**Replies of the Protector of Citizens to the Questionnaire: Right to Housing of Persons with Disabilites**

1. Please explain the guarantees for the right to housing in the domestic legislation, including the constitutional provisions and laws on human rights.

**The Constitution of the Republic of Serbia[[1]](#footnote-1)** does not directly regulate the right to housing, nor does it define the public interest in this field; however, according to the provisions[[2]](#footnote-2) regulating the right to social protection, citizens and families that require social welfare for the purpose of overcoming social and existential difficulties and creating conditions to provide the basic existential needs are entitled to social protection the provision of which is based on the principles of social justice, humanity and respect of human dignity. Disabled persons, war veterans and victims of war are to be provided with special protection in compliance with the law.

**Due to the fact that the international legal acts** are to become incorporated in the domestic legislation based on the adoption of the laws on their ratification, we shall here point out to the following act that are of special importance for the field of housing:the Universal Declaration of Human Rights[[3]](#footnote-3), the International Covenant on Economic, Social and Cultural Rights and the European Social Charter (Revised).[[4]](#footnote-4)

As an emerging field, the social housing was provided with the legal basis in 2009, through the adoption on the Law on Social Housing[[5]](#footnote-5) that ceased to be in force on December 31, 2016, with the entry into force of the **Law on Housing and Maintenance of Buildings.[[6]](#footnote-6)** Bearing in mind the time of its adoption and a relatively short period of its implementation, as well as the implementation of the Strategy, Action Plan and the program, this Law will show the real effects of its implementation in practice.

The Law on Housing and Maintenance of Buildings defines the notion of housing support and the basic principles based on which the housing policy is to be implemented, and in that sense, the following is prescribed: that the person who is a national of the Republic of Serbia, and who is without an apartment, i.e. without an adequate apartment within the meaning of this Law, and who cannot resolve his housing need with his own means at the market conditions for himself and for his family household, can be a beneficiary of housing support. A person who does not own an apartment is a person who does not own an apartment, i.e. a family house in the territory of the Republic of Serbia. A person who does not own an adequate apartment is a person who owns only an apartment or a family house that does not fulfil a minimum of one conditions prescribed by Article 90 of this Law.[[7]](#footnote-7)

Categories of beneficiaries of housing support were introduced as well, according to which the housing support programs are defined, and those are, in particular, a person who does not own an apartment, i.e. who does not own an adequate apartment who is a veteran of the 1st category, as well as a beneficiary of this right from the field of veteran and disability protection and protection of civilian invalids of war and a person who does not own an apartment, i.e. who does not own an adequate apartment who is a person with disability, among others.[[8]](#footnote-8)

Housing support is realized through: the lease of an apartment; purchase and other methods of acquiring the property right over an apartment or a family house; improvement of housing conditions; assistance for legalisation of an apartment or a family house; housing care.[[9]](#footnote-9)

The housing support allocation procedure for persons with domicile in the territory of the local self-government unit that is implementing the housing support program is to be initiated on the basis of a public call that is to be published in a local public media and in the official internet site of the local self-government unit. Exceptionally, the procedure for housing support allocation to the persons employed with the user of resources that are public property is to be initiated on the basis of a public call for housing support allocation, which must be published in such a manner as to be accessible to all the persons employed with the user of such resources that are public property that is allocating housing support.[[10]](#footnote-10)

Determining the order of priority for allocation of housing support is to be conducted primarily in accordance with the housing status (a person who does not own an apartment), i.e. with the housing conditions (a person who does not own an adequate apartment), and then in accordance with the following criteria as well: the number of family household members who are beneficiaries of housing support; the medical condition of the beneficiary of housing support and of the members of his household; the disability and bodily impairment of the beneficiary of housing support and of the members of his household. In determining the order of priority, priority shall be given to: vulnerable persons in terms of housing with the longer period of such vulnerability, i.e. worse housing conditions, longer years of service, families with smaller number of employed persons and larger number of underage persons and/or with a household member who is a person with disability, as well as the beneficiaries of the social protection services.[[11]](#footnote-11)

Based on the list of order of priority, the assembly of the local self-government unit, i.e. the competent authority of the user of publicly owned assets shall pass a decision on allocation of housing support. An appeal can be filed against this decision to the municipal, i.e. city council within 15 days from the decision publication date. In case that the housing support is allocated to the person employed with a user of publicly owned resources, the appeal against the decision of the housing commission of a user of publicly owned resources can be filed to the commission of the Government in charge of housing issues within 15 days of decision publication date. Based on the final decision, the competent authority of the local self-government unit, i.e. of the user of publicly owned assets shall conclude an agreement on allocation of relevant housing support.[[12]](#footnote-12)

For the purpose of realisation of public interest in the field of housing, i.e. for the purpose of determining and implementation of housing policy, the Government shall adopt the National Housing Strategy (hereinafter: the Strategy) and the action plan for it implementation (hereinafter: the Action Plan). The Strategy and the Action Plans shall be realised through programs and projects prepared by the authorities and organisations of the Republic of Serbia and/or the local self-government units competent for the specific issues of the housing policy.[[13]](#footnote-13)

The Ministry in charge of housing shall prepare the Program of Housing Support in accordance with the Strategy and the Action Plan and deliver it to the Government for adoption.[[14]](#footnote-14)

With a view to realising the public interest in the field of housing and implementing the objectives and measures laid down in the Strategy and in the Action Plan, the local self-government unit shall adopt the local housing strategy and an action plan for its implementation. The local housing strategy shall be implemented through programs and projects of housing support, as well as through other housing programs and projects whereby the objectives and measures of housing policy of the local self-government unit are to be realised.[[15]](#footnote-15)

According to **the Law on Social Protection,** the independent living support service – housing with support - is envisaged as an aspect of the social protection services.[[16]](#footnote-16)

1. **Kindly, specify any useful statistical indicators, analyses or reports relating to the housing conditions of the persons with disabilities, the scope of homelessness and discrimination (including failure to provide reasonable dwelling) in the private or public sector. In addition to that, kindly provide references to any documentation available (written, visual or any other) on the experiences under dwelling conditions for persons with disabilities.**

The requested information is not available to the Protector of Citizens, since no statistical data, reports or analyses relating to the dwelling conditions of persons with disabilities have been produced. Only information pertaining to the complaints submitted to the Protector of Citizens and to his handling of such complaints is available to this authority.

Namely, while investigating citizens’ complaints, towards the end of 2015, the Protector of Citizens addressed his opinion to the Government of the Republic of Serbia so that they would carry out the activities within the scope of their competency with the aim of harmonizing and directing the work of the competent state administration authorities in order to remove all the obstacles and providing complete and efficient exercising of rights to housing for the vulnerable population groups through amendments and harmonization of the legislative framework and through the adoption of the required by-laws.[[17]](#footnote-17) Addressing of such opinion was prompted by the fact that the Law on Social Housing that was in force at that time did not regulate the obligations and responsibilities of the holders of housing policy on the Republic and local levels in a clear and precise manner and that the envisaged mechanisms for their mutual harmonized and efficient actions had not been envisaged, which prevented successful realisation of housing policy objectives in the field of social housing which were laid down by this Law, by the National Strategy for Social Housing and by the Action Plan for its implementation. With the adoption of the above mentioned Law on Housing and Maintenance of Buildings, a large number of perceived deficiencies was removed; the effects of this Law will however be clearer and more visible only after the implementation of the Law in question for a certain period of time.

In addition to that, on the occasion of the complaint submitted by a person with disability that pertained to inadequate conditions for dwelling in the apartment for social housing under protected conditions, that is, due to the fact that the complainant had been placed in an apartment with too small floor surface area together with another beneficiary that was not a member of her family household following a revision of placement of the beneficiaries of this service which was aimed at reviewing the right to use and rationalisation of dwelling capacities, the Protection of Citizens addressed his recommendation with the opinion to the competent municipal authorities and to the Centre for Social Work. Following such addressing of recommendation by the Protector of Citizens, adequate conditions for dwelling were provided to the beneficiaries in an apartment for social housing under protected conditions.

1. **Kindly, provide data on the number of persons with disabilities that are living in residential institutions and relevant information on progress made towards development or implementation of deinstitutionalisation strategies in order to facilitate permanent transition from such institutions to the community based living arrangements.**

Concerning the number of persons with disabilities that are living in residential institutions, the Protector of Citizens does not have a precise piece of relevant data, since there is no register of persons with disabilities in the Republic of Serbia. According to some unofficial data, the number of such persons is 18,215. The Ministry of Labour, Employment, Veteran and Social Policy and the Republic Institute for Social Protection will be able to provide more specific information on this question.

Concerning the deinstitutionalisation procedure, the Protector of Citizens pointed out to the deficiencies perceived on the national level in this respect in his regular annual report, just like in the previous years, in the sense that there was still no clear decision or any plan to implement the process of “deinstitutionalisation”. It is due to that deinstitutionalisation is implemented without any clear picture of the alternative solutions for the required support to persons with disabilities and to the elderly persons.[[18]](#footnote-18) The cause for such situation, among others, lies in the fact that the systems for support have not been sufficiently developed, which is in turn a consequence of the insufficiently developed financially sustainable system of services and support services for persons with disabilities and for the elderly. Thus, it is quite difficult to speak about any progress in implementation of this process, due to the fact that the situation in this field has not changed over the past years.

It can be concluded, based on the report of the Protector of Citizens, which is conducting the tasks of the National Preventive Mechanism, that the activities on “deinstitutionalisation” in a large number of institutions visited are being conducted sporadically only and that, if observed by percentages, only a very small number of beneficiaries of those institutions are participating in this process. In institutions in which these activities are implemented, they are based on enthusiasm and efforts of dedicated individuals, i.e. staff members and managers of individual institutions. Measures aimed at savings and the adoption of regulations that introduced the prohibition on employment in the public sector have additionally hindered this process and some of the activities, and are often the cause of additional reductions in exercising the rights of persons with disabilities, which was pointed out by the Protector of Citizens on numerous occasions. The support services in the local communities are not developed to a sufficient degree and their planning is hot synchronised, either with the plans for the transfer of beneficiaries from institutions, or with the existing needs of the local population, since there are no records on the number of persons with disabilities or on the types of their disabilities.

1. **Kindly, provide information on relevant laws, policies or programs that are intended to ensure equal access and enjoyment of rights to adequate dwelling to persons with disabilities and provide an assessment of their efficiency and deficiencies.**

Relevant regulations that are governing the right to housing are: the Law on Housing and Maintenance of Buildings (which was mentioned under question under 1) and the Law on Social Protection; the policy in this field is based on the National Strategy for Social Housing[[19]](#footnote-19).

The Law on Social Protection regulates the social protection activity, the objectives and principles of social protection, social protection rights and services, procedures for exercising of rights to social protection and the use of social protection services, exercising of social protection rights and obligations of the beneficiaries of social protection, establishing and operation of the social protection institutions, conditions under which the social protection services can be provided by other forms of organisations, supervision of work of social protection institutions, inspections in conducting the social protection activities, position of professional staff and professional assistants in social protection, establishing of the Social Protection Chamber, support to and improvement of the quality of expert work within the social protection system, financing of social protection, as well as other issues of significance for social protection. Among the social protection services prescribed by this Law is housing with support, which has proven to be a successful model in practice, and which is being insufficiently used and which is predominantly realized through project activities.

The subject matter of the National Strategy for Social Housing is determining conditions for development of social housing in the Republic of Serbia and laying down objectives that can be achieved over the following ten years’ period, in order to facilitate resolving of housing issues of households that are exercising this right, as well as proposing methods for the achievement of these objectives. The legal basis for this Strategy are, first of all, the Constitution of the Republic of Serbia, and then the relevant international legal acts laying down the right to housing, which became integral parts of the domestic legislation through their ratification, as well as the Law on Social Housing which was in force at the time and which laid down the obligation to adopt the National Strategy for Social Housing as the principal strategic instrument for the development of social housing in the Republic of Serbia, along with its basic elements. The Strategy covers the issues that pertain to the beneficiaries of social housing, i.e. to persons and households with unresolved housing status who are also facing difficulties in accessing adequate dwellings in the market, and also the issues pertaining to establishing and continuous implementation of institutional, legal and financial instruments for the development of social housing with the aim of achieving adequate and available housing solutions for these beneficiaries. The public housing fund is also a very important instrument of social housing, which is used for resolving of housing issues faced by the beneficiaries of social housing under conditions that are more favourable than the market ones, which shall, however, be considered in this Strategy only as an instrument that needs to be built up again, since the public housing fund has almost completely disappeared in Serbia during the process of privatisation of socially owned and state-owned apartments in the beginning of 1990s. The Strategy is also covering the conditions for realisation of strategic measures, the issues pertaining to allocation of responsibilities among the actors tasked with their implementation, as well as the processes of monitoring, assessment and correction of measures envisaged.

1. **Kindly, list the programs, policies and strategies that are in force so that: i/ institutions are gradually closed down; ii/ human rights of persons with disabilities who are still living in institutions are protected; iii/ it is ensured that persons with disabilities can challenge their placement with institutions; and iv/ it is ensured that, upon leaving the institutions, persons with disabilities have access to adequate housing and support services in the community. In addition to that, kindly provide all pieces of information on policies and programs that pertain to reasonable dwelling and accessibility for persons with disabilities in respect of their housing, both in the formal and in the informal housing sectors. What measures have been taken to increase the number of “universally designed” apartments or houses in communities?**

The Social Protection Development Strategy, which was adopted by the Government in 2005, includes the process of “deinstitutionalisation” as well, and lays down the transformation of institutions through priority development of a network of services and support in the local community.[[20]](#footnote-20) It was envisaged that, through the construction of smaller residential facilities or through transformation of services of the existing institutions, fulfilment of beneficiaries’ needs is enabled in the natural environment. The Strategy did not envisage the adoption of an action plan; instead, the Ministry in charge of social policy should conduct evaluation of achieved strategic activities and results achieved periodically, and once in two years at the minimum. In addition to that, no specific or precisely defined period for Strategy implementation was determined, and instead separate time limits for implementation of measures and activities were envisaged, predominantly in 2006-2009; continuous implementation was envisaged for some of these measures and activities. There is no plan or any other act for the implementation of the “deinstitutionalisation” process envisaged as an umbrella document for this process, and the Protector of Citizens pointed out to this fact on a number of occasions, among others in the Regular Annual Report for 2016[[21]](#footnote-21), as well as in the Deinstitutionalisation Roadmap[[22]](#footnote-22) that he drew up.

Concerning the accessibility, despite adequate legislative and strategic framework, as well as the numerous initiatives of the public and civil sector, in conducting daily activities, persons with disabilities face obstacles for their movement, use of public transportation, as well as in exercising of their right to information and communication. It is due to that that the Protector of Citizens, in cooperation with the Standing Conference of Towns and Municipalities and with the Team for Social Inclusion and Poverty Reduction of the Republic of Serbia Government, signed the Agreement on Cooperation; the aim of this Agreement is to improve the position of persons with disabilities and of the vulnerable population groups in the Republic of Serbia, as well as to realise mutual cooperation with the aim of determining the state of play in the field of accessibility and causes for the failure to fully implement the regulations that guarantee the rights to accessibility of public facilities, services and services to persons with disabilities. In addition to that, this Agreement envisaged establishing of a Commission for awarding the local self-government unit that had contributed the most to the development of all the forms of accessibility in its territory over the previous calendar year, along with the joint promotion of examples of best practice relating to accessibility for persons with disabilities.

1. **Kindly, list the national and sub-national level institutions that are primarily responsible for supervision of compliance with the right to housing of persons with disabilities, such as the national institutions for human rights, offices for disability issues; Ombudsman or Commissioner.**

Citizens, including persons with disabilities, are entitled to lodge complaints in relation to exercising the rights in the field of housing to the Protector of Citizens, to lodge complaints to the Commissioner for Protection of Equality and to lodge complaints to the Provincial Protector of Citizens – Ombudsman. In addition to that, in some towns and municipalities in the Republic of Serbia, protectors of citizens of the local self-governments were established as well.

The Protector of Citizens conducts the tasks of the National Preventive Mechanism and in conducting these tasks, he cooperates with the Autonomous Provinces’ ombudsmen and with associations with Statutes that are envisaging the objective to promote the human rights and freedoms in compliance with the law.

By means of the Regulation of the Government of the Republic of Serbia, the Office for Human and Minority Rights was established to conduct expert tasks for the needs of the Government and competent Ministries pertaining to the issues of protection and promotion of human and minority rights.[[23]](#footnote-23)

Despite the fact that in the Concluding Observations on the Initial Report on Serbia, the Committee on the Rights of Persons with Disabilities of the UN expressed concern that there was no coordination mechanism, as it was specified in Article 33, paragraph 1 of the Convention, and that it addressed recommendation to the Republic of Serbia to ensure that the independent organisations of persons with disabilities were systematically included in supervision processes over the implementation of the Convention and to provide them with efficient budgetary support for this purpose, this has not been complied with and the Protector of Citizens has pointed out to this fact on several occasions. The Protector of Citizens, as an independent state authority with the “A” status in the Republic of Serbia, which is working on the protection and promotion of human rights, could, as such, be an adequate mechanism for the promotion, protection and monitoring of implementation of this Convention with the necessary support from the Republic of Serbia, which would pertain to strengthening of human resource, financial and functional capacities.

1. **Kindly, explain whether and how the courts, national bodies for human rights, i.e. the independent mechanisms for monitoring recognized the right to housing of the persons with disabilities, including those persons who are still placed in institutions. In addition to that, kindly list the court or other relevant measures that are requested upon identification of violations of this right and describe the degree of success of their implementation. Kindly, provide the links or documents pertaining to the relevant court practice.**

With the adoption, application and implementation, as well as through the control over the application and implementation of the above mentioned Laws and Strategies, all the above mentioned authorities in the Republic of Serbia recognized the right to housing of the persons with disabilities as a very significant right. No concrete court protection in case of any violations of this right, however, has been envisaged in the above mentioned laws.

Concerning the Protector of Citizens, in case that upon having completed an investigation to control the legality and proper work of the authorities, he should determine that this right has been violated through the actions of such authorities, he may address a recommendation to such authority so that it can rectify the omissions determined in their work. According to statistical data, 80% of all the recommendations that the Protector of Citizens addressed were complied with; the links and a brief description of the concrete recommendations and opinion have already been provided in the previous part of the text.

1. **Kindly, describe all the innovative initiatives that have been undertaken on the local, regional or national level to promote and ensure the right to housing of the persons with disabilities and list the lessons learnt. Kindly, specify how your Government or organisation considers that the Special Rapporteur on the right to housing and other international bodies or procedures for human rights can play a part in ensuring the right to adequate housing of persons with disabilities.**

Housing with support of persons with disabilities was introduced as a social protection service that is provided on the local level and financed from the budget of the local self-government unit in cases where such local self-government unit is developed to a degree that is exceeding the average development level in the Republic of Serbia. In all the other cases, this service is to be financed from the budget of the Republic of Serbia. Since the organisation and provision of this service are left to the local self-governments, problems occur in its organisation and provision, because certain local self-government units do not provide this service or provide it to an insufficient degree only, and thus persons with disabilities are discriminated against depending on their place of residence. In that sense, it is necessary to introduce amendments to the Law on Social Protection, in order to place this service within the sole responsibility of the state. The beneficiaries of housing with support are provided with housing in apartments and with professional support, supervision and other forms of support in their independent existence.

In the general acts, some local self-governments established another aspect of the housing service – the social housing under protected conditions. This is an aspect of the open form of social protection that is realized in facilities and apartments designated for this purpose that are provided by the local self-government. Individuals and families who are socially vulnerable and without a dwelling, with the domicile in the territory of the municipality are entitled to social housing under protected conditions.

We are of the opinion that the Special Rapporteur on the right to housing can contribute to improved promotion of the right to adequate hosing of the persons with disabilities through systematic monitoring of the situation in this field and thorough proposals of new solutions aimed at rectifying the omissions observed in practice and providing assistance to the national institutions for the purpose of full implementation of this right in practice.

1. “Official Gazette of the RS”, No. 98/06. [↑](#footnote-ref-1)
2. Article 69, paragraphs 1 and 4. [↑](#footnote-ref-2)
3. Proclaimed by the Resolution of the General Assembly of the United Nations 217 А (III) of December 10, 1948, and accepted by all the UN member states. [↑](#footnote-ref-3)
4. “Official Gazette of the RS – International agreements”, No. 42/09. [↑](#footnote-ref-4)
5. “Official Gazette of the RS”, No. 72/09. [↑](#footnote-ref-5)
6. “Official Gazette of the RS”, No. 104/16. [↑](#footnote-ref-6)
7. Article 89, paragraphs 1 through 3. [↑](#footnote-ref-7)
8. Article 89, paragraph 4, points 5 and 6. [↑](#footnote-ref-8)
9. Article 92. [↑](#footnote-ref-9)
10. Article 105. [↑](#footnote-ref-10)
11. Article 106, paragraphs 1 and 2. [↑](#footnote-ref-11)
12. Article 108, paragraphs 1, 3, 4 and 5. [↑](#footnote-ref-12)
13. Article 112, paragraphs 1, 2, 3 and 5. [↑](#footnote-ref-13)
14. Article 114, paragraph 1. [↑](#footnote-ref-14)
15. Article 115, paragraphs 1 through 3. [↑](#footnote-ref-15)
16. Article 40, paragraph 1, point 3. [↑](#footnote-ref-16)
17. Opinion no. 15-2678/11 reference no. 46701 from December 18, 2015, available at: <http://www.ombudsman.rs/index.php/2011-12-11-11-34-45/4501-2015-12-23-08-14-14>. [↑](#footnote-ref-17)
18. Available at: <http://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji/5191-2016-pdf>. [↑](#footnote-ref-18)
19. “Official Gazette of the RS”, No. 13/12. [↑](#footnote-ref-19)
20. “Official Gazette of the RS”, No. 108/05. [↑](#footnote-ref-20)
21. Available at: <http://ombudsman.rs/index.php/izvestaji/godisnji-izvestaji/5191-2016-pdf>. [↑](#footnote-ref-21)
22. Available at: <http://www.osobesainvaliditetom.rs/attachments/Mapa%20puta.pdf>. [↑](#footnote-ref-22)
23. “Official Gazette of the RS”, No. 75/12. [↑](#footnote-ref-23)