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To the Delegation of the European Union to the Republic of Serbia

Contribution to Serbia 2020 Annual Report

Joint submission by Mental Disability Rights Initiative MDRI-S and Women's rights organization FemPlatz

Chapter 23: Judiciary and fundamental rights

Women with mental disabilities in residential and psychiatric institutions

Women with disabilities in residential and psychiatric institutions are exposed to different forms and manifestations of gender-based violence and they are at increased risk of abuse, sexual assaults, rape by other clients and/or staff because of their specific vulnerability. MDRI-S conducted comprehensive research and documented violence against girls and women with disabilities in residential institutions¹ which showed that institutionalized women are exposed to physical, psychological, and sexual violence (both horizontal and vertical) ranging from violation of privacy, verbal threats and intimidation, sexual abuse and harassment, coercive measures. Women with mental disabilities are victims of forced abortions, arbitrary separation from a child, and administration of contraceptives without informed consent, while there is no functional complaint or appeal mechanism. Although these findings were published and presented to relevant decision-makers and other relevant actors during 2016-2017, there has been **no improvements in the protection of women in residential and psychiatric institutions from gender-based violence in 2018.**

¹ Developed as part of the project "Deinstitutionalize and End Violence against Women with Disabilities in Custodial Institutions" implemented by MDRI-S and supported by United Nations Trust Fund to End Violence against Women and Girls, 2016-2018; results published in publication "Here walls have ears too: testimonials of women with mental disabilities about gender-based violence in residential institutions", Biljana Janjic, Dragana Ciric Milovanovic, 2017; <http://www.mdri-s.org/wp-content/uploads/2017/09/Ovde-i-zidovi-imaju-usi-za-sajt.pdf>; and study "Violence against women with mental disabilities in residential institutions," Kosana Beker and Tijana Milosevic, 2017; In 2019, MDRI-S and Protector of Citizens (as part of the National Preventive Mechanism for Torture) conducted monitoring visits to five big residential institutions and established no changes in the practice and treatment of women with mental disabilities in residential institutions in Serbia;

Most critical abuses that we want to draw attention to are:

- **Administration of contraceptives without informed consent:** for women under guardianship, consent for inserting intrauterine device is asked from a guardian (many women are not informed or unaware that they'd be subjected to such treatment, which is sometimes done under total anesthesia), while the guardian is only informed in the case of administration of contraceptives pills as they are regarded as “part of regular therapy,” while a woman is not informed about it. **It is crucial to completely separated woman's status of legal capacity from the informed consent to medical treatments related to sexual and reproductive rights.**
- **Forced abortions:** women under guardianship are not informed or asked about prospective abortion, which is presumed to be the most adequate solution. Women who have their legal capacity are coerced to have abortions by threats of being expelled from the institution and denied means of living. In both cases, it can be said that abortions are forced upon women. Again, **the status of legal capacity of a woman must be completely separated from the informed consent and decision about abortion.**
- **Forced sterilization:** although there is a lack of transparent evidence on cases of sterilization, interviews with several women and staff of residential institutions give grounds to believe that such practices against women are still common in Serbian residential institutions. Forced sterilization is without doubt one of the most severe forms of violation of human rights and medical ethics and it can be described as cruel, inhuman, and degrading treatment that can amount to torture.² With the 2017 changes of the Criminal Code in Serbia, **criminal acts of forced abortion and forced sterilization have not been criminalized and harmonized with the Convention on preventing and combating violence against women and domestic violence (Istanbul convention).**

The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed concerns “about the incapacity and guardianship regime in the State Party that restricts the legal capacity for many women with disabilities, as a consequence of which they cannot marry, form a family, access justice or vote” and recommended to the Republic of Serbia to **“repeal any provisions of the Civil Code and other legislation that**

² As recognized by the UN Special Rapporteur on violence against women, UN Special Rapporteur on Torture, Committee against Torture, Committee on the rights of Persons with Disabilities, Committee on the Elimination of all forms of Discrimination against Women, Committee on the Rights of the Child. Also, Istanbul Convention asks from party-states to criminalize and prohibit forced sterilization.

restrict the legal capacity of women on the grounds of disability or any other form of discrimination.”³

Committee on the Rights of Persons with Disabilities gave recommendations to Serbia to eradicate these practices in its 2016 Concluding observations. CEDAW Committee also stated that there is “an increase in all forms of violence against women with disabilities in institutions” and emphasized its concern over the fact that “the State party only addresses domestic violence and do not respond to all types of gender-based violence against women and girls.”⁴

Equally critical is **partner violence** that women with mental disabilities survive in residential institutions. While recently adopted Law on protection from domestic violence is important in the Serbian society, women from vulnerable and disadvantaged groups are not provided with adequate protection measures and services to exit violence.

The capacity assessment of shelters (safe houses) for women victims of violence in Serbia, conducted during 2019 by FemPlatz⁵ showed that **shelters are not accessible to women with disabilities survivors of violence**. On average, there were three women with disabilities survivors of violence who were admitted to the shelters in previous three years, which is still a very small number given the high prevalence of violence against women with disabilities. In the period of three years (2016-2018), six shelters in the research supported 439 women victims of violence, while only two women with mental disabilities who have had experience of institutionalization were admitted to the shelters. Staff employed in the shelters does not fully understand concepts of accessibility of support to women with disabilities and lack information of legal capacity of women with disabilities. The approach to women with disabilities is still grounded in medical model, and internal bylaws contain discriminatory provisions for the admission of women with mental disabilities, while the venues are not architecturally and physically accessible and adjusted to the needs of women with disabilities. The process of licensing the shelters as service providers for women victims of violence should be used as an opportunity to revise internal bylaws and ensure accessibility of the service to women with disabilities.

Two different criminal acts prescribed in the Criminal Code of Serbia, both sanctioning rape

³ CEDAW/C/SRB/CO/4, Concluding observations on the fourth periodic report of Serbia, Committee on the Elimination of Discrimination against Women, 8 March 2019

⁴ Ibid.

⁵ Capacity assessment of shelters for women victims of violence to provide support to women with disabilities was conducted in 2019 in 13 shelters in Serbia.

Although 2016 changes of the Criminal Code of the Republic of Serbia⁶ and equalization of the sentences (five to 12 years in prison⁷) for criminal act of Rape and criminal act of Copulation with a helpless person can be assessed as improvement in the protection from discrimination and from violence of women with disability, we would like to draw attention to the existence of two different criminal acts – for women from general population and for women with disability. The article 179, paragraph 1 of the Criminal Code, defines criminal act of Copulation with a helpless person as follows: *“whoever commits sexual intercourse or equivalent act by taking advantage of person’s mental disability, mental health problem, other mental state, helplessness or other state of a person who, as a result, is not capable of resisting, he/she will be sentenced to five to 12 years in prison.”*

The title and content of this criminal act in Serbian legislation is problematic, because it is essentially an issue of the criminal act of rape, prescribed in the article 178, paragraph 1 of the Criminal Code, defined as *“the one who forces other person on sexual intercourse or equivalent act by using force or threat to directly attack life and body of the person or other close persons will be sentenced to five to 12 years in prison.”*

The logic should be to dismiss criminal act of Copulation with a helpless person and determine rape of a woman with disabilities as a qualified form of rape and provision higher sentences⁸, since women with disabilities have been unequally treated in our society. In this regard, CEDAW Committee recommended to the State to “revise article 179 of the Criminal Code (copulation with a helpless person), with a view to removing the discriminatory language.”⁹

The submitting organizations would like to ask the Delegation of the European Union to the Republic of Serbia to review the violations of rights of women with disabilities and make recommendations to the protection of fundamental rights of women with disabilities in 2020 Serbia’s Progress Report.

⁶ Criminal Code of the Republic of Serbia, “Official Gazette of the RS”, Nos. 85/2005, 88/2005- correction, 107/2005 – correction, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016

⁷ Articles 178 and 179 of the Criminal Code

⁸ Initiative for assessment of the constitutionality of the article 179 paragraph 1 of the Criminal Code, MDRI-S, 21.10.2016, available at: <https://www.mdri-s.org/saopstenja/diskriminacija-zena-sa-invaliditetom-obljubana-d-nemocnim-licem-ili-silovanje/>

⁹ CEDAW/C/SRB/CO/4, Concluding observations on the fourth periodic report of Serbia, Committee on the Elimination of Discrimination against Women, 8 March 2019