analizu-zakonodavnog-i-institucionalnog-okvira-republike-srbije-u-oblasti-obrazovanja-s-konvencijom-un-o-pravima-osoba-sa-invaliditetom/

08

ARTICLE 25

HEALTH

People with disabilities in Serbia have the right to free health care. However, their needs in the field of health care are not met in a large number of cases, and the reasons for this are numerous, including, among others: health workers do not invest enough effort in communicating with children with disabilities; the facilities where health care is provided are frequently not physically accessible; there is a lack of sign language interpreters; and healthcare workers are insufficiently educated when it comes to adults with mental disabilities and how communication with them can be adapted.

Article 25 of the Convention guarantees to persons with disabilities quality, free, accessible health care and other relevant programs offered to other people, taking care that health services must be provided as close as possible to the communities in which people live. Also highlighted is the importance of developing and maintaining services for early detection/diagnosis of disability, as well as interventions and services aimed at preventing further disability. Emphasis is also placed on services aimed at preserving reproductive health. This article insists on equality, i.e., providing the same quality of treatment to persons with disabilities as to others, based on informed consent. It is directly stated that discrimination against persons with disabilities is prohibited when providing health and life insurance.

The most important regulations regulating this area in Serbia are the Law on Health Insurance,[209] where Article 16, paragraph 2, point 4 specifies that persons with disabilities have the right to health insurance financed from the budget. The Law on Healthcare

209 Law on Health Insurance, Official Gazette of the Republic of Serbia, No. 25/2019. https://www.paragraf.rs/propisi/zakon_o_zdravstvenom_osiguranju.html

protection[210] identifies people with disabilities, along with some additional groups, as a group that is specifically covered by social health care.[211]

According to the Guide to the Health Care System in the Republic of Serbia,[212] the health care system is managed by the Ministry of Health, the Institute for Public Health of Serbia Dr. Milan Jovanović-Batut, and the Republic Health Insurance Institute.

Health care is provided at three levels: primary facilities (health centers, of which there are over 150 in Serbia), secondary facilities (general hospitals and special hospitals) and tertiary facilities (clinical centers). Healthcare activities can also be performed by private healthcare institutions under specially prescribed conditions.

All children aged 0-18 should have a designated pediatrician at the local state health center, women and girls aged 15 until the end of their life have a designated gynecologist, and adults of both sexes from the age of 18 until the end of their life have a designated doctor, as well as a designated dentist. In some health centers, there are development counseling centers that provide early recognition and early intervention services, with 35 such centers documented in 2018.[213]

Although the system is set up according to the standards of the World Health Organization, a high rate of the population – as much as 19.6%, has unmet health needs, and inequalities in the health care of vulnerable groups compared to the general population still exist,[214] while it should be noted here that the cited report states that it should be borne in mind that this secondary analysis did not include persons placed in health and social care institutions.

It has already been said that people with disabilities have the right to free health care regardless of whether they have income or not. All children up to the age of 18 have the right to health care financed from the budget. However, the procedures for obtaining a health insurance card in some cases represent an obstacle for parents attempting to access services, with 8% of the total number of children aged 0-11 months and 22% of Roma children documented as lacking a health insurance card.[215]

When it comes to the diagnosis of developmental disabilities, in the Situational Analysis of Services for Babies and Toddlers with Developmental Disabilities in the Republic of Serbia,[216] it is stated that, excepting those case of difficulties visible at birth (e.g., Down's syndrome, spina

210 Law on Healthcare Protection, Official Gazette of the Republic of Serbia, 25/2019. https://www.paragraf.rs/propisi/zakon_o_zdravstvenom_osiguranju.html

211 Ibid, Art. 8: As part of social concern for health, health care shall be provided that includes: the preservation and improvement of health; the prevention, detection, suppression, and control of risk factors for the occurrence of diseases; the acquisition of knowledge and habits about a healthy lifestyle; the prevention, suppression and early detection of diseases; timely diagnosis; timely, effective and efficient treatment; health care and the rehabilitation of the sick and injured; information that the population or an individual needs for responsible action and for exercising the right to health care.

212 Vodič kroz sistem zdravstvene zaštite, Kako funkcioniše zdravstveni system u Republici Srbiji? (Guide to the health care system: How does the health care system function in the Republic of Serbia?), Ministry of Health of the Republic of Serbia: https://www.dzblace.org.rs/wp-content/uploads/2014/04/VODIC-KROZ-SISTEM-ZDRAVSTVENE-ZASTITE.pdf

213 Za svako dete najbolji početak: Poseta novoopremljenom razvojnom savetovalištu u Domu zdravlja Zvezdara (The best start for every child: Visit to the newly equipped Development Counselling Unit at the Primary Health Care Center Zvezdara), Media statement, UNICEF, November 13, 2018: https://www.unicef.org/serbia/medija-centar/vesti/za-svako-dete-najbolji-po%C4%8Detak

214 Popović, Nataša, Terzić-Šupić, Zorica, and Snežana Simić, Nezadovoljene potrebe za zdravstvenom zaštitom stanovnika Republike Srbije (Unsatisfied needs for the health care of residents of the Republic of Serbia), SIPRU, Belgrade, 2017.

215 Situation Analysis of Children in Serbia, UNICEF, 2014.

216 Situational Analysis of Services for Babies and Young Children with Disabilities in the Republic of Serbia, UNICEF, 2018. https://www.unicef.org/serbia/media/9436/file/Situaciona%20analiza%20usluga%20za%20bebe%20i%20malu%20decu%20sa%20smetnjama%20u%20razvoju%20u%20Republici%20Srbiji.pdf

bifida), pediatricians (36% of cases) suspect the existence of developmental difficulties less often than parents (46% of cases). Also, in a survey conducted among parents of children with developmental disabilities, it was documented that, even when they themselves express their doubts to doctors in health centers, they have difficulty accessing secondary or tertiary institutions where diagnostics are performed.[217] Children who live in smaller, rural areas are especially at risk. A particularly alarming concern is that in Serbia there are no clear procedures on who performs screening and who assesses developmental delays, and when it is necessary to do so.[218]

According to the testimonies of parents of children with developmental disabilities with whom MDRI-S has contacts, the parents are not sufficiently informed about the treatment options that are available in the country, as well as regarding those that exist in other countries, nor about which treatments are approved by the World Health Organization and which treatments might be considered experimental and alternative. For this reason, they are documented as often obtaining information from other parents and turning to institutions from private practice whose work is insufficiently controlled, with such enterprises at times offering so-called life-saving solutions and cures, thereby misleading parents.[219]

A special problem in this area is respecting the child's opinion. The UN Convention on the Rights of the Child, in Article 12, as well as the Convention on the Rights of Persons with Disabilities, in Article 7 (3), state that children have the right to express an opinion on all matters that concern them, and that this opinion is to be taken into account according to their age and maturity. Since children with disabilities are more exposed to medical interventions or hospitalization during childhood, health care undoubtedly falls into the category of those that concern them and have a significant impact on their lives. Children with disabilities face a number of challenges in exercising their right to make decisions about their treatment.

The Law on the Rights of Patients stipulates in Article 19 that a healthcare worker is obliged to enable a child, i.e., a person deprived of legal capacity, to participate in making a decision on consent to medical intervention in accordance with their maturity and ability to reason, and young people who have reached the age of 15 can independently give consent if they are capable of reasoning,[220] yet at the same time they cannot independently refuse a medical measure even though they are capable of reasoning, which represents a clear paradox. In addition, it is not clear how the ability to reason is determined, so children with disabilities, especially those with intellectual disabilities, are at risk of the mere existence of a disability serving as a justifying indication for the competent health worker to determine a lack of ability to reason.

The data obtained from the research show that in practice the child's opinion about the proposed course of treatment is taken into account by the adults involved in the decision-making process only when that opinion coincides with the adult's decision, and when the child's opinion is contrary to the opinion of the parents or health workers, it is easily neglected, while the child is rarely given feedback on why it was necessary to act against his/her will, contrary to the obligations arising from Article 7 (3) of the Convention, which indicate that the child's opinion needs to be given due consideration.

Healthcare institutions do not have established support systems and procedures that would ensure that children with disabilities are presented in an accessible and comprehensible

217 Ibid, p. 48.

218 Ibid, p. 56.

219 Stefanović, Lazar, Lazarević, Snežana, and Dragana Ćirić Milovanović,: Analiza položaja osoba sa invaliditetom tokom kovid-19 krize (Analysis of the position of persons with disabilities during the COVID-19 crisis), MDRI-S, 2021.

220 Official Gazette of the RS, No. 45/2013 and 25/2019 – state law.

manner with the proposed course of treatment and that they are informed in accordance with their age and maturity. Since the procedures for the participation of children and young people, including children with disabilities, are not institutionalized within health institutions, the practice of participation and informing of children and young people depends almost exclusively on the sensitization and inclination of individual health workers. According to parents and young people with disabilities, during admission and during their stay in hospitals, they do not receive information about their rights as patients or about the mechanisms for protecting and exercising those rights. Parents also state that the informed consent procedure is reduced to a formality with the informed consent forms generally administered by nurses, and that they are often denied the opportunity to have a conversation with the competent physician and ask questions about the possible risks of medical intervention.[221]

Health workers frequently do not invest enough effort in communication with children and young people with disabilities and most often turn to parents during examinations, as evidenced by this experience of a young person with disabilities.:

> *Researcher: Did you feel that you had the opportunity to ask the doctor some questions regarding your interests?*
>
> *Interviewee: No. Because in most cases he would ignore me, because he was having a conversation with my father or mother and ignored me completely, so... I was just there as an object for trying out new, I don't know... ideas of his.*
>
> Aleksandar, 17-year-old male[222]

Furthermore, health care providers are not generally not suitably trained to communicate information about medical procedures and the proposed course of treatment to children with disabilities in a manner that is consistent with the child's maturity and level of understanding:

> *She (the hospital psychologist) told me that I would feel like I was drunk (after waking up from anesthesia), and I was 8 years old at the time. That I will see three eyes, that I will see horns, that, I don't know, that they will pop out, I don't know, a third hand, a third eye and so on. Afterwards, I got scared and asked my mom: "Mom, is it really going to be like I have a third eye or something like that?"*
>
> Aurora, 18-year-old female[223]

Additionally, children with disabilities and their parents state that their right to choose between different treatment procedures and between different institutions of the tertiary level of health care is limited, and that, when it comes to highly specialized medical interventions aimed at mitigating the negative consequences of disability, they face difficulties in obtaining approved, prescribed appointments for the desired institutions at the tertiary level of health care in which the mentioned procedures are performed.[224] Although Article 25 (b) of the Convention states that persons with disabilities, including children, should be provided with health services related to the mitigation of the consequences of disabilities and the prevention of their further deterioration and progression, therapies and treatments related to rehabilitation are provided exclusively in health institutions, without the possibility of rehabilitation in the community or through home visits, which often makes it practically impossible for working parents and their children to access such services.

221 Keravica, Radoš, 'Disabled Children's Participation in Healthcare Decision-Making' (University of Leeds 2023 forthcoming).

222 Ibid. The children's names have been pseudonymized in accordance with the ethical principles of the referenced research.

223 Ibid.

224 Ibid. The focus of the referenced research is optional orthopedic surgeries.

There are numerous reasons for the unmet needs in the field of health care for adults with disabilities: the physical inaccessibility of facilities where health care is provided, the absence of sign language interpreters, and the insufficient education of health workers when it comes to adults with mental disabilities and the way in which communication with them can be adjusted. The Committee on the Rights of Persons with Disabilities also noted these problems in its Concluding Observations on the Initial Report of the Republic of Serbia, and recommended to the country that health workers be adequately trained to provide care to persons with disabilities, as well as adequate training and the necessary skills to accelerate the implementation of the national program for promoting early childhood development.[225]

> "The Committee recommends that the State party provide health-care personnel with adequate training and the competencies required and that it expedite the implementation of the national program for the enhanced of early childhood development."
>
> *(The Committee on the Rights of Persons with Disabilities on Health in its recommendations to the Republic of Serbia)*

Parents of persons with autism testify that there are child psychiatrists in Serbia who, among other issues, deal with the diagnosis and monitoring of children with autism, but when these children with autism become teenagers, they are faced with the problem that most psychiatrists who treat adult patients claim to have no experience in working with such cases.[226]

Dental care for children with developmental disabilities and adults with disabilities, especially people with mental disabilities, is also a significant problem. For example, in the Institute for Psychophysiological Disorders and Speech Pathology Prof. Dr. Cvetko Brajović, there is a dental department that provides dental health care to children, adolescents, and adults with developmental disabilities, but their capacities are nowhere near sufficient to meet all the needs. Employees in other dental practices, whether in the private or in the state sector, generally do not have enough relevant knowledge or willingness to provide dental services to this population. A large number of people with disabilities, especially those with mental disabilities, are referred to the Faculty of Dentistry, at the Center for Dental Care of Persons with Disabilities in Psychophysical Development, where interventions are performed under total anesthesia. The procedure that precedes such interventions is extremely complicated, requiring an entire series of examinations (laboratory analyses, EKG, orthopanic scan), the opinion of a pediatrician, in the case of children, or of an internist, in the case of adults, the scheduling of the appointment by phone, and a mandatory visit to the center a week in advance of the intervention, with all the collected documentation and with the patient, for a consular examination. The question arises as to how and when emergency interventions are carried out when they are needed.[227]

In regard to the reproductive health of women with disabilities, there has been a longstanding and significant problem with the availability of gynecologist services, a situation also noted by the Committee on the Rights of Persons with Disabilities in its Concluding Observations on the Initial Report of the Republic of Serbia.[228] In recent years, the situation has somewhat

225 Concluding Observations on the Initial Report on Serbia, Committee on the Rights of Persons with Disabilities, 2016: https://platforma.org.rs/wp-content/uploads/2020/03/srpski-zakljucna zapazanja komiteta za prava osoba sa invaliditetom srb.pdf

226 Stefanović, Lazar, Lazarević, Snežana, and Dragana Ćirić Milovanović,: Analiza položaja osoba sa invaliditetom tokom kovid-19 krize (Analysis of the position of persons with disabilities during the COVID-19 crisis), MDRI-S, 2021.

227 Ibid.

228 Concluding Observations on the Initial Report on Serbia, Committee on the Rights of Persons with Disabilities, 2016: https://platforma.org.rs/wp-content/uploads/2020/03/srpski-zakljucna_zapazanja_komiteta_za_prava_osoba_sa_invaliditetom_srb.pdf

improved, due to the great engagement of women's organizations, and articles can be found published in the press about preventive gynecological examinations for this population being organized in a certain city/region.[229]

Health

Observation

The Committee is concerned about the limited access to health services for persons with disabilities in the State Party, particularly access to services related to sexual and reproductive health.

Children with disabilities and adults with disabilities who live in social care institutions are exposed to discrimination in the field of health care as well. Mental Disabilities Rights Initiative MDRI-S in its report The Hidden and Forgotten[230] documented excessive application of psychotropic drugs, especially regarding adult users, yet worryingly they were also found to be used on children. In situations where the use of drugs is not sufficient to establish control over users, isolation and fixation are resorted to, which are very dangerous practices. Also, in the report Serbia's Forgotten Children[231] it is stated that the denial of medical treatment and neglect is dangerous to the child's life. Many children have been diagnosed as being in the condition of "lack of progress," which is fundamentally caused by a long-term lack of physical activity, and the absence of love and human contact. In one of the institutions, a large number of children are fed using nasogastric tubes, the long-term use of which can lead to their blockage, damage, or dislocation, which can cause ulcers and infections, inhalation of food, intestinal perforation that can cause internal bleeding, pneumonia, and even death. The report also recorded cases of denial of treatment, such as, for example, interventions necessary for children diagnosed with hydrocephalus. Such a practice represents a threat to the right to health services that serve to reduce and prevent disability or its worsening (Article 25 (b) of the Convention) or even a threat to the right to life when life-saving interventions are denied.

Women who live in social welfare institutions are also exposed to gross violations of reproductive rights, which include forced abortions, i.e., abortions carried out based on the consent of the guardian, without the informed consent of the woman.[232] In the report Serbia's Forgotten Children, and based on the statements of employees, women with disabilities living in social care institutions are exposed to the administration of contraceptive pills without informed consent, as part of regular therapy, while in the case of older women, as a measure pregnancy prevention, the so-called "spiral" (a intrauterine contraceptive device) is administered, with the consent of only the guardian.

The Covid-19 virus pandemic revealed certain weaknesses of the health system, and people with disabilities were a particularly vulnerable group, a situation also documented in the report Consequences of COVID-19 on the Position of Vulnerable and At-risk Groups – Causes, Outcomes, and Recommendations.[233]

229 e.g., Dejanović, M., "U vranjskom ZC nastavljeni preventivni ginekološki pregledi za žene sa invaliditetom," (Preventive gynecological examinations for women with disabilities continued in Vranje's Health Clinic), Južne vesti, April 5, 2021.

230 Ćirić Milovanović, Dragana et al., The Hidden and Forgotten, Belgrade, MDRI-S, 2012, p. 28

231 Serbia's Forgotten Children, Disability Rights International and MDRI-S, 2021.

232 Janjić, Biljana, and Dragana Ćirić Milovanović: Here the Walls also Have Ears too, Belgrade, MDRI-S, p. 46-48

233 Posledice Kovid-19 na položaj osetljivih grupa i grupa u riziku – uzroci, ishodi i preporuke (Consequences of COVID-19 on the Position of Vulnerable and At-risk Groups – Causes, Outcomes, and Recommendations), OHCHR, Team for Social Inclusion and Poverty Reduction of the Government of the Republic of Serbia, 2020. https://socijalnoukljucivanje.gov.rs/wp-content/uploads/2020/12/Posledice_Kovid-19_na_polozaj_osetljivih_grupa_i_grupa_u_riziku.pdf

For many persons with disabilities, COVID clinics were inaccessible, and there as a lack of protocols for children/parents with disabilities in need of being admitted to hospitals.

Vaccination against the SARS-CoV-2 virus was available to users of social care institutions at the very beginning of the vaccination campaign, as the people living in them were exposed to the greatest risk of infection. However, users indicated that most often they were not informed about the vaccination, their consent was not sought, and they did not know which vaccine they had received, despite asking employees this precise question.[234] The users of the institutions also pointed out the difficulty in accessing health services that could not be provided by the in-house doctors of the respective institutions during the pandemic.[235]

In regard to persons with disabilities living in the community, they were not originally classified as a priority group for vaccination. Therefore, MDRI-S and the Association Naša Kuća (Our Home) sent a letter to the Ministry of Health of the Republic of Serbia, the National Immunization Team, and the Ministry of Labor, Employment, Veterans, and Social Affairs in which they requested that all persons with disabilities and their family members be provided with the opportunity to apply for priority vaccination and that the vaccination of persons with disabilities be carried out in adapted conditions, which are not stressful for them, because any medical intervention or examination of this group of persons requires the patience of the medical staff and demands more time and commitment. A response was received only from the Ministry of Labor, Employment, Veterans, and Social Affairs, in which it was suggested that in filling out the questionnaire for expressing interest in immunization against COVID-19, applicants should indicate their position in the relevant item of the questionnaire by selecting the option "I can't leave the house/apartment," so that the vaccination of persons with disabilities could be carried out in adapted conditions.

In April 2022, Mental Disability Rights Initiative MDRI-S sent a request for access to information of public importance to all social protection institutions for the accommodation of children and youth with developmental disabilities, children and youth without parental care, and children and youth with developmental disabilities and for the housing of adults and elderly people with mental disabilities. Through a questionnaire, data was collected on the number of users of these institutions who had been or were infected with COVID-19, the number of deaths resulting from infection by the virus, as well as whether these persons had been/were being treated in the social care institutions themselves, or in specialized health institutions.

Of all the children and adults from institutions for the accommodation of children and young people who had Covid-19,[236] only 22 of them (slightly more than 4%) were treated in specialized health institutions. It could be assumed that this was due to the children having a generally milder clinical picture compared to adults, but this could also be attributed to health personnel being constantly employed in these institutions. When it comes to institutions for the accommodation of adults and elderly people with disabilities, out of 1481 patients, only 170 (11%) were treated in health institutions.[237] This naturally gives rise to the question of the quality of health care that the remaining patients could have received in the homes where they were treated, when one bears in mind the extremely small number of staff in these institutions, as well as their equipment, i.e., lack of devices for oxygen therapy, respirators, etc.

234 Život žena sa mentalnim invaliditetom u ustanovama: specijalni dodatak dnevnog lista Danas (The life of women with mental disabilities in institutions: a special supplement of the daily newspaper Danas), May 27, 2021, Popović, Maja, Jović, Marijana, and Maša Pavlović, (Isolated in Isolation, Belgrade, MDRI-S, 2021.

235 Ibid.

236 The data are aggregated for 2020 and 2021.

237 Ibid.

Regarding mortality, only two adult users from facilities for children and youth with developmental disabilities died as a result of the infection. Therefore, the mortality rate [238] was 0.14% and the lethality rate[239] 0,45%. In institutions for housing children and young people without parental care and children and young people with developmental disabilities, there were no deaths documented from the consequences of this infection.

A total of 79 users were documented as dying from infection with the SARS COV-2 virus in institutions for the accommodation of adults and elderly people with disabilities. This means that the mortality rate was 2.02%, and the lethality rate 5.33%, with this mortality rate significantly higher than the mortality rate for people living outside institutions, which was measured at 0.80% for the same period.[240]

Given that the Convention pays great attention to the rehabilitation of persons with disabilities, it is important to emphasize the extremely restrictive conditions for realizing the right to rehabilitation and medical bath treatment at the expense of the Health Insurance Fund. Namely, people with disabilities generally do not have the right to publicly funded preventive bath/spa treatment and rehabilitation, which is often important for maintaining and improving their health conditions; only after certain medical interventions, i.e., operations with the display of the discharge list documenting the stay in the hospital, may such treatments be approved. This is regulated by the Rulebook on medical rehabilitation in inpatient health institutions specialized in rehabilitation.[241] Indications for prescribing rehabilitation and treatment in medical spa centers or specialized rehabilitation institutions are based on medical diagnoses, alongside the other restrictive criteria listed above. Following periodic amendments to the above-mentioned Rulebook, changes were documented that represent a regression in the achieved degree of exercising rights, since certain groups of persons with disabilities, such as persons with muscular dystrophy and persons with paraplegia, have lost the right to publicly funded regular annual rehabilitation with a minimum duration of 21 days. These amendments were made by expert bodies made up of specialist doctors and other medical experts[242] without proper consultation with persons with disabilities.

Regarding access to life insurance in Serbia, the current relevant provisions are in complete contradiction with the Convention on the Rights of Persons with Disabilities. Namely, in the General conditions for the insurance of persons through insurance companies from the consequences of an unforeseen accident (casualty),[243] it is stated that persons who are completely deprived of legal capacity are excluded from insurance in any and all cases. Dunav Osiguranje (Dunav Insurance company) has a somewhat different provision:[244] "There is no insurance for the death of a person under the age of 14, nor for a person completely deprived of legal capacity."

238 Mortality is the ratio of deaths to the number of beneficiaries.

239 Lethality is the ratio of deaths to the number of infected patients.

240 Data as of May 29, 2022. Downloaded from the website: https://covid19.rs/

241 Official Gazette of the Republic of Serbia, No. 56/2019.

242 Information on the composition of the Working Group that prepared the new Rulebook was taken from the Ministry of Health's response no. 9-00-00022/2016-05 from January 2017, to the Request for notification and explanation sent by the member of the National Assembly of the Republic of Serbia, Ljupka Mihajlovska.

243 Generali Osiguranje Srbija ltd., Capacity for insurance, Art.4; https://www.generali.rs/upload/documents/Uslovi/Nezgoda/TL-U-01-ON-01-04_Opsti_uslovi_za_osiguranje_lica_od_posledica_nesrecnog_slucaja_(nezgode)_1440081772.pdf; Wiener Stadtische, Capacity for insurance, Art. 2: https://wiener.co.rs/wp-content/uploads/2018/07/Op%C5%A1ti-uslovi-za-osiguranje-od-nezgode.pdf

244 General conditions for life insurance, Dunav Osiguranje, Art. 2: https://www.dunav.com/wp-content/uploads/2021/11/opsti-uslovi-za-osiguranje-zivota.pdf

09

ARTICLE 27

WORK AND EMPLOYMENT

Although the Convention mandates that persons with disabilities be recognized as having the right to work on equal footing with others in Serbia, the assessment of work ability based on the medical model of incapacity is still carried out for these persons. It is recommended that it be abolished in its current form, and that an assessment of the need for support be introduced instead, which would be carried out in the work environment. In Serbia, the adoption of the Law on Professional Rehabilitation and Employment of Persons with Disabilities introduced some positive solutions that encourage the employment of persons with disabilities, but their position in the labor market is still unsatisfactory.

Article 27 of the Convention on the Rights of Persons with Disabilities obliges all contracting states to recognize the right of persons with disabilities to work, on equal footing with others, in the labor market and in a working environment that is open, inclusive, and accessible to persons with disabilities. Among other things, the following are guaranteed: equal opportunities and compensation for work of equal value; provision of necessary training and professional development; trade union organization; assistance in finding, acquiring, and preserving a job and in returning to work. The term "open labor market" refers to the participation of persons with disabilities in the general labor market, and not in closed or protected forms of employment.[245]

245 Bantekas, Penilas, Tromel. Article 27, Work and Employment, in the UN Convention on the Rights of Persons with Disabilities: Commentary, Editor: Bantekas, Stein, Anastasious. 2018. p. 772.

In addition to the above, the adjustment of the legal framework also implies the abolition of regulations that are discriminatory towards persons with disabilities, such as work capacity assessment procedures.[246] In its concluding observations, the Committee expressed the view that assessments of work abilities could aim to promote closed and segregated employment of persons with disabilities, i.e., exclusion from the general labor market.

> The Committee recommends that the State party review the practice of the application of law to make surelegislation is not disadvantageous for persons with disabilities, in terms of employment and labor market participation, and that they guarantee provisions for reasonable accommodation in the workplace. It also recommends that the State party review the assessment of working capacity to eliminate the medicalized approach and to promote the inclusion of persons with disabilities in the open labor market. The Committee further recommends that persons with disabilities can exercise their right to establish trade unions and that the State Party pay attention to the links between Article 27 of the Convention and target 8.5 of the Sustainable Development Goals.
>
> *(The Committee on the Rights of Persons with Disabilities on Work and Employment in its Concluding Observations addressed to the Republic of Serbia)*

In Serbia, there are general regulations governing work and employment in force in – the Labor Law[247] and the Law on Employment.[248] According to these regulations, an employment contract can be concluded by a person older than 15 years of age. Therefore, all persons who are deprived of legal capacity are deprived of the right to work, because, according to the provisions of the Family Law,[249] these people are legally considered to be under 14 years of age and therefore cannot enter the labor market at all.

Apart from these laws, the Law on Professional Rehabilitation and Employment of Persons with Disabilities[250] is of key importance for persons with disabilities in the field of work and employment. While Article 2 of this law, which establishes the principles upon which it is based, is aligned with the standards of the Convention, already in Article 6, item 7, specially organized forms of employment and work engagement of persons with disabilities are mentioned. They are defined in more detail in Article 34 of the Law as companies for the professional rehabilitation and employment of persons with disabilities, work centers, and social enterprises. However, there is a significant difference between these three types of employment, and only those forms which function according to market principles, guarantee the payment of wages to persons with disabilities, and enable career development would be considered as in accordance with the provisions of the Convention.

For example, in this Law, a work center is defined as "a special form of institution that provides work engagement as a work therapy activity for persons with disabilities who cannot be employed or maintain employment under either general or special conditions, i.e., whose work performance is less than one third of the work performance of an employee at a normal workplace."[251]

246 Bantekas, Penilas, Tromel. Article 27, Work and Employment. p. 773.

247 Labor Law, Official Gazette of the RS, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – decision of the Constitutional Court, 113/2017 and 95/2018 – authentic interpretation.

248 Law on Employment and Unemployment Insurance, Official Gazette of the RS, No. 36/2009, 88/2010, 38/2015, 113/2017, 113/2017 – state law, and 49/2021.

249 Family Law, Official Gazette of the RS, No. 18/2005, 72/2011 – state law, and 6/2015.

250 Law on Professional Rehabilitation and Employment of Persons with Disabilities, Official Gazette of the RS, 36/2009 and 32/2013, Art. 43

251 Law on Professional Rehabilitation and Employment of Persons with Disabilities, Official Gazette of the RS, 36/2009 and 32/2013, Art. 43

The Committee on the Rights of Persons with Disabilities addressed the issue of "protected employment," which clearly includes work centers and companies for professional rehabilitation, in a series of concluding considerations that it issued to the state parties. In these statements, it is implied that protected forms of employment can, at best, be used as time-limited professional rehabilitation in order to prepare the employee for employment on the open market. [252] It is particularly problematic that the Law on Professional Rehabilitation and Employment of Persons with Disabilities stipulates that the right to financial assistance is exercised in work centers, which cannot be considered as earnings, and is therefore not in accordance with the Convention. Also, this is a segregated work environment, and those engaged in work centers do not exercise their rights from the employment relationship.

Particularly problematic are the provisions that establish the assessment of work ability, which is then more closely defined by the Rulebook on the more detailed conditions, costs, and criteria for assessing work ability and the possibility of employment or maintaining employment of persons with disabilities.[253] In the Concluding Observations on the Initial Report on Serbia, the Committee determined that the assessment of work capacity in Serbia is still based on the medical model of "incapacity."[254] Apart from the way in which the assessment of work ability is carried out, and the criteria on which it is based, the "scale" on the basis of which people who undergo this assessment are finally classified into four groups from 0-3 is also highly disputed. The meaning of the 3rd degree of work ability is that these persons cannot be employed either under general or special conditions, which means that they are de facto unable to get a job and benefit from measures to encourage employment and job retention. The Committee has already requested other states to completely abolish the concept of incapacity for work.

It should be noted that the provision from Article 43 paragraph 1 of the Law on Professional Rehabilitation and Employment, which refers to the assumed productivity of a person that is "less than one third of the work performance of an employee in a normal workplace" is discriminatory because it is based on assumptions about a person's future work ability that it is not assessed at the actual workplace and in the working environment, while such an assessment is made only for persons with disabilities.[255]

In light of all of the above, the assessment of work ability should be abolished in the form in which it currently exists, and should be replaced by an assessment of support needs that must be carried out in a real work environment. This should be followed by changes to the definition of discrimination in the Labor Law, as well as in the relevant anti-discrimination laws, so that the denial of reasonable accommodation is recognized as a special form of discrimination in the workplace, as well as in the job search and recruitment process.[256]

Alongside the indicated deficiencies, this Law did usher in some improvements to the position of persons with disabilities. According to the law, the obligation to employ persons with

252 See: Jevtović, Jelena, Lazarević, Snežana, and Lazar Stefanović, Zapošljavanje osoba sa mentalnim invaliditetom u Srbiji (Employment of Persons with Mental Disabilities in Serbia), MDRI-S, 2021.

253 Pravilnik o bližem načinu, troškovima i kriterijumima za procenu radne sposobnosti i mogućnosti zaposlenja ili održanja zaposlenja osoba sa invaliditetom, Official Gazette of the RS, No. 36/2010, 88/2010, 97/2013.

254 Takođe [Komitet] preporučuje da država potpisnica preispita procenu radne sposobnosti u cilju eliminacije medicinskog pristupa i u cilju promovisanja inkluzije osoba sa invaliditetom u otvoreno tržište rada. V: Zaključna zapažanja i preporuke ugovornih tela Ujedinjenih nacija u vezi sa pravima osoba sa invaliditetom u Republici Srbiji, https://platforma.org.rs/wp-content/uploads/2020/08/Radna-grupa-u-oblasti-prava-osoba-sa-invaliditetom.pdf

255 Jevtović, Jelena, Lazarević, Snežana, Stefanović, Lazar: Zapošljavanje osoba sa mentalnim invaliditetom u Srbiji (Employment of Persons with Mental Disabilities in Serbia), MDRI-S, 2021.

256 Ibid.

disabilities applies to every employer who has at least 20 employees, who must employ at least one person with disabilities. For employers who have 50 employees, the rule prescribes that they must employ at least two persons with a disability, and for every subsequent number of 50 employees, at least one more person with a disability. Employers also have options to fulfill these obligations in other ways – by paying funds into the so-called Budget fund for each person they have not employed, by fulfilling the financial obligation under a suitable contract on business-technical cooperation, or through a contract on the purchase of products or the provision of services by companies for the professional rehabilitation and employment of persons with disabilities, on an annual basis. Apart from their obligations in this context, employers can obtain certain benefits if they employ a person with a disability, such as the reimbursement of support costs for persons with disabilities who are employed under special conditions or wage subsidies for persons with disabilities without previous work experience. However, civil society organizations and persons with disabilities have repeatedly highlighted the non-transparency of the budget fund intended for the reimbursement of wages of persons with disabilities employed in companies for professional rehabilitation, for the employment of persons with disabilities, for the improvement of working conditions, for the improvement of relevant production programs and for other purposes, according to the stipulations of the Law on Professional Rehabilitation and Employment of Persons with disabilities.[257] Not only is there no publicly published data on the amount of funds that employers pay into the budget fund each year, but there is also no transparency on how and for what purposes this money is spent, as well as on whether all funds that are initially earmarked to improve the position of persons with disabilities on the labor market are indeed applied precisely for those purposes in the end or are they spent on other purposes as well.

As previously stated, during the 2011 Census, around 8% of the population of Serbia indicated having a disability. Of all those registered in this way (571,780), 156,918[258] persons belong to the age category between 15 and 65 years, meaning the provisions of the Law on Employment and Professional Rehabilitation of Persons with Disabilities could apply to them. Data from the annual report of the National Employment Service for 2018 show that the total number of unemployed persons with disabilities registered in the records of the National Service is 14,562, and that, in 2018, 1,567 persons with disabilities were actively employed. Data from 2013 show that 45 companies for the professional rehabilitation and employment of persons with disabilities employed 1670 persons with disabilities. The number of companies for professional rehabilitation and employment of persons with disabilities has increased in recent years – in September 2019, the total number of these companies, with a valid work permit from the Ministry of Labor, Employment, Veterans, and Social Affairs, was 57.[259] According to data from 2007, the employment rate of persons with disabilities was 13.3%, the unemployment rate was 26.9%, and the inactivity rate was 69%. Although these data have changed for the positive after the introduction of the obligation to employ persons with disabilities (2010), the majority of persons with disabilities remain outside the open labor market,[260] a very worrying sign and one that is perpetuated by prejudice against these people, insufficient information by employers about their obligations, insufficient support both for disabled persons and employers, and deficiencies in the educational structure and in

257 Official Gazette of the Republic of Serbia, No. 36/2009.

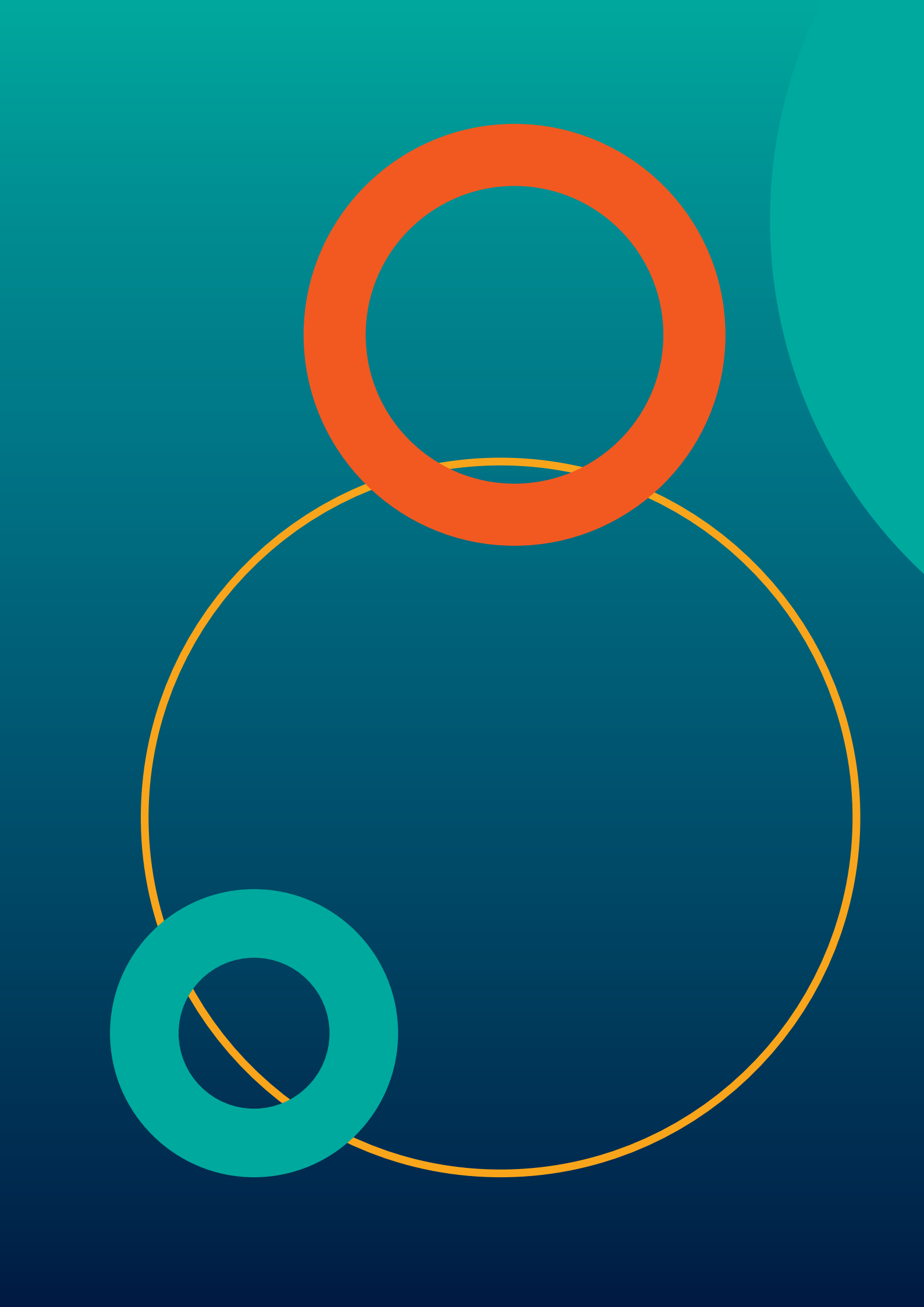
258 Marković, Milan M., Osobe sa invaliditetom u Srbiji (People with Disabilities in Serbia), Belgrade, Republic Institute for statistics, 2014: https://pod2.stat.gov.rs/ObjavljenePublikacije/Popis2011/Invaliditet.pdf

259 Strategy for Improving the Position of Persons with Disabilities in the Republic of Serbia 2020-2024, Official Gazette of the Republic of Serbia, No. 44/2020, description of the existing situation.

260 Ibid.

opportunities for the acquisition of relevant skills by persons with disabilities. Furthermore, a number of persons with disabilities are excluded from the labor market because they are deprived of legal capacity, while some are classified in the 3rd category on the assessment of work capacity and are thereby de facto deprived of the right to work. Also documented is that parents of persons with disabilities are sometimes not ready, or unwilling, to "take risks" and resultantly do not support persons with disabilities to get a job for fear of losing material benefits such as allowance for care and assistance of other people, which for many families provides some kind of secure source of income.[261]

261 Plazinić, Ljiljana, Prakse zapošljavanja osoba sa mentalnim invaliditetom u Republici Srbiji: izveštaj sa istraživačkim nalazima (Practices of Employment for Persons with Mental Disabilities in the Republic of Serbia: Report with Research Findings), MDRI-S, 2021. https://www.mdri-s.org/public/documents/upload/zaposljavanje/Izve%C5%A1taj%20sa%20istra%C5%BEiva%C4%8Dkim%20nalazima.pdf



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ARTICLE 28

ADEQUATE STANDARD OF LIVING AND SOCIAL PROTECTION

According to current data, people with disabilities are often at risk of poverty. To improve their position, it is crucial to develop relevant services in the community, as well as to ensure that they enjoy the services available to the general population. However, it is equally important that the social protection system provide these persons and their families with various types of material benefits. Also, to improve the rights of persons with disabilities it is necessary to ensure the right to adequate housing.

Worryingly, the data show that persons with disabilities in the Republic of Serbia are at risk of poverty. As previously discussed, persons with disabilities have a relatively low educational status, very few of them are engaged in the labor market, and services in the community are not sufficiently developed. It is often the case that in families of children with developmental disabilities, at least one of the parents is not employed. This is why the area of social protection, that is, receiving different types of material benefits, is very important for this population.

The Law on Social Protection[262] regulates, among other things, the rights to monetary benefits aimed at the poor, monetary benefits aimed at persons with disabilities, such as allowance for care and assistance of other people, and increased allowance for care and assistance of other people, as well as the designated transfers directed to local self-government units for the development of relevant services in the community.

262 Law on Social Protection, Official Gazette of the Republic of Serbia, No. 24/2011, Article 92, Paragraph 1

The law defines that the right to monetary social assistance belongs to an individual, i.e., a family, who, through his/her/their work, income from property, or income from other sources earn an income less than the amount of monetary social assistance determined by this law.[263] However, in October 2014, the Government of the Republic of Serbia adopted the Decree on social inclusion measures for beneficiaries of financial social assistance.

Among other things, this regulation stipulates that beneficiaries of financial social assistance who are able to work as determined by the center for social work are to be involved in socially useful work, that is, work in the local community. Those who refuse this type of activation may lose their social assistance or have it reduced by law, the discriminatory provisions of which have been repeatedly pointed out by civil society organizations, especially the organization A11.[264] Unfortunately, in the reports on the work of centers for social work published by the Republic Institute for Social Welfare, there is no data on how many persons with disabilities and/or their family members are entitled to this type of material support.

The right to an allowance for assistance and care of another person is granted to a person who, due to physical or sensory impairment, intellectual difficulties, or changes in health, is deemed to require the assistance and care of another person in order to meet his/her basic life needs.[265] Additionally, paragraph 4 of Art. 92 of the Law on Social Protection clarifies that the need for help and care of another person is also recognized for a person who, due to physical damage, damage to the sense of sight that causes a loss of the sense of light with accurate projection or vision achieved with a correction of 0.05, intellectual difficulties, or changes in the state of health, needs help and care of another person in order to meet the basic needs of life and for a person who is unable to get out of bed, move inside the apartment without the use of aids, feed, undress, dress, or maintain basic personal hygiene without the help of another person.

The right to an increased allowance for assistance and care of another person belongs is prescribed in Article 92, paragraph 1 of this law, for a person, who, based on the regulations on pension and disability insurance, has been determined to have a physical impairment of 100% on a single basis or to have an organic permanent disorder of neurological and psychological type and for a person who has multiple impairments, with the level of impairment being 70% or more on at least two grounds.[266]

These are extremely restrictive provisions, and very often they are interpreted quite differently by the members of the PIO (penzijsko i invalidsko osiguranje – pension and disability insurance) fund commissions who assess the need for this type of support, while people with intellectual disabilities and autism are denied this material support to an especially problematic degree. This is particularly significant given that the realization of the right to care and assistance from other persons, as well as for providing solutions related to this right, is often a prerequisite for the application of some other social protection services (such as personal assistance), or at the minimum, for placement in a higher position when the ranking is conducted to determine who shall qualify from among those who have applied for certain services.

However, a much more serious objection to determining the need for this type of material support is that the assessment is based entirely on a medical model. The need for assistance

263 Ibid, Article 81.

264 The leaflet is available here: https://www.a11initiative.org/wp-content/uploads/2018/10/Uredba_SR.pdf

265 Law on Social Protection, Official Gazette of the Republic of Serbia, No. 24/2011, Article 92, paragraph 1.

266 Law on Social Protection, Official Gazette of the Republic of Serbia, No. 24/2011, Article 94, paragraph 1.

and care of another person is determined on the basis of regulations on pension and disability insurance.[267] The assessment is carried out by the expert body of the Fund for Pension and Disability Insurance, based on medical documentation, and the commission consists exclusively of health workers. It is even more problematic that the degree of "disability" is expressed in percentages, and the mere existence of disability is not enough to realize this right. Thus, for the increased compensation measure of the long-term assistance/care of another person, it is necessary to establish the existence of 100% disability for a single capacity, or the existence of 70% impairment on two grounds. This method of assessment and observation of disability must be changed as soon as possible and harmonized with human rights standards by assessing the support needs of each child/person, and not by determining impairment according to such current practices.

According to the data of the Republic Institute for Social Protection for the year 2020, 13,275 persons submitted requests for the allowance and care of another person, with 8,578 beneficiaries realizing the right. When it comes to an increased allowance in this context, 8,652 requests were submitted, and 4,866 were granted.[268]

The Law on Social Protection provides that one of the parents of a child with a disability, who is not employed and who has directly taken care of his/her child for at least 15 years, and who has obtained the right to an increased allowance for the help and care of another person, has the right to a special allowance.[269] Upon these persons (a parent) reaching the legal retirement age, a special allowance continues to be paid to them in the form of a lifelong monthly income equal to the lowest pension. This allowance is received by less than 537 persons.[270]

Children with developmental disabilities can exercise the right to a child allowance, one that is increased in comparison to other children, if they meet all the requirements of the Law on Financial Support for Families with Children.[271] According to this law, children with developmental disabilities have the right to reimbursement or reduction of the costs of their stay in a preschool institution. This law also regulates compensation based on the birth and care of a child in general and for the special care of a child. According to this law, the competent minister shall prescribe more detailed conditions for qualifying the absence from work or half-time work for parents, including adoptive parents, foster parents, or guardians of children under the age of five, who need special care, as well as for unemployed persons entitled to unemployment benefits for the duration of special child care. The Constitutional Court of the Republic of Serbia found the provisions of Article 12, paragraph 7 of the Law on Financial Support for Families with Children unconstitutional. The provisions in question stipulated that the realization of the right to compensation for wages, i.e., wages for the period of absence due to special care of a child, was conditional on the non-receipt of an allowance for the assistance and care for a child with disabilities; these were ruled as invalid and thus do not apply.

267 Defined according to the Law on Social Protection, Art. 92, paragraph 4, and the Law on Pension and Disability Insurance, Official Gazette of the Republic of Serbia, No. 34/2003, 64/2004 – decision of the Constitutional Court, 84/2004 – state law, 85/2005, 101/2005 – state law, 63/2006 – decision of the Constitutional Court, 5/2009, 107/2009, 101/2010, 93/2012, 62/2013, 108/2013, 75/2014, 142/2014, 73/2018, 46/2019 – decision of the Constitutional Court, 86/2019, and 62/2021.

268 Report on the Work of Centers for Social Work, Republic Institute for Social Protection, 2021. http://www.zavodsz.gov.rs/media/2354/izvestaj-csr.pdf

269 Law on Social Protection, Official Gazette of the Republic of Serbia, No. 24/2011, Article 94, Paragraph 6.

270 Third National Report on Social Inclusion and Poverty Reduction in the Republic of Serbia, Team for Social Inclusion and Poverty Reduction of the Government of the Republic of Serbia, 2018.

271 Official Gazette of the Republic of Serbia, No. 113/2017, 50/2018, 46/2021 – decision of the Constitutional Court, 51/2021 – decision of the Constitutional Court, 53/2021 – decision of the Constitutional Court, 66/2021, and 130/2021.

Persons with disabilities and "persons who are unable to work" can also exercise some additional rights, i.e., to material benefits, such as, e.g., a family pension. Despite not being regulated as such in the regulations, in practice it is often the case that persons with disabilities, especially persons with mental disabilities, are required to meet the condition of the deprivation of legal capacity in order to exercise these rights.[272]

People with disabilities can also enjoy some other "privileges," such as, for example, privileges in domestic passenger traffic (in which context the companions of these persons may also be included in receiving such privileges). Privileges apply to blind persons, persons suffering from dystrophy and related muscular and neuromuscular diseases, persons suffering from plegia, persons suffering from cerebral palsy, children's paralysis, and multiple sclerosis, provided the existence of disability is proven by a certificate from the federation or association.[273] The issue here, however, is that according to the basis or criteria established, only some groups of persons with disabilities are singled out, while others are completely excluded, therefore resulting in a situation that clearly constitutes discrimination. There is an even greater paradox in that people who have difficulty moving are those that have the right to benefits, yet given that most modes of transport are practically inaccessible for such persons with disabilities, they cannot actually realize the benefits.

Persons with disabilities, i.e., organizations of persons with disabilities, may, based on the Customs Law[274] exercise the right to exemption from payment of import duties, namely on items intended for education, employment, or improving the social position of persons with disabilities, on passenger cars and other motor vehicles designed primarily for the transportation of persons with disabilities which have been specially made or adapted for such persons, and on spare parts, components, or accessories specially made for those products.

Especially important for improving the rights of persons with disabilities is the right to adequately accessible, affordable housing. In this regard, the Committee on the Rights of Persons with Disabilities sent a recommendation to Serbia for the full implementation of the law guaranteeing persons with disabilities a quota of 10% of adequate housing arrangements.

This issue is regulated in Serbia by the Law on Housing and Building Maintenance.[275] This law stipulates that persons with disabilities can be beneficiaries of housing support, if: they fulfill the qualifying conditions (mentioned above) related to the material conditions of the family, they do not have a housing unit, and they cannot resolve their housing issue with their own funds. Housing support can be realized through: the renting of a housing unit, i.e., its subsidization; the purchase, or acquisition by other means of the property rights over, an apartment or family house; the improvement of living conditions; assistance for the legalization of an apartment or family house; or housing care. Unfortunately, no data is available on how many persons with disabilities and their families use housing support based on this law.

272 For more, see: Beker, Kosana, Perić, Sandra, and Lazar Stefanović: Smernice za centre za socijalni rad (Guidelines for centers for social work), MDRI-S, 2020. https://www.mdri-s.org/wp-content/uploads/2020/05/Smernice-za-centre.pdf

273 Law on Privileges in Domestic Passenger Traffic for Disabled Persons, Official Gazette of the Republic of Serbia, No. 22/93, 25/93 – amendment, and 101/2005 – state law.

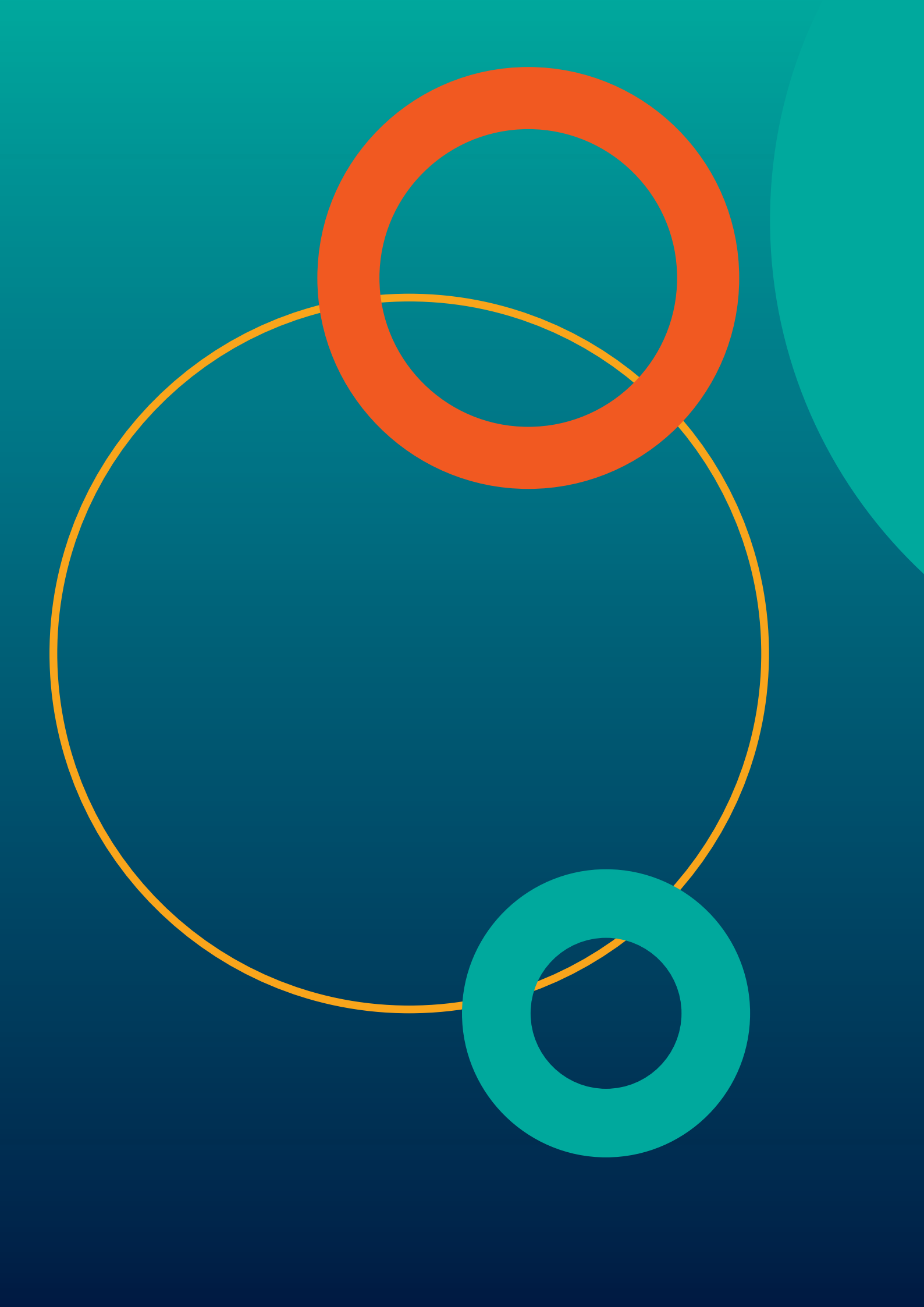
274 Customs Law, Official Gazette of the Republic of Serbia, No. 95/2018, 91/2019 – state law, 144/2020, and 118/2021.

275 Official Gazette of the Republic of Serbia, No. 104/2016 and 9/2020 – state law.

In regard to adequate living conditions and social protection for people with disabilities, this entire area needs to be reformed and harmonized with the social model and human rights standards. Children and people with disabilities, in order to realize some of these rights, are "sentenced" to many different commissions and expert opinions, most of which take into account only medical documentation and diagnosis, and not the real needs of a certain person and his/her family. Also, the practice of making the exercise of one right conditional on the realization of another right is still present, which is inconsistent with the Convention on the Rights of Persons with Disabilities.

"The Committee recommends full implementation of the law guaranteeing disabled a 10% quota of accessible housing for persons with disabilities."

(The Committee for the Rights of Persons with Disabilities on appropriate conditions for life and social protection in recommendations addressed to the Republic of Serbia)



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ARTICLE 29

PARTICIPATION IN POLITICAL AND PUBLIC LIFE

Legal regulations seek to guarantee the realization of political rights, as well as participation in political and public life, for persons with disabilities. These rights were enhanced by changes in the laws in 2022, but gaps remain. Participation in the electoral process is often hampered by lack of information and/or inaccessibility.

Every citizen has the right to participate in the life of his community, which is one of the basic principles of human rights. Participation in political and public life does not necessarily mean belonging to a party, but that participation can take place both through direct membership in political parties and through the activities of various civil society organizations, including organizations of persons with disabilities. Politics inherently deals with people with disabilities through the adoption of various measures and regulations, and it will always do so, regardless of whether people with disabilities participate in it or not. Therefore, it is crucial that persons with disabilities are included in these processes, as stipulated in Article 4 of the United Nations Convention on the Rights of Persons with Disabilities.

Article 29 of the Convention on the Rights of Persons with Disabilities stipulates that States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake:

(a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives,

including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

(i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

(iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

The legal framework that regulates the issue of participation in political and public life in Serbia, in various ways, and especially the participation in elections for persons with disabilities, is determined primarily by: the Constitution of the Republic of Serbia,[276] the Law on the Election of Members of Parliament,[277] the Law on Local Elections, [278] Law on Elections of the President of the Republic, [279] the Law on the National Assembly of the Republic of Serbia,[280] and the Law on the Prohibition of Discrimination,[281] as well as indirectly by the Law on Prevention of Discrimination against Persons with Disabilities,[282] the Law on Electronic Media,[283] and the Law on Electronic Communications.[284]

As stated in the Constitution of the Republic of Serbia,[285] all citizens of the Republic of Serbia have the active and passive right to vote under completely equal conditions, if they are over 18 years old and are not deprived of their legal capacity. The same applies to persons with disabilities who meet these conditions. However, persons with disabilities who have been deprived of legal capacity by court decision could not exercise this right until recently, that is, until January 2022. Therefore, the political participation of persons with intellectual and mental disabilities, who make up the largest number of persons deprived of legal capacity, could not be realized prior to this time.

276 Official Gazette of the Republic of Serbia, No. 98/2006 and 115/2021.

277 Official Gazette of the Republic of Serbia, No. 14/2022.

278 Official Gazette of the Republic of Serbia, No. 14/2022.

279 Official Gazette of the Republic of Serbia, No. 14/2022.

280 Official Gazette of the Republic of Serbia, No. 9/2010.

281 Official Gazette of the Republic of Serbia, No. 22/2009 and 52/2021.

282 Official Gazette of the Republic of Serbia, No. 33/2006 and 13/2016.

283 Official Gazette of the Republic of Serbia, No. 83/2014, 6/2016 – state law, and 129/2021.

284 Official Gazette of the Republic of Serbia, No. 44/2010, 60/2013 – decision of the Constitutional Coury, 62/2014, and 95/2018 – state law.

285 Official Gazette of the Republic of Serbia, No. 98/2006 and 115/2021.

According to the Law on the Election of Members of Parliament,[286] the Law on Local Elections,[287] and Law on the Election of the President of the Republic,[288] which were adopted in 2022,[289] a new provision was ratified that also allows persons with partially deprived legal capacity to participate in the elections, i.e., in the Law on the Election of Members of Parliament, Article 3 reads: "The right to elect deputies and to be elected as a deputy belongs to an adult citizen of the Republic of Serbia over whom parental rights have not been extended, i.e. who has not been completely deprived of legal capacity… [290]

A person partially deprived of legal capacity can elect deputies and be elected as a deputy if the court has not determined that he is incapable of exercising his electoral right by a decision on partial deprivation of business capacity." Although this is a completely new provision that expands the circle of persons who can exercise their right to vote, it is still not in accordance with the UN Convention on the Rights of Persons with Disabilities, which stipulates that all persons with disabilities, without limitations, should have these rights.

This undoubtedly represents a significant shift in the right direction, but the true picture is obtained only when comparing the available data on the number of persons deprived of legal capacity. According to research conducted by MDRI-S,[291] the total number of persons who were completely deprived of legal capacity in 110 examined municipalities in Serbia as of 12/31/2018 was 7865, i.e., 84.23% of the surveyed persons with disabilities, the number of persons who were partially deprived of legal capacity was 928 (9.42%), and the number of persons whose parental rights were extended was 6.35%. The majority of people who were completely deprived of legal capacity were in the category of adults aged 26-64, which represents a group of persons who at the age when they could be most politically active. Thus, this right as newly defined by the adopted laws will, if not counting those persons with intellectual disabilities who have not been deprived of their right to legal capacity, in actuality apply to only a relatively small number of people, provided that they have not been deprived of the right to vote by a court decision.

At the time of the writing of this report, how the new provisions of these laws would be practically applied remained to be seen in the yet-to-be elections scheduled for April 3, 2022. Also, some analysts and political figures have criticized these laws, because in addition to the right to vote, persons with partial legal capacity can also be elected to certain bodies, i.e., as members of parliament, councilors in local assemblies, and even as the President of the Republic, criticisms routed in the grounds that these persons have partially lost their legal capacity, which clearly indicates still widespread prejudice and discrimination against persons with mental disabilities.

It is legally prescribed that "a voter who is unable to vote in person at a polling station (a blind, disabled person, illiterate person, etc.) has the right to bring with him a person chosen by the voter who will vote for him/her in a manner appropriate for him/her, that is, can vote in his/her place (on his/her behalf)."[292]

286 Official Gazette of the Republic of Serbia, No. 14/2022.

287 Official Gazette of the Republic of Serbia, No. 14/2022.

288 Official Gazette of the Republic of Serbia, No. 14/2022.

289 Indicator 29.1 List of indicators for the participation of PWDs in political life – partially fulfilled.

290 Indicator 29.1 and 29.3. – partially fulfilled

291 Plazinić, Ljiljana: Istraživački nalazi o praksama Centra za socijalni rad u vezi sa lišavanjem poslovne sposobnosti (Research findings on the practices of the Center for Social Work in connection with deprivation of legal capacity), MDRI-S, Belgrade, 2020.

292 Indicator 29.6 partially fulfilled.

Just as a voter can vote at a polling station, persons who are unable to come to their polling station can inform the polling board and ask to vote at home in accordance with the prescribed procedures. It is also possible for voting to be organized for people with disabilities who are placed in institutions for permanent accommodation.

Gaps still remain, however, both in prescribed procedures and in practice. Participation in the election process is hindered by the inaccessibility of polling stations and voting materials, as well as the lack of information in election campaigns.

At the end of 2019, the Republican Election Commission made a decision that all polling committees on the territory of Serbia must assess the accessibility of polling stations and make adaptations where this was currently possible.[293] In the commissions that performed this assessment, based on questionnaires carried out by organizations of persons with disabilities,[294] persons with disabilities were also included.

According to the decision of the RIK (Republička izborna komisija – Republic Election Commission), this assessment is to be carried every two years.[295] Information on the accessibility of all polling stations by district can be found on the RIK website.[296]

Political rights and opportunities to enjoy these rights on the basis of equality for people with impaired hearing (deaf and hard of hearing) are often called into question, because programs in election campaigns are not sufficiently available in sign language, while the election procedure and translation into Serbian sign language are not available during voting.

Although the need for confidential voting, especially for blind people, has been recognized, the conditions for it have not yet been provided. A provision in the Law on Public Information[297] states that all information must be accessible to persons with disabilities, but there is no precise interpretation which would explain exactly what this implies.

In some countries (Montenegro) there are templates with which blind people can vote independently and secretly. In Serbia, however, this option represents a big problem, because the ballots are printed in the respective languages of the various relevant peoples and nationalities and have different formats, and it is thus difficult to create templates that would satisfy all these needs. Perhaps electronic voting, if well secured, could partially solve this problem.

People with disabilities can freely express their political affiliation, be members of political parties and participate in election campaigns. From 2007 to 2012, in the political life of Serbia, PWDs were represented by a member of parliament (a person with a disability, and a wheelchair user), but in the elections of 2012 and 2014, no political party nominated a single person with a disability as a candidate for deputy on their electoral lists. At the local level, there were several persons with disabilities who were elected as councilors in local assemblies, but this is still not sufficient representation. In order to improve the situation, it is necessary to raise the awareness of the leaders of political parties about persons with disabilities, while at the same time, it is necessary to empower persons with disabilities and motivate them to actively participate in political life. Another problem is that even when persons with disabilities are placed on the electoral lists of political parties, they are often not

293 Indicator 29.3 partially fulfilled.

294 The Center for Independent Living of Persons with Disabilities of Serbia and the Association for the Revision of Accessibility.

295 Indicator 29.3 partially fulfilled.

296 https://www.rik.parlament.gov.rs/tekst/3194/pristupacnost-birackih-mesta.php

297 Official Gazette of the Republic of Serbia, No. 83/2014, 58/2015, and 12/2016 – authentic interpretation, Art. 12.

among the first options presented, reducing their chances of being elected to the Parliament or other representative political bodies.

The situation has seen moderate improvement, although when questioned by the BBC in Serbia,[298] from among the first 17 declared lists of political coalitions for the parliamentary elections on April 3, 2022, only seven representatives responded to the question regarding the number of candidates for MPs with disabilities on the electoral lists:

- Listed as 7th among the candidates representing a coalition gathered around the ruling Serbian Progressive Party (SNS) was Paralympian and table tennis player Borislava Perić Ranković;
- In their response, the Serbian Radical Party did not specify whether they have candidates for MPs with disabilities on the list, but stated that they do not make any distinctions and that "there is neither negative nor positive discrimination;"
- The Moramo coalition had a disabled person in 171st place out of 250 candidates;
- From the coalition of Dveri and the Movement for the Restoration of the Kingdom of Serbia, it was stated that as many as 22 persons with disabilities were on their list, with five of them are in the first 20 candidates;
- The Sandzak Party for Democratic Action stated in a written statement that there was no candidate with a disability on their list;
- Out of a total of 26 candidates on the minority list "Zajedno za Vojvodinu – Vojvođani" ("Together for Vojvodina – Vojvodinians") it was stated that there was one candidate with disabilities;
- On the list of the Citizens' Group "Otete bebe Ana Pejić" ("Stolen Baby Ana Pejić"), it was stated that there were no disabled persons out of 27 candidates, but they point out that the 1st and 7th place candidates were the guardians of disabled persons;
- On the minority list "Alternativa za promene – Albanska demokratska alternativa" ("Alternative for Change – Albanian Democratic Alternative"), it was stated that there were no persons with disabilities.

Key obstacles to the political participation of persons with disabilities are: a lack of support services; inaccessibility of institutions, services, and voting materials; complete deprivation of legal capacity; low expectations (among persons with disabilities and the general public); low awareness (among persons with disabilities and the general public); and the low awareness and desire of political parties to put persons with disabilities on their lists in places where they have a chance to be elected.

Key recommendations for improving the political participation of persons with disabilities are:

- The removal of legal and administrative barriers;
- Raising the awareness of citizens and persons with disabilities;
- Expanding the possibilities for participation in public life;
- The provision of accessible polling stations and electoral materials;
- Ensuring conditions for confidential voting for persons with disabilities;

298 Stevanović, Nemanja: Izbori u Srbiji: Da li je politika pristupačna osobama sa invaliditetom Elections in Serbia (Elections in Serbia: Is politics accessible to people with disabilities?), BBC News in Serbian, March 17, 2022.

- Improving the system of voting from home, that is, from the place of residence;
- Introducing a system of responsible budgeting for the participation of persons with disabilities;
- In the Law on the Financing of Political Activities, the determining of a percentage for financing the participation of persons with disabilities and additional support for candidates with disabilities;
- The provision of adequate training for political actors on the affirmative inclusion of persons with disabilities in political activities.

These recommendations are in line with the Human Rights Indicators under the Convention on the Rights of Persons with Disabilities (CRPD) which are a component of the SDG-CRPD Resource Package (Sustainable Development Goals and Convention on the Rights of Persons with Disabilities), developed by the Office of the United Nations High Commissioner for Human Rights (OHCHR).

In regard to the situation in Serbia in relation to the political participation of persons with disabilities, most of the Human Rights Indicators are not fulfilled, while some are fulfilled only partially. One of the key problems is that for most indicators there is no data or obligation to collect them. The public administration has neither the capacity nor the political will to collect such data.

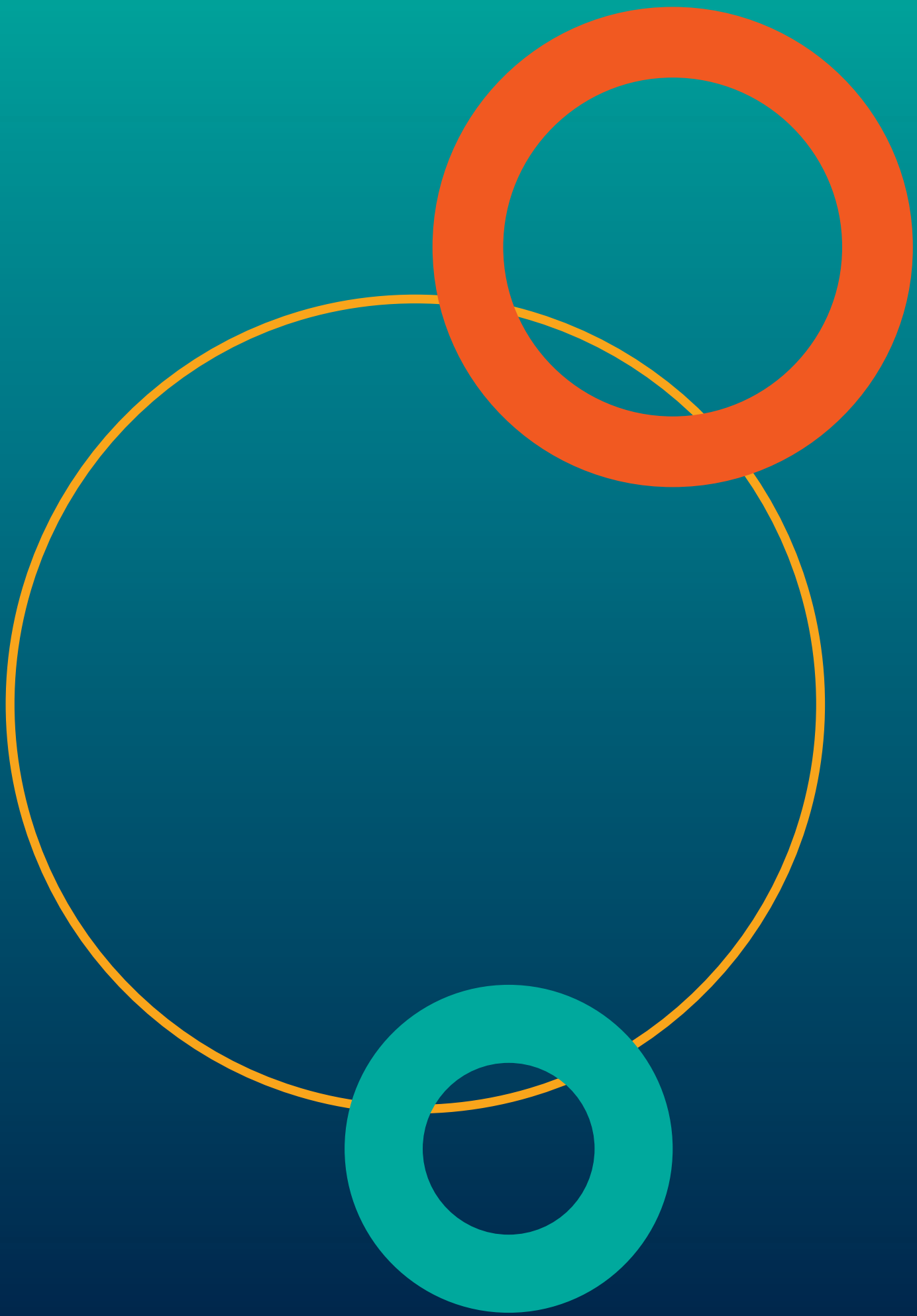
For example, there is no information on how many persons with disabilities voted in the 2020 and 2022 elections, how many voted at the polling stations, and how many outside polling stations (in the 2020 elections, around 62,000 voters in total voted outside the polling station, yet there is no record of how many of this number were persons with disabilities, nor data relevant to these persons classified by gender, age, and type of disability).

As another example, despite their being, according to Indicator 29.3, standards for the accessibility of polling stations and the obligation to assess accessibility every 2 years, the data collected by the RIK (Republic Election Commission) in 2020 and published publicly have not been processed, nor could available data be found on the percentage of physically accessible polling stations.

In accordance with Indicator 29.4, it would be necessary to introduce a legal obligation to collect data on the number and percentage of persons with disabilities registered to vote, including data on related complaints, as well as on persons with disabilities performing public functions.

Additionally, in compliance with Indicator 29.5, a national plan should be adopted by the election management to ensure the availability of voting procedures, the voting environment, facilities, materials, and complaint mechanisms, and of inclusive voter registration and education activities, as well as the appropriate recruitment and training of election committee members.

In general, it would be necessary to develop a national plan for the adoption of appropriate legal regulations and to define measures and activities that would enable the appropriate collection of data that is necessary to be able to apply the Human Rights Indicators under the Convention on the Rights of Persons with Disabilities (CRPD) and the SDG-CRPD Resource Package.



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