

International Disability Alliance (IDA)

Member Organisations:

Disabled Peoples' International, Down Syndrome International, Inclusion International,
International Federation of Hard of Hearing People,
World Blind Union, World Federation of the Deaf,
World Federation of the DeafBlind,
World Network of Users and Survivors of Psychiatry,
Arab Organization of Disabled People, European Disability Forum,
Red Latinoamericana de Organizaciones no Gubernamentales de Personas con
Discapacidad y sus familias (RIADIS), Pacific Disability Forum

Suggestions for disability-relevant recommendations to be included in the Concluding Observations Human Rights Committee 101st Session (14 March – 1 April 2011)

The International Disability Alliance (IDA) has prepared the following suggestions for the Concluding Observations, based on references to persons with disabilities to be found in the State Report and List of Issues.

SERBIA

Serbia ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol on 31 July 2009.

State Report

Select references to persons with disabilities in the State report and List of Issues:

21. The Civic Defender has been introduced into the legal order of the Republic of Serbia by the Law on the Ombudsman of Serbia. The Republic of Serbia has chosen the concept of the general type National Parliamentary Ombudsman. In accordance with paragraphs 1 and 2 of Article 6 of the Law on the Ombudsman of Serbia, the Ombudsman shall have four deputies to help the Ombudsman in performing the duties prescribed by the law. When delegating powers to his deputies, the Ombudsman especially takes into account providing of certain specializations in performing tasks from the competence of the Civic Defender, particularly regarding protection of rights of persons deprived of liberty, gender equality, rights of the child, rights of persons belonging to national minorities and rights **of disabled persons**.

Medical and psychiatric care

148. The Law on Extrajudicial Proceedings stipulates under Article 45 procedures for accommodation and detaining of a **mentally ill person** in an adequate healthcare organization, when it is necessary due to nature of illness to restrict freedom of movement and communication with the outside world. In such cases urgent mandatory procedure is applied.

149. Pursuant to Article 46 of the Law on Extrajudicial Proceedings, when a healthcare organization receives for **medical treatment a person without his/her consent** or court ruling, the healthcare organization must report this within three days to the court within whose territorial jurisdiction it is found. Healthcare organization must act in the aforementioned way also in the case when the person received voluntarily in the healthcare organization revokes his/her consent, while the authorized person or authority of this healthcare organization believes that further detention of this person is necessary.

150. Pursuant to Article 50 of the Law on Extrajudicial Proceedings, the court must make within 15 days, i.e. within a maximum 30-day time limit from the date of the report, i.e. from the date when detention has been brought to the court's knowledge, a decision on further detention of this person or his/her release. Pursuant to Article 51 of the same law, when the court decides on further detention of the received person in the healthcare organization, the court shall determine period of detention, which cannot be longer than one year. Healthcare organization must submit to the court periodical reports on health status of the detainee.

151. Pursuant to Article 53 of the Law on Extrajudicial Proceedings, if a healthcare organization assesses that a detainee should stay for further treatment upon expiry of the time limit specified in the court's decision, the healthcare organization is obliged to propose to the court extension of the detention period 30 days before the expiry of the detention period.

152. Pursuant to paragraphs 1, 2 and 3 of Article 80 of the Criminal Code, where grounds under this Code exist, the court may impose one or more security measures on an offender. **Compulsory psychiatric treatment and confinement** in a medical institution and compulsory psychiatric treatment at liberty shall be imposed as an individual sanction on a **mentally incompetent criminal offender**. In addition to these measures, ban on practising certain profession, activity or duty, ban on driving a motor vehicle and confiscation of objects may also be ordered. These measures may be ordered to an **offender whose mental capacity is substantially impaired**, if under pronouncement of a penalty or suspended sentence.

153. Pursuant to paragraph 1 of Article 81 of the Criminal Code, the court shall order **compulsory psychiatric treatment and confinement** in a medical institution to an **offender who committed a criminal offence in a state of substantially impaired mental capacity** if, due to the committed offence and the state of **mental disturbance**, it determines that there is a risk that the offender may commit a more serious criminal offence and that in order to eliminate this risk they require medical treatment in such institution.

154. The new Criminal Procedure Code envisages possible accommodation of the defendant in a healthcare institution. Pursuant to paragraphs 1 and 2 of Article 142, in case of suspicion that the **mental competence of the defendant has been lost or diminished**, the expert analysis of the defendant's mental state shall be ordered. If the expert witness believes that longer observation is necessary, the defendant shall be sent to an appropriate health care institution for observation. The relevant decision is made by the Investigative Judge, Individual Judge or the Trial Chamber. The observation may be extended and last for more than two months only upon a substantiated proposal of the manager of the health care institution, after the receipt of the expert witness's opinion, but it may not last longer than six months under any circumstances.

457. The development of foster care concept is still in progress, in particular a specialized foster care which is aimed at providing accommodation for children with behaviour problems, **children with disabilities and physically or mentally underdeveloped children**.

Prohibition of discrimination

486. Constitution of the Republic of Serbia under Article 21, Paragraphs 1 through 3, specifies that all citizens are equal before the Constitution and law. Everyone shall have the right to equal legal protection, without discrimination. All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, **mental or physical disability** shall be prohibited.

492. In accordance with Article 18 of the Labour Law, both direct and indirect discriminations are prohibited against persons seeking employment and employees in respect to their sex,

origin, language, race, colour of skin, age, pregnancy, health status or **disability**, nationality, religion, marital status, familial commitments, sexual orientation, political or other belief, social background, financial status, membership in political organizations, trade unions or any other personal quality. Under Article 20, discrimination is prohibited in relation to: employment conditions and selection of candidates for a certain job; working conditions and all rights resulting from the labour relationship; education, training and advanced training; promotion at work; and, termination of the labour contract. Provisions of the labour contract establishing discrimination on some of the specified grounds shall be null and void.

497. The **Law on Prevention of Discrimination against Persons with Disabilities** under Article 1, prescribes for the general regime of prohibition of discrimination on basis of **disability**; particular cases of forbidden discrimination against **persons with disabilities**; procedures for protection of persons who had been victims of discrimination; and, measures that State and local authorities take in order to promote and encourage equality and social inclusion of **persons with disabilities**.

498. The **Law on Prevention of Discrimination against Persons with Disabilities**, as defined under Article 2 thereof, builds upon the following principles: prohibition of discrimination against **persons with disabilities**; respect for human rights and dignity of **persons with disabilities**; integration of **persons with disabilities** in all spheres of social life on the basis of equality; inclusion of **persons with disabilities** in all decision-making processes pertaining to their rights and duties; and, equality of rights and duties.

499. The provisions of Articles 39 through 45 of the **Law on Prevention of Discrimination against Persons with Disabilities** provide for specific rules of civil procedure in cases of discrimination on grounds of **disabilities**. Proceedings are initiated by a complaint lodged by **person with disability** claiming to have been a victim of discrimination, or that person's legal representative. Exceptionally, under circumstances stipulated by the Law, the complaint may be lodged by companions of **disabled persons**. The lodger of complaint may request: prohibition of carrying out of act that would constitute discrimination; cessation of continued or repeated carrying out of the act of discrimination; removal of consequences of discrimination; declaration that defendant carried out an act of discrimination; and, compensation for material or other damage caused. Civil procedures in cases of discrimination on grounds of **disabilities** are subject to re-examination.

503. Under Article 8, Paragraph 1, the **Law on Prevention of Discrimination against Persons with Disabilities** stipulates that it shall not be considered discrimination to adopt provisions of legislation, regulations, decisions or specific measures aimed at: improving the status of **persons with disabilities**, their families and their organizations; or, providing a special support which is needed for the realization of the rights of **persons with disabilities** under conditions of equality. Pursuant to Article 32, Paragraph 2 of this Law, the incentives that are introduced in order to accelerate the effectuation of the employment of **persons with disabilities** in accordance with the Law governing the employment of **persons with disabilities** shall not be deemed discrimination in employment.

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10. Please provide information on the implementation of the **Law on Prevention of Discrimination against Persons with Disabilities**. (State party's report, paras. 497-499).

Liberty and security of the person and treatment of prisoners (arts. 9 and 10)

17. Please indicate whether persons in detention are provided with prompt and effective access to legal and medical assistance, as required by the Covenant, in particular **persons**

with disabilities. Please also indicate whether doctors working in prison form part of the prison personnel. (State party's report, para. 206)

Recommendations from IDA :

- To take measures to ensure the elimination of discrimination of persons with disabilities in the field of employment, both in private and public sectors, and to ensure that workers with disabilities in all forms of employment, including sheltered employment, enjoy rights under fair wage and labour laws on an equal basis with other workers.
- To take steps to ensure that the concept of reasonable accommodation is recognised in the law and that failure to provide reasonable accommodation amounts to discrimination.
- To adopt measures to ensure that all health care and services, provided to persons with disabilities, including all mental health care and services, are based on the free and informed consent of the individual concerned, and that involuntary treatment and confinement are not permitted by law in accordance with the CRPD.
- To incorporate into the law the abolition of violent and discriminatory practices against children and adults with disabilities in the medical setting, including deprivation of liberty, the use of restraint and the enforced administration of intrusive and irreversible treatments such as neuroleptic drugs and electroshock, recognized as forms of torture and ill-treatment, in conformity with recommendations of the Special Rapporteur on Torture.
 - To ensure that persons with disabilities, including persons with psychosocial disabilities, detained for reasons of law enforcement and punishment for crimes are treated in compliance with the objectives and principles of the CRPD, including provision of reasonable accommodation (Article 14(2) CRPD), and are entitled to all the guarantees of international human rights law, including the ICCPR, on an equal basis with other detainees.
- To ensure that participation by detainees with psychosocial disabilities* in mental health services or programs is entirely voluntary, that a wide range of supports, including peer support, is offered to them in general population, and that reasonable accommodation and trauma-informed approaches* guide policy in relation to these detainees.
- To ensure reform of the law in accordance with the principles and provisions of the Convention on the Rights of Persons with Disabilities, in particular Article 12 of the CRPD on equal recognition before the law; including the adoption of measures to ensure that having a disability does not directly or indirectly disqualify any person from exercising his or her legal capacity autonomously, and to ensure that persons with disabilities have access to support that they may need to exercise legal capacity on an equal basis with others, respecting the will and preferences of the person concerned.
- To guarantee in the law that persons with disabilities exercise their right to vote and to participate in public affairs on an equal basis with others in accordance with Article 29 of the CRPD which comprises the latest international standards with respect to participation in political and public life (and superseding former instruments, including General Comment no 25 of the Human Rights Committee).

- To adopt measures in the law to ensure the implementation of inclusive education for *all* children, including children with disabilities, such as the obligatory training of all teachers (beyond special education teachers), to require individual education plans for all students, ensure the availability of assistive devices and support in classrooms, educational materials and curricula, ensure the accessibility of physical school environments, encourage the teaching of sign language and disability culture, allocate budget for all of the above, in accordance with Article 24 of the CRPD.

*Note on terminology:

- **Psychosocial disabilities:** instead of using the terms "mentally ill person" or "mentally incompetent ", the term "psychosocial disabilities" is preferred because it moves away from the medical model and refers to the interaction between psychological and social/cultural components of disability. The word psychosocial refers to the interaction between psychological and social/cultural components of our disability. The psychological component refers to ways of thinking and processing our experiences and our perception of the world around us. The social/cultural component refers to societal and cultural limits for behavior that interact with those psychological differences/madness as well as the stigma that the society attaches to labeling us as disabled.
- **Trauma-informed approaches:** A trauma-informed approach is based on the recognition that many behaviors and responses (often seen as symptoms) expressed by people with psychosocial disabilities are directly related to traumatic experiences that often cause mental health, substance abuse, and physical concerns. For many people with psychosocial disabilities, systems of care perpetuate traumatic experiences through invasive, coercive, or forced treatment that causes or exacerbates feelings of threat, a lack of safety, violation, shame, and powerlessness. Unlike traditional mental health services, trauma-informed care recognizes trauma as a central issue. Incorporating trauma-informed values and services is key to improving program efficacy and supporting the healing process.