SUBMISSION ON THE RIGHT OF PERSONS WITH DISABILITIES TO SOCIAL PROTECTION IN REPUBLIC OF SERBIA UPON REQUEST OF UN SPECIAL RAPPORTEUR ON DISABILITY

CENTER FOR SOCIETY ORIENTATION (COD) – DISABILITY RIGHTS PROMOTION INTERNATIONAL REGIONAL CENTER FOR EUROPE

May, 2015

Dear Ms. Devandas-Aguilar,

Following are the findings on the right of people with disabilities to Social Protection in Republic of Serbia. Findings are stemming from the comprehensive monitoring process done in Serbia in 2013 which resulted in Holistic Report on Conditions of Persons with Disabilities in the Republic of Serbia[[1]](#footnote-1) and are updated for the purpose of this submission. The report was based on the UN Convention on the Rights of Persons with Disabilities. The Republic of Serbia is a signatory to the Convention and in January 2012 it submitted an Initial Report on the Implementation to the UN Committee for the Rights of Persons with Disabilities. The Convention itself says that civil society needs to monitor the implementation of the rights of persons with disabilities. Nowadays, persons with disabilities actively participate in policy making as well in the monitoring of human rights. This submission provides an overview of the current situation in the field of social protection and access of persons with disabilities to welfare system.

In 2009, Center for Society Orientation - COD in partnership with the National Association for Persons with Autism have started working together to build the capacity of organizations of persons with disabilities in the field of monitoring the rights of persons with disabilities. During 2010, in collaboration with York University form Toronto, Canada, opened a Regional Center for Monitoring the Rights of Persons with Disabilities in Eastern Europe. Later in 2011, Center grew into a Regional Center for Europe.

We would like to thank Disability Rights Promotion International, York University, Toronto, which recognized our capacity and vision and have supported us immensely in the work of the Regional Centre for Monitoring the Rights of Persons with Disabilities in Europe.

**Center for Society Orientation- COD**

Milutina Milankovića 68/3, 11070 Novi Beograd, Belgrade, Serbia

Tel: +381 (0)11 311 38 60

E-mail: office@cod.rs www.cod.rs

**Disability Rights Promotion International (DRPI)**

York University, 5021 TEL Building 4700 Keele Street Toronto, Ontario M3J 1P3 Canada

Telephone: 1-416-736-2100 ext. 20718, Fax: 1-416-736-5986

E-Mail: drpi@yorku.ca

**INTRODUCTION**

Disability Rights Promotion International is a collaborative project led by the York University in Toronto and supported by the Swedish International Development Agency (SIDA). DRPI seeks to establish a sustainable mechanism for monitoring the rights of persons with disabilities globally with active involvement of people with disabilities themselves in the monitoring process. DRPI project uses the human rights based approach to disability, namely, systemic discrimination and social exclusion of persons with disabilities, and their vulnerability to poverty, unemployment, various forms of discrimination and inequality. Knowledge of human rights violations based on facts and evidence is an important tool for initiating social change, change of policies and programmes that would lead to the improvement of the status of persons with disabilities. DRPI operates through 5 regional offices in Africa, South America, North America, Asia-Pacific and Europe. DRPI Regional Center for Europe is hosted by Center for Society Orientation and Autism Society of Serbia, based in Belgrade, Serbia.

**Methodology**

In order to gain an insight into the human rights violations of persons with disabilities, the project uses a holistic approach to monitoring. The methodology consists of three elements and focus areas: monitoring of individual experiences, which included interviews with persons with disabilities, systemic monitoring with the aim to provide an overview of laws, policies and programmes and their weaknesses in the field of disability, as well as monitoring of the media in order to gain insight into the way the media report on issues relevant to persons with disabilities. Holistic approach to monitoring of human rights of persons with disabilities is based on fundamental principles of human rights contained in the Convention on the Rights of Persons with Disabilities: ***dignity, autonomy, non-discrimination and equality, participation, inclusion and accessibility and respect for diversity***.

The key characteristic of monitoring methodology is direct involvement of persons with disabilities and their organizations in all stages of monitoring. Direct involvement of persons with disabilities in the process of holistic monitoring forms the basis for establishing sustainable monitoring of the rights of persons with disabilities.

This submission is based on the monitoring report and collected information using DRPI monitoring methodology.

**PART I**

**Access to material support and disability-related benefits**

In the internal regulatory framework for this area of a particular relevance is the *Law on Social Protection[[2]](#footnote-2)*, which in the framework of its provisions stipulates significant principles of social protection, such as the principle of respect of the integrity and dignity of beneficiaries and the principle of non-discrimination. Part VII (7) of the Law on Social

Protection stipulates the material support that can be exercised by beneficiaries, namely cash benefits, carer’s allowances, increased carer’s allowances and other types of the material allowances. The right on carer’s allowance is exercised by the persons who cannot meet their needs independently. The need for carer’s allowance shall be determined on the basis of regulations on pension and disability insurance. It means that only persons whose impairment gravity is estimated at a particular level qualify for this benefit which implies that the assessment of needs for this type of material support is based exclusively on medical model of disability.

Persons with disabilities, particularly vulnerable persons have the right to material assistance,

which is designed at the national level or at the level of local self-government. At the national level, these are primarily carer’s allowances and support for vocational training and cash benefits. Procedures addressing the Centers for Social Work are always the same, but the procedures for obtaining local support remain within the jurisdiction of the cities and municipalities[[3]](#footnote-3). In the framework of the procedure, after the submission of the requested documentation, it takes about 30 days, with the possible prolongation of the same period (additional checking), to obtain the decision. There is a possibility to appeal the decision, and depending on the place in which rights are required in this area, the appeal will through the

centers go to the city authorities, Provincial Secretary for Social Protection or the Ministry. Carer’s allowance is intended for persons who cannot meet their basic needs themselves. This type of assistance is obtained only if under other grounds of pension and disability insurance funds are not already allocated for this purpose. There is the possibility of exercising this right on the increased carer’s allowance if the person has a physical impairment of 100% or if there are more impairments and at least two exceed 70% and persons with permanent organic disorder of neurological and psychological type. The request for the carer’s allowance must be accompanied by a set of documents, such as the proposal for the expertise of physicians, the latest finding of the specialist, decision of the commission for categorization or earlier assessment of the first instance expertise. Taking into account that Centers for Social Work are referent institution at the municipal levels which conduct needs assessments of beneficiaries, it should be emphasized that the great problem is inaccessibility of CSWs. Annual report on the work of CSWs for 2011. Contains the data that out of 160 CSWs, accessible ramps can be found only at 16%, handrails 15,5%, accessible ground floor 29%, while there is no any single elevator in any of CSWs in Serbia. Accessible toilet can be found only at 14% of CSWs.

The *Rulebook on Education and Method of Work of the Expert Body of the Pension and Disability Insurance Fund [[4]](#footnote-4)*stipulates the formation and method of work of the assessment, and for the purposes of this report, it is crucial to point out that it is related to the exercise of the rights from pension and disability insurance, determines the content and form for

determination of disability, and the Expert Body belongs to the Republic Fund for Pension and Disability Insurance. In addition to the Expert Body, there is a Control Body for control of assessments, opinions and ratings which gives the approval or comment on the findings.

Expert Body is required by the Rulebooks to apply uniform criteria for determining disability, physical impairment and the need for carer’s assistance. Article 6 stipulates that the Expert Body is consisted of the court expert, and the Control Body is also consisted of the court expert. In determining changes in the state of disability, the commission is consisted of three members, i.e. medical experts. It is important that the physician – medical expert is specialized in appropriate or related field in relation to the rights of beneficiaries. The finding of the Expert Body under Article 10 indicates the necessity of clear, logical, scientific and expert-based findings. Medical expert in the first-instance expertise is not allowed to perform the expertise in the second-instance, and the same applies to the Control Body findings. The expertise refers to a number of areas in the disability assessment when a physician submits a proposal and, together with the request for the process initiation, starts this process. In the expertise in the first-instance expertise (Articles 28 - 36), it is testified about the existence and cause of disability, physical disability, the need for carer’s assistance, complete ability to work and the inability to live and work independently. In assessing the level of physical disability, the percentage is determined by referring to the *Rulebook on* *Determining Physical Disability.* The document called Finding, opinion and assessment are signed by the medical experts and medical experts - the controller. The expertise in the second-instance expertise of the exercising rights is performed by the expert body that is different from the first-instance expertise and it actually determines the regularity of the findings, opinions and assessments of the first-instance expertise of the exercising of rights. It is interesting to note that the Expert Body of the second-instance expertise provides technical assistance to the Expert Body in the first-instance exercising of rights. The finding, opinion and assessment are signed by the medical expert and the medical expert - the controller. In the assessment of the physical disability, assessments of the need for carer’s allowance, inability to work and change of the disability status relies on the expertise of disability, i.e. in accordance with the provisions of this Rulebook. Article 58 discusses about the control of the findings, opinions and assessments, and it is performed without examining the insured or the beneficiary unless the assessment on the basis of the previous documentation is necessary. However, it remains the fact that the person submitting the request for the assessment, after the assessment doesn’t get hard copy of the “Finding, opinion and assessment”, but instead this document is sent for the internal revision within the of the Republic Fund for Disability and Pension Insurance. This undermines the process of assessment significantly and infringes the rights of people with disabilities guaranteed by Law that the person who is subjected to assessment has to be aware of the outcome right after the assessment. Interviewed people with disabilities claim that they don’t get the document but only verbal assurance that the decision will be positive and that the medical experts in the commission for assessment will give recommendation to allocate the benefit and then it happens that they get the final decision by post with negative decision which implies the suspicion that the revision internal body cancels the recommendation of assessment commission which is not justified or indicated transparently leaving little space for legal remedies.

Also, it is indicative that when it comes to carer’s allowance, Expert Body in charge for the assessment in its decisions impose the obligation for periodic control of existence of the need for material support which is also the case with the people with disabilities of progressive type with no prospects for improvement of person’s condition. It imposes additional stress and unnecessary effort for people with disabilities and puts in question already acquired benefits.

For the interviewees who cited problems in this area, one of the most pressing problems is the cash benefits based on disability. The amounts allocated for the carer’s allowance in reality is not sufficient for a person to provide the service they need, and the amount of carer’s allowance is commonly used as a means of mere survival:

***“****...In general, my pension and carer’s allowance… are not enough for me to pay the services of the Home…”*

Female, 38

*“A country of eight million people is not able to regulate that minor, minimal disability pensions and cannot allow for carer’s allowance can to be as personal assistance, so you can pay that personal assistant – you can neither pay nor you can hire a personal assistant ... If you hire a personal assistant, the law prescribes that the wife or brother and sister cannot be personal assistants. I think that such thing does not exist anywhere in the world. Here, with carer’s allowance we cannot even pay for five days of personal assistance.”*

Male, 66

Also, for the beneficiaries who are trying to achieve the rights to receive cash benefits based on disability, it is not an easy challenge, as the criteria and documentation required for the exercise of these rights is extremely demanding, and the assessment of the need for the income depends on the assessment of the competent Medical Commission:

*“After that I made a request for the carer’s allowance, but it was not approved … I was rejected once, then I was rejected a second time, and then for the third time I was invited to the Commission to Belgrade. I went there ... and then a doctor looked at me and said: guys, are we so blind not to see that a woman is powerless. I mean, she has seventy percent of physical impairment, she is incapable of self-care. I can say that I was rejected quite often. And so, for the third time, I obtained that carer’s allowance by the Commission.”*

Female, 57

*“Well, the biggest problem is that doctors... who do the assessment… I think they misunderstood their role; they generally defend the system and state money from us. And their role is to assess whether we are capable or not, and not to tell that there is no money for such allocations, and under that excuse to you deny you your rights. The role of the doctor is to do the assessment, that is, to assess the state of your health, not to think about the state money primarily. Because of that I am mostly disappointed, as it is all about the money. No one even examines you properly ... only once in my life I have experienced during the assessment of physical damage the real assessment, meaning he asked me to take off my shoes, to walk, examined me completely. They just look at the documentation, they do not examine you at all, and … I was rejected for the carer’s allowance for the third time, despite the fact that I am not able to take care of myself at all…they examine you, don’t say anything and when you receive the answer – you are rejected. To date it happened two or three times, even though I have all documents from all specialists who treat me. Meaning - two physical therapists, neurologists in Belgrade, neurologists in Novi Sad, electromyographic results, everything. Documentation supports the fact that I need carer’s allowance.”*

Female, 50

**Access to disability pensions**

According to the Law on pension and disability insurance**[[5]](#footnote-5) right to disability pension** can be realized once the total loss of working capacity is determined before the age required for old-age pension: if the cause of disability is work related injury or professional illness, no matter the years of service; if the disability is the consequence of illness of injury unrelated to work, at least 5 years of service are needed. Throughout recent years, number of disability pension beneficiaries has reduced significantly due to the more restrictive approach in assessment of the need for disability pensions. Also, in Serbia, at the moment the process of revision of already granted disability pensions from 2000 onward is taking place and the first results indicate the high frequency of abuses of disability pensioner status. Due to imperative for savings of public funds and austerity measures, it happens that applications for disability pensions of people with disabilities with recommendations from medical specialists for disability pensions are being refused by Expert Bodies. There is an option that person assessed gets **“**easier working place” within the same company by decision of the Expert Body but it is not taken into account if there are such working places within the particular company at all. Throughout the monitoring of individual experiences of people with disabilities, the case is identified when the application for disability pension of woman working in the hair-dressing saloon was refused and she was directed to “easier working place” which doesn’t exist in the hair-dressing saloon:

*“ I got the Decision of the expert body for disability pension, which says that they give me easier working place because previously I had filed a complaint on their first decision that I’m not allowed to go in disability pension…and then I got the decision related to my complaint where they give me “easier working place” but my company had been privatized already and my boss doesn’t want to hear about it. Over there, we were not only hair-dressers but cleaners as well. He didn’t want to pay for the cleaner in our company so he didn’t want to approve this decision. He said to me that either I will be able to work or he will fire me.”* Woman, 59

**According to the regulation of military of State of Serbia and Law on pension and disability insurance,** the right to old-age pension and disability pension for professional military servants as well as the right to family pension for family members of military servants. The rights of war veterans, military and civil disabled in the war are regulated by the **Law on rights of civil disabled war victims[[6]](#footnote-6) and the Law on fundamental rights of war veterans, disabled veterans and families of dead soldiers[[7]](#footnote-7)**. In this field, following rights can be realized: veteran benefit; personal allowance of disabled veterans; carer’s allowance for disabled veterans; orthopedic allowance; unemployment benefits for war veterans; food and accommodation allowance when traveling to another city for war veterans; rights to car import; rights to free or discounted ride with the means of public transport; right to benefits of family members of disabled war veterans; rights to family disability allowance; carer’s allowance; funeral cost reimbursement. **From the aforesaid it can be concluded that disabled civil and war veterans have disproportionally higher disability related benefits and material support on the basis of their disability in comparison with other people with disabilities.**

**Other disability related benefits**

In many local self-governments, persons with disabilities, especially those entitled with the rights to carer’s allowance or having particular impairment level, qualify for incentives when paying communal taxes for the electric power, communal services, internet, mobile or landline phone bills, intercity transport, cable TV, legalization of housing objects, car registration. First thing to bear in mind is that such incentives are not related to poverty thresholds or average income in the household but are frequently conditioned with entitlement to carer’s allowance. The assumption of the decision-makers is that those who acquired the right to carer’s allowance have the most severe disabilities which qualifies them for such incentives. However, such incentives should be perceived as social material support and shouldn’t be related solely to disability gravity but to additional socio-economic indicators. Also, over the recent period, there is a tendency of cancellation of such benefits illustrated with the Decisions of Cities of Belgrade (the Capital) and Novi Sad (the second largest city) from 2014. which have cancelled the incentives for communal service costs.

**PART II**

**Access to social services**

The Law on Social Protection regulates the area of providing social protection to persons with disabilities. They are designated as activities that provide support and assistance to individuals and their families to enhance the quality of life of persons with disabilities and create opportunities for independent living (Article 5). Through described principles of social protection, it is necessary to provide social services in the immediate and the least restrictive environment, timely, high-quality, accessible in the economic, physical and geographical terms to meet individualized approach and expertise of employees[[8]](#footnote-8). Article 36 guarantees the right to free choice of services, which includes selection of social service providers by the

beneficiary. A special part are services and social service beneficiaries, and Article 40 describes the service groups that are divided into five integrated units, assessment and planning services, daily services in the community, support services for independent living, advisory-therapeutic and social and educational services as well as accommodation services (Article 40). Social services are related to all ages of beneficiaries in a way that suits the needs and best interests of the beneficiaries and they are defined as temporary, intermittent and continuous. Services listed under Article 40 are provided by the Republic of Serbia, Autonomous Province or the local self-government, and if it is not possible to provide adequate scope, it is necessary to provide services from a provider of social protection licensed under the public procurement procedure of social services.

The Law on Social Protection stipulates Rulebooks aimed at its implementation, including: the Rulebook on Detailed Conditions and Standards for the Provision of Social Protection Services, the Rulebook on Licensing Experts in Social Protection, the Rulebook on Licensing Social Welfare Organizations and the Rulebook on Amendments to the Rules of Professional Jobs in Social Protection.

*The Rulebook on Detailed Conditions and Standards for the Provision of Social Protection Service[[9]](#footnote-9)* through common minimum functional standards (Articles 12-21) sets an admission (triage) system for the beneficiaries, assessment, determining the level of support, planning, internal evaluation, staff development and the availability of programmes and services in the community. Services must be available, and if there are not sufficient resources, they shall be provided in the community through other organizations and experts. Planning of specific services is followed by the individual service plan which should make concrete activities in

the framework of goals and expected outcomes that are part of this plan. Beneficiary or his legal representative, expert, responsible staff, and if necessary, other experts are involved in its development and the copy is delivered to the beneficiary or his legal representative. This

Rulebook contains a set of services: accommodation services, daily services in the community and support services for independent living. Thus, within support services for independent living services are identified services for supported housing and personal assistance. The Rulebook in this regard determines the content of services, including minimum functional standards. We can take personal assistance as an example. Specification of service determines availability for the beneficiaries and they are related to an adult with an estimated first or second level of support, entitled to the increased carer’s allowance, working or involved in the operation of various civil associations and other forms of social engagement, that is, involved in the regular or individual education programme. This Rulebook defines personal assistance as providing individual practical support, personal needs and social activities with the aim of increasing the level of independence. This includes assistance in maintaining personal hygiene and basic personal needs, assistance in maintaining the hygiene in the apartment, transfer and assistance in moving inside and outside the home, work place and places where social and educational activities are taking place as well as assistance in the use of transportation. It also provides assistance in the use of health services, assistance with communication and performing various social activities. Based on the identification of needs the scope and type of engagement of personal assistants is determined. Service provider concludes a contract with the beneficiary and personal assistant. In order to provide personal assistance services, Personal Assistant completes accredited training programme and the user completes training for the use of this service. The Rulebook is restrictive in terms of household members and it is not possible for a member of the family to be a personal assistant. In accordance with the individual needs of beneficiaries, the redistribution of working hours is allowed. The Rulebook does not specify method of personal assistant selection, that is, the resolution of potential problems in the event of improper mutual relations. The Rulebook only highlights the period of 30 days of mutual adaptation. Also, the Rulebook stipulates planning, which includes weekly and monthly plan in which a parent or other significant person for the beneficiary can participate.

All Rulebooks that follow the Law on Social Protection are issued under the Institute of Social Protection[[10]](#footnote-10), recently published and entered into force in 2013. The *Rulebook on Licensing Experts in Social Protection[[11]](#footnote-11)* and the *Rulebook on Licensing Social Welfare Organizations[[12]](#footnote-12)* are important for the improvement of the entire area of social services, the focus is certainly moving towards the implementation and availability of services and the future will show its practical use and sustainability intended by the regulatory framework in this area. The system of social services for persons with disabilities in Serbia still remains largely institutionalized, thanks in part to the fact that relatively narrow range of community- based services and support services exist at the local level. The process of decentralization of funding and authorities (from the state level to the local self-governments) has started and it is necessary to monitor the implementation of this process. Although the Law on Social Protection stipulates that the responsibility for financing social services is at the local level, still the dominant source of financing is from the state budget. Unfortunately, with the existing range of social services in Serbia, persons with disabilities cannot achieve full social

integration and participation[[13]](#footnote-13).

Currently, only a limited number of services are standardized, suggesting that a work on standardization and expansion of the existing range of social services must be continued.

Although the delivery of social services is regulated by the Law on Social Protection and accompanying regulations relating to the application of the law, the system of social services for people with disabilities are still faced with many challenges, of which the most important are: 1) the financing of social services, 2) plurality of services and 3) very slow process of transformation of institutions into the services in the community. According to the Social protection Law, the local governments are obligated to plane and finance the social service for persons with disabilities through tendering procedures but in the reality, the Ministry of Labor, Employment and Social Policy stay the dominant source of funding for these services through public tenders for projects of civil society organizations, mostly because local governments do not have sufficient funds or do not spending it on the correct way. The Budget Fund for Programmes on the Protection and Improvement of the Status of Persons with Disabilities under the Ministry of Labour, Employment and Social Policy finances projects of socio-humanitarian organizations and 33 national and provincial confederations of persons with disabilities, which gather 526 local associations. These projects support the development of community-based services for persons with disabilities (supportive housing, day care, personal assistance) and various programme activities (development of stimulation and inclusion programmes, offices for sign language interpreting services, SOS helpline, legal aid and strengthening the capacities of the organizations of persons with disabilities). Additionally, a permanently open call aims at financing projects of improving the accessibility of physical environment, improvement of spatial and technical working conditions in organizations of persons with disabilities and humanitarian and other programs. Between 2011 and 2013, **over one billion RSD from the Budget Fund were allocated to the said projects and activities**. Local governments also finance the social services for persons with disabilities through the tenders for projects. As both funding sources provide only a temporary and partial funding and cover a limited number of social services for people with disabilities, the result is that people with disabilities are faced with a very limited number of services that are available to them with limited duration (till the end of the project). It should be noted that the criteria set for the selection of projects to be funded are not based on the assessed needs of the population and they are very often the subject of political influence. The good example is the latest call for financing social services published by the Ministry, which was downed at the request of civil society organizations due to the non-transparent selection of service providers that did not meet the set criteria of selection. The political influence to the financing of social services for persons with disabilities is illustrated by a report prepared by the civil society organization "Center for Independent Living”[[14]](#footnote-14): 1) There is a political influence to the tendering procedure in local communities that are not always transparently identified and did not correlate with the needs of citizens for services of social protection, 2) The importance of the political affiliation of service providers interested in obtaining funds for the project implementation and 3) The existence of a lobby for getting funds for project implementation.

In 37 local communities in Serbia, there is no social service for persons with disabilities financed from the local government budget. Poor areas are highly affected by these kinds of financing, which jeopardizes the constitutional guarantee according to which all citizens are entitled to the same social protection. This problem is scheduled to be resolved by “transfers for special purpose” (the local governments is able to request the money from the state in order to finance the service), but procedures are very complicated and almost does not work in practice. An important role in the system of social protection in the local community have CSWs: they have to conduct a needs assessment for certain services and refer certain beneficiaries to them. In the reality, CSWs make plans only for the services that are available in the community at the moment, not recording the services that are needed by persons with disabilities if they are not available. In that sense, persons with disabilities have almost no power to make decisions about which services they want to use. The monitoring of individual experiences of people with disabilities showed that the field of social service delivery is of great importance for persons with disabilities since 85% of respondents mentioned the experience in this field during the interviews. A total of 328 respondents indicated good or bad experiences with social service availability and delivery practice. Even 72% of respondents do not have access to the necessary service support, 42% of respondents do not have the ability to influence decision making and choice of service they will receive as well as its quality and scope. Consequently, there is a violence of the principle of dignity, even in 28% of patients. For users who claimed to have no access to necessary social services, the most often reasons is that community-based services for independent living are not sufficiently developed, or the ones that exist do not cover existing needs of multiple users and have not resolved the issue of sustainable funding.

There are no data available, disaggregated by impairment, sex, age or ethnic origin in relation to coverage of social protection programmes by persons with disabilities; rates of poverty among persons with disabilities; and additional costs or expenses related to disability.

Despite the continued **deinstitutionalization process** and the expansion of foster care, the development of existing community-based services is insufficient, uneven and often unsustainable. The least progress has been achieved in the provision of community-based services for adults with disabilities, particularly those with intellectual and mental health problems, given that virtually no reform has been implemented in the care for these persons.

Conditions in institutional care in the Republic of Serbia, as well as further frequency of implementation of this option, as a solution for persons with psychosocial and intellectual disabilities versus developing the possibilities of life in the community, is one of the most pressing problems.

From the medical perspective, the new *Law on Protection of Individuals with Mental Illness[[15]](#footnote-15)*

relies on existing institutions such as psychiatric hospitals and health centers. According to

Article 12, “Health care facilities under paragraph 1 of this Article shall establish separate organizational units which will perform the works of the mental health care in the community. Type and detailed conditions for the establishing of the organizational units and conducting mental health care in the community stipulates the Minister in charge of health issues.“ Estimation and definition of specific units in the community was not defined by the law. The right on the conditions of the treatment in the least restrictive environment is not discussed except in the principled stance that restrictive methods are used only if they are only efficient. However, other treatment options or types of support to accompany the treatment which could lead to greater inclusion of persons with mental disabilities in society are not proposed. General prevention, rehabilitation and inclusion are not covered by this law, and “reliance on support systems that are provided within the system of social protection

is welcome, but not enough to facilitate full social inclusion and protect human rights”[[16]](#footnote-16).

Within the framework of the Mental Disability Rights Initiative[[17]](#footnote-17), it has been noted that the institutional environment in practice often includes toilets with no doors and toilet seats and

the shower stall without the ability to be closed, when a group of beneficiaries shower with hose is not implemented which is justified by the employees with “beneficiary condition” and

“negative experience”, which violates principles of dignity and independence. A person living in an institution has not the right to choose with whom to live or to accomplish

privacy. Considering that the institution is designated for large number of people, especially if it comes to people who need considerable support in daily life, beneficiaries are exposed to

limitations that reduce the opportunities for self-determination, including rules on when and with whom they can go out of the home, how often and when they have to return. This

particularly limits the possibilities for establishing close relationships and expressing sexuality. Men and women sleep together in the same rooms.

Law on social protection, within the group of support services for independent living envisages the service of **supported housing** but provision of this service faces numerous problems among which the most frequent ones refer to unregulated financial transfers for this service. The service is available on the long-term basis to people with physical, intellectual or psychosocial disabilities after the age of 15, according to the Law on social protection. The biggest obstacles in realization of service of supported housing faced by service providers are:

1. Social benefits and material support aimed for housing of beneficiaries are still continuing to be transferred to residential institutions even if beneficiaries are no longer in institutions but were deinstitutionalized living in supported community-based housing.
2. Residential institutions continue to send invoices for costs of accommodation to family members of beneficiaries even if the beneficiaries are no longer living in the institutions.
3. All material social benefits entitled to beneficiaries are not following person nor community-based social service provider of supported housing but are still being transferred to residential social care institutions.

These data are telling about unregulated mechanisms which would ensure the needed service for the beneficiaries and about negative perception of the State towards civil society organizations as social service providers.

For beneficiaries who have stated that they have no access to necessary social services, often the reason is that community-based services for independent living have not been sufficiently developed or that the ones that exist do not cover the existing needs of large number of beneficiaries and have not resolved the issue of the sustainable funding.

*“Well, let me tell you what she said to me personally-her job was to walk me all the time*

*…not to prepare me food nor to do something for me, just to walk me all day long and to give me something to drink. “*

Female, 60

*“I'm familiar with it and my daughter was the beneficiaries of personal assistance, however, I can tell you that there was not great help from them. I still had to cook because they didn’t want to, they could not, and I still had to everything about the personal hygiene of my daughter. The only aspect which I can say that was useful was that we were brought staple food in the morning. And that was bread and basic groceries. All other chores were too difficult for them, they were afraid of everything they had to do, and I could say - avoiding everything.”*

Female, 59

The criteria for obtaining a personal assistant are often too restrictive because of the limited resources:

*“I have bad experience because those organizations for personal assistants have assistants for disabled people of working age, not for… working disabled persons or for ... working, it is also applicable on studying, learning, is that right? ... Those who study. Then ... those who have less…who are not sixty years old. First of all, if I am sixty - I mean, those who are old, who did their lifetime, who have finished their education and are now retired, but still have the need to get out of the house and if they do not have to go to the cinema or the theatre or on the quay, they don’t have to - but they have to go to the doctor’s. But, they cannot because the World Organization ... at the level of the World Organization for Personal Assistants they enacted this Convention that people over sixty cannot have personal assistant even if they are no longer working. Well, I think that in my lifetime I didn’t experience more discrimination than ... And that is the World Organization that fights discrimination against persons with disabilities and they make such a decision. It is inapprehensible to me.*

Female, 63

*“You see, personal assistance would really mean a lot to me, but I have no right to that because I am not a beneficiary of carer’s allowance. That is for the increased carer’s allowance… you can also have basic carer’s allowance to obtain the service. They don’t specify which carer’s allowance is increased or basic, it is important to have the carer’s allowance to obtain assistance at home.”*

Female, 50

Persons with disabilities are deprived of choice of selection of personal assistant:

*“Why wouldn’t my wife be the assistant since she is already familiar with these situations, my problems and everything else? I mean, she could provide the assistance and be paid for that as well. It would make me feel better; I would be more comfortable, because I feel* *embarrassed when some person comes and works around me. I mean, when I already have a wife. “* Male, 38

For now, financing mechanisms for social services do not indicate their sustainability:

*“I didn’t ... because I know, when I asked in my hometown about personal assistants, they said that ... that the city has no money for that.”*

Female, 23

*“And before that, there was one kind of personal assistant at the Center for Social Work - but it was a pilot project. It lasted only three months. “*

Female, 63

**The effects of deprivation of legal capacity**

**Number of children and adults under guardianship[[18]](#footnote-18)**

|  |  |  |  |
| --- | --- | --- | --- |
|  | 2010 | 2011 | 2012 |
| Children and youth | 6,162  | 11,025  | 11,267  |
| Adults | 8,672  | 11,212  | 11,852 |
| The elderly  | 3,049  | 4,803 | 5,611 |
| Total | 19,893  | 29,051 | 30,742 |

Institute of deprivation of legal capacity and extension of parental rights institute hinders the realization of labour rights and other human rights for persons with disabilities, which in particular has negative impact on persons with intellectual and psychosocial disabilities[[19]](#footnote-19). The right to work is one of the rights that a person obtains as 18 years old, and can be lost by deprivation of legal capacity, which leads to legal equality with the person under 14 years of age. The *Law on Social Protection[[20]](#footnote-20)* is not directly related to the employment of persons with disabilities, but Article 61 deals with beneficiaries of social services and improvement of their working abilities.[[21]](#footnote-21) Legal provisions of this Law still did not put emphasis on services related to the employment of persons with disabilities. However, in Part IV of this Law - Services and beneficiaries of social protection in Article 40 groups of social services are classified and through the third part of the support services for independent living that are indirectly related to the employment of persons with disabilities[[22]](#footnote-22). Support services to people with disabilities so far have been limited, despite the efforts made in recent years to improve the legal framework governing this area of life of persons with disabilities[[23]](#footnote-23). Despite the obstacles, persons with disabilities are gradually entering the open labour market and the number of people needing support is increasing[[24]](#footnote-24).

Beneficiaries of social care institutions for permanent residence are even more disadvantaged in relation to other persons with disabilities:

*I: “Well, let me tell you something that was for me, from the moment when the Law on Professional Rehabilitation of Persons with Disabilities started to apply, in the City of Belgrade and throughout Serbia - it was strange because it is interesting ... maybe you will find the information interesting - Users of social care institutions do not have the opportunity for employment because you are in a social care institution. Apparently, this is something that is changing, but then, it’s not clear to me. Would not be easier for the State to provide you with the ability to work and keep a part of the funds, because there is nothing better and more precious than when you earn your money - it is the desire of all of us, whether you are a person with or without disabilities. I ... I was thinking , would not it be easier for the State to allow you to work, to make the most of your remaining abilities that you have and that, simply, one pay for the part…*

*M1: “And, are you registered at the Employment Service?”*

*I: “Ne. Because we, as beneficiaries of the Home cannot be registered on the address we live at...”* Woman, 37

1. Keravica R., Loncar G. “Holistic monitoring report: Monitor your rights!”, Center for Society Orientation, Disability Rights Promotion International Regional Center for Europe, Belgrade, 2013. <http://www.cod.rs/en/news/holistic-report-monitor-your-rights-monitoring-of-rights-of-persons-with-disabilities-in-republic-of-serbia/> [↑](#footnote-ref-1)
2. Law o Social Protection, ”Official Gazette of the Republic of Serbia“, No 24/2011   [↑](#footnote-ref-2)
3. Rulebook on organization, norms and standards of the Center for Social Work “Official Gazette of the Republic of

Serbia”, Nos 59/2008, 37/2010, 39/2011 – sec. Rulebook and 1/2012 – sec. Rulebook [↑](#footnote-ref-3)
4. Rulebook on Education and Method of Work of the Expert Body of the Pension and Disability Insurance Fund, “Official

Gazette of the Republic of Serbia”, Nos 59/2008, 75/2008 – amd, 24/201 and 7/2012 [↑](#footnote-ref-4)
5. „Official Gazzette of RS", no. 34/2003, 64/2004 - de

101/2005, 63/2006 - decision USRS, 5/2009, 107/2009, 101/2010 i 93/2012) [↑](#footnote-ref-5)
6. “Official Gazzette RS", no. 52/96 [↑](#footnote-ref-6)
7. “Official Gazzette SRJ", no. 24/98, 29/98 - corr. i 25/2000 - decision SUS i "Official Gazzette RS", no. 101/2005 -

Law 111/2009) [↑](#footnote-ref-7)
8. Articles of the Law on Social Protection which determine principles of social protection are described in Articles 24-33 of this Law [↑](#footnote-ref-8)
9. Rulebook on Detailed Conditions and Standards for the Provision of Social Protection Services, ”Official Gazette of the

Republic of Serbia“, No 42/2013   [↑](#footnote-ref-9)
10. Institute for Social Protection, published Rulebooks [http://www.zavodsz.gov.rs/index.php?option=com\_content&task=view&id=291&Itemid=291](http://www.zavodsz.gov.rs/index.php?option=com_content&amp;task=view&amp;id=291&amp;Itemid=291) [↑](#footnote-ref-10)
11. Rulebook on Licensing Experts in Social Protection, “Official Gazette of the Republic of Serbia”, No 42/2013 [↑](#footnote-ref-11)
12. Rulebook on Licensing Social Welfare Organizations, “Official Gazette of the Republic of Serbia”, No 42/2013 [↑](#footnote-ref-12)
13. More in Social services for persons with disabilities as support for equal socio-economic development – Monitoring report

2012, Serbia, Center for Society Orientation, 2012, p 48. Available at: <http://sr.cod.rs/images/COD_Monitoring-izvestaj->

2012\_Socijalni\_servisi-2012.pdf [↑](#footnote-ref-13)
14. The report on compliance of legislative and institutional framework in Republic of Serbia with the UNCRPD and the recommendations for harmonization, Center for Independent Living of Serbia, 2014 [↑](#footnote-ref-14)
15. Law on Protection of Individuals with Mental Illness, “Official Gazette of the Republic of Serbia”, No 45/2013 [↑](#footnote-ref-15)
16. Supra 7 [↑](#footnote-ref-16)
17. The study included 2.023 persons in seven institutions: Centre for the protection of infants, children and youth in Zvečanska street in Belgrade, Home for children and youth with disabilities “Sremčica”, Home “Veternik” in Novi Sad, Home “Nikola Šumenković” in Stamenica, Home “Kolevka” in Subotica, Home for children and youth with autism in Belgrade and Home for adults “Kulina” near Aleksinac. [↑](#footnote-ref-17)
18. <http://danube-inco.net/object/document/14151/attach/Second-National-Report-on-Social-Inclusion-and-Poverty-Reduction-final.pdf> [↑](#footnote-ref-18)
19. Provisions that enable deprivation of legal capacity and extension of parental rights are scattered through the Law on Extra-judicial Proceedings, ”Official Gazette of the Republic of Serbia“, Nos 25/82 and 48/88 and ”Official Gazette of the Republic of Serbia“, No 46/95 - sec. law, 18/2005 - sec. law, 85/2012 i 45/2013 - sec. law) and Family Law (”Official Gazette of the Republic of Serbia“, Nos 18/2005 and 72/2011 - sec. law) [↑](#footnote-ref-19)
20. Law on Social Protection, ”Official Gazette of the Republic of Serbia“, No 24/2011 [↑](#footnote-ref-20)
21. More: Through Employment to Inclusion of Persons with Disabilities in the Republic of Serbia, Milanović L. and others, Balkan Fund for Local Initiatives, 2012, p 13 [↑](#footnote-ref-21)
22. Article 40 “...support services for independent life – supported living; personal assistance; training for independent living

and other support necessary for active participation of users in the society.” [↑](#footnote-ref-22)
23. Employment of persons with disabilities in the Republic of Serbia, 2012, Center for Society Orientation, p 47- 50. [↑](#footnote-ref-23)
24. Butigan Darja and others, Social services for persons with disabilities as support for equal socio-economic development, Monitoring Report 2012, Center for Society Orientation [↑](#footnote-ref-24)