**INPUTS FROM THE PROTECTOR OF CITIZENS OF THE REPUBLIC OF SERBIA**

**Questionnaire on the rights of older persons with disabilities**

**1. Please provide information on the legislative and policy framework in place in your country to ensure the realization of the rights of older persons with disabilities, including both persons with disabilities who are ageing and older persons who acquire a disability later in life.**

* The Law on Social Welfare.[[1]](#footnote-1)
* The Law on Preventing Discrimination against Persons with Disabilities.[[2]](#footnote-2)
* The Law on the Prohibition of Discrimination.[[3]](#footnote-3)
* The Law on Retirement and Disability Insurance.[[4]](#footnote-4)
* The Family Law.[[5]](#footnote-5)
* The Law on Protection of Persons with Mental Disorders.[[6]](#footnote-6)
* The Law on Health Protection.[[7]](#footnote-7)
* The Law on Health Insurance.[[8]](#footnote-8)
* The Law on Extra-Judicial Proceedings.[[9]](#footnote-9)

**2. Please provide information on discrimination against older persons with disabilities in law and practice.**

Age, health and disability are the basis for the prohibition of discrimination within the Law on the Prohibition of Discrimination.

Article 1, Paragraph 1 "This Law regulates the general prohibition of discrimination, all forms and cases of discrimination, as well as the procedures for protection against discrimination ”.

„Article 2, Paragraph 1, I. 1, the terms "discrimination" and "discriminatory treatment" mean any unjustified differentiation or unequal treatment or omission (exclusion, limitation or giving priority) in relation to persons or groups as well as to members of their families or close associates, in an open or covert manner, which is based on race, skin color, ancestors, citizenship, nationality or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, wealth, birth, genetic features, **health condition**, **disabilities**, marital and family status, previous conviction, **age**, appearance, membership in political, trade union and other organizations and other real or assumed personal qualities (hereinafter: personal properties)”.

Also, the Law on the Preventing Discrimination against Persons with Disabilities, in Article 1, Paragraph 1, stipulates that "this Law regulates the general regime for the prohibition of discrimination on grounds of disability, special cases of discrimination against persons with disabilities, the procedure for protection of persons exposed to discrimination and the measures taken to promote the equality and social inclusion of persons with disabilities. Article 3, Paragraph 1 I. 1 stipulates: the term "persons with disabilities" means persons with inborn or acquired physical, sensory, intellectual or emotional disabilities who, because of social or other obstacles, do not have opportunities or have limited opportunities to engage in social activities with others at the same level, regardless of whether they can accomplish the mentioned activities with the use of technical aids or support services”.

**3. Please provide information on the existence of long-term care services in your country and describe to what extent they promote the autonomy and independence of older persons with disabilities.**

The Constitution of the Republic of Serbia[[10]](#footnote-10) – Article 69, Social Welfare - establishes the right to social welfare and social allowance in order to overcome social and life difficulties. From the above mentioned provision, the protection of the elderly in the sense of the rights to long-term care provides the basis for further regulation through appropriate regulations.

„Citizens and families in need of social allowance in order to overcome social and life difficulties and create the conditions for meeting basic living needs have the right to social welfare, the provision of which is based on the principles of social justice, humanism and respect for human dignity.

The rights of employees and their families to social welfare and insurance are regulated by Law.

The employees are entitled to compensation for earnings in the event of temporary work-related hindrance, as well as the right to compensation in case of temporary unemployment, in accordance with the Law.

The disabled, war veterans and war victims are provided with special protection, in accordance with the Law.

Social security funds are established in accordance with the Law.“

The Law on Social Welfare[[11]](#footnote-11) provides for accommodation as one of the social welfare services (Article 40, Paragraph 1, Item 5). Article 41, Paragraphs 1 and 3, stipulates that "the beneficiary of the rights or social welfare services is an individual, that is, a family that faces obstacles in meeting needs, thus not being able to reach or sustain the quality of life or which does not have sufficient means to meet basic living needs , and can not realize them through their work, income from the property or any other sources.

„A person older than 65 (hereinafter: the "older beneficiary") is a user within the meaning of Paragraph 1 of this Article, when their well-being, safety and productive life in the society are endangered by the risks of age, disability, illness, family and other circumstances, especially:

1) if they have physical, intellectual, sensory or mental difficulties or difficulties in communication, and when, due to social or other obstacles, they encounter functional limitations in one or more areas of life;

2) if they are in danger of becoming a victim or they are a victim of self-neglect, neglect, abuse, exploitation and domestic violence;

3) if they face difficulties due to disrupted family relationships, dependence on alcohol, drugs or other narcotics or other forms of socially unacceptable behavior and other causes;

4) if they are a victim of human trafficking;

5) if a foreign citizen and a person without citizenship are in need of social welfare;

6) if there is need for housing and other needs for the use of social welfare.

The accommodation services prescribed by this Law shall be provided by placing the user in 1) an akin, foster or other family for adults and the elderly (hereinafter: family accommodation); 2) a home for the accommodation of users, including small local communities (hereinafter: home accommodation); 3) shelter; 4) other types of accommodation, in accordance with the Law. Accommodation services are provided by the Republic of Serbia, autonomous province and local self-government units, in accordance with this Law (Article 47 of the Law).

Home accommodation is provided, inter alia, as: 1) standard accommodation; 2) accommodation with intensive or additional support. More detailed conditions for the use of accommodation services and other types of accommodation are prescribed by the Minister in charge of social welfare. (Rulebook on Detailed Conditions and Standards for the Provision of Social Welfare Services, "Official Gazette of the Republic of Serbia", No. 42/2013), (Article 53 of the Law).

Home accommodation services may be provided by a social welfare institution, that is, a provider of social services that has been granted a license to provide these services. The Center for accommodation of adults and the elderly can not have a capacity of more than 100 users, that is, the home for accomodation of children and young people can not have more than 50 users (Article 54.).

The Law on Social Welfare envisages community services, which include activities that support the stay of the user within the family and the environment. Daily community services are provided by a local self-government unit (Article 44). It also envisages support services for independent living provided to an individual in order to equalize his ability to meet basic needs with the abilities of other members of society, to improve his quality of life and offer the ability to lead an active and independent life in a society. These services are also provided by a local self-government unit, or by the Republic of Serbia, if so prescribed by the Law. (Article 45.).

Palliative care is part of the Law on Health Care[[12]](#footnote-12) and it is envisaged as one of the forms of health care provided by the healthcare activities at the primary level (Article 88, Paragraph 1, Item 12 of the Law). Also, in Article 39, Paragraph 2., the Law on Health Insurance[[13]](#footnote-13) stipulates that an insured person that is in the terminal stage of the disease and immobile, or mobile with the help of other persons, and which needs palliative care, is entitled to short-term hospital treatment for the purpose of applying symptomatic therapy and nursing care, under the conditions prescribed by the general act of the Republic Fund.

Lack of accommodation capacities in hospitals for the palliative care of elderly people, as well as persons suffering from the most serious diseases, due to which, they are often placed in retirement homes. Palliative care, under certain conditions, is provided in hospitals, as mentioned above, in social welfare institutions (homes for the elderly and persons with disabilities) and in institutes. The Law on Health Care envisages the institute as a health institution that performs primary health care activities and carries out health care of specific population groups, that is, healthcare activity in a particular field of health care. The institute is founded, inter alia, as a department for gerontology and palliative care. As an example, we can mention the City Institute for Gerontology and Palliative Care in Belgrade that exists since 1987 and was formed by the merger of the Institute for Chronic Diseases and Gerontology and the Center for Home Care. As a specialized health institution at the primary level of health care, the Institute performs out-of-patient and social and medical health activities for a population group of functionally dependent and severely ill citizens of Belgrade, aged 65 and over. Within the Institute there is a Service for the implementation of home care and treatment. Good practice of the Institute for Gerontology and Palliative Care in Belgrade is available, which in 2013 published a study of Gerontology in Serbia. From the point of view of human rights, it is very important for the state to recognize the need and take measures in order to establish new specialist institutions that would solely be intended for the palliative care of the elderly and the diseased who are in terminal stages of said diseases. Patients in the terminal stages of the disease and their families are most often faced with a lack of care in healthcare facilities, patients are spending their last days at home instead of in the hospital and are treated by family members, which is a huge challenge for everyone, with extremely negative consequences for emotional and psychological state as a whole.

In the Republic of Serbia, when it comes to positive legal regulations, the right to independence is not defined as a special right of citizens. The Constitution of the Republic of Serbia, as well as ratified international documents, guarantee the citizens of the Republic of Serbia human and minority rights and freedoms and their immediate application. The right to legal ability prescribes that everyone has legal capacity and that a person acquire through adulthood the ability to decide independently on their rights and obligations. A person may be entirely or partially deprived of their legal capacity only in the legally prescribed procedure and before a competent court. In accordance with the above, we can talk about the factual right of every able-bodied citizen to be independent in making decisions concerning them personally, acting in accordance with positive legal regulations.

Thanks to the work of independent institutions for the protection of human rights in Serbia, non-governmental and international organizations, the problem of insufficient independence of the elderly in decision-making has been actualized, primarily the choice of residential accommodation, life options, as well as the rights of persons already accommodated to decide on many issues concerning the maintenance and organization of their everyday life in their homes. Naturally, much more needs to be done within a concrete plan, first of all, in the area of ​​informing the elderly themselves about the rights they have and how to seek their respect and protection.

**4. Please describe how is access to justice guaranteed for older persons with disabilities. Please provide information on jurisprudence, complaints or investigations in relation to violence, abuse and neglect against older persons with disabilities.**

Access to justice, or judicial authorities, as well as independent institutions for the protection of human rights is guaranteed by the positive regulations of the Republic of Serbia to all citizens under equal conditions.

According to data available to the Office for Human and Minority Rights, around 20% of the elderly suffer some form of violence. The risk of institutionalization has increased, with the data showing that every fifth elderly person needs help in their home. The source of discrimination lies in the belief that the elderly are a burden to society. According to a survey conducted in 2014, 63% of the elderly consider that they are victims of discrimination, and 49% of them have experienced some form of discrimination. According to the statements of the elderly, such discrimination mostly occurs in hospitals, health centers - 19%; public transportation - 11%, other institutions - 11%, shops 6%.[[14]](#footnote-14)

**5. Please describe to what extent and how are older persons with disabilities involved in the design, planning, implementation and evaluation of policies related to ageing and/or disability.**

In the Republic of Serbia there is a number of associations that deals exclusively with the rights of the elderly. Their role is of great importance in making visible the problems that the elderly in Serbia face on a daily basis, to propose better legal solutions for improving the position of the elderly, and to provide support for the elderly, through various activities those associations conduct. This is especially important, bearing in mind the circumstance that the dominant demographic tendency in Serbia has been aging for several decades now. According to the latest census of the population from Serbia in 2011[[15]](#footnote-15), the elderly make up 16.8% of the total population. The percentage of persons over the age of 65 in Serbia will be at least 22% by 2030, which is almost every fifth citizen. The associations of the elderly, but also individuals, have the right to participate in the public debate on the proposed draft law. The Protector of Citizens does not have information on the real extent of participation of the elderly in policy making, planning and evaluation.

1. „Official Gazette of the Republic of Serbia", no. 24/11. [↑](#footnote-ref-1)
2. „Official Gazette of the Republic of Serbia", no. 33/06 and 13/16. [↑](#footnote-ref-2)
3. „Official Gazette of the Republic of Serbia", no 22/09. [↑](#footnote-ref-3)
4. „Official Gazette of the Republic of Serbia", no. 34/03, 64/04 – decision of the USRS, 84/04 – state law, 85/05, 101/05 – state law, 63/06 - decision of the USRS, 5/09, 107/09, 101/10, 93/12, 62/13, 108/13, 75/14, 142/14 и 73/18. [↑](#footnote-ref-4)
5. „Official Gazette of the Republic of Serbia", no. 18/05, 72/11 – state law and 6/15. [↑](#footnote-ref-5)
6. „Official Gazette of the Republic of Serbia", no. 45/13. [↑](#footnote-ref-6)
7. „Official Gazette of the Republic of Serbia", no. 107/05, 72/09 – state law, 88/10, 99/10, 57/11, 119/12, 45/13 – state law, 93/14, 96/15, 106/15, 113/17 – state law and 105/17 – state law. [↑](#footnote-ref-7)
8. „Official Gazette of the Republic of Serbia", no. 107/05, 109/05 - rev., 57/11, 110/12 – decision of the US, 119/12, 99/14, 123/14, 126/14 – decision of the US, 106/15 и 10/16 – state law. [↑](#footnote-ref-8)
9. „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, 18/05 – state law, 85/12, 45/13 – state law, 55/14, 6/15 and 106/15 – state law. [↑](#footnote-ref-9)
10. „ Official Gazette of the Republic of Serbia ", no. 98/06. [↑](#footnote-ref-10)
11. „Official Gazette of the Republic of Serbia ", no. 24/11. [↑](#footnote-ref-11)
12. „Official Gazette of the Republic of Serbia ", no. 107/05, 72/09 – state law, 88/10, 99/10, 57/11, 119/12, 45/13 – state law 93/14, 96/15, 106/15 and 113/17 – state law. [↑](#footnote-ref-12)
13. „ Official Gazette of the Republic of Serbia ", no. 107/05, 109/05 – rev., 57/11, 110/12 – decision of the US, 119/12, 99/14, 123/14, 126/14 – decision of the US, 106/15 and 10/2016 – state law. [↑](#footnote-ref-13)
14. Available at: <http://www.ljudskaprava.gov.rs/sh/press/vesti/paunovic-zastititi-starije-od-diskriminacije-i-nasilja>. [↑](#footnote-ref-14)
15. Available at: <http://popis2011.stat.rs/>. [↑](#footnote-ref-15)