**Submission on the right of persons with disabilities to participate in decision-making in Serbia**

**Disability Rights Promotion International Regional Center for Europe**

**Introduction:**

Disability Rights Promotion International Regional Center for Europe ahs completed monitoring study focusing on political participation of PWDs in Serbia in 2014 in the context of early parliamentary elections (march 2014). Report also focused on participation of PWDs in decision-making processes. DRPI holistic participatory 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***. This study is enriched with brief additional analysis to correspond with the nature of questions formulated by UN Special Rapporteur on Disability related to participation in decision-making.

**Specific information request:**

1. Please provide information on the legislative and policy framework in place in your country related to the status, establishment, resourcing, and functioning of representative organizations of persons with disabilities at the national, regional and local levels;

Establishment of civil society organizations including DPOs and State support to civil society organizations is regulated by the Law on Associations and the Law on Foundations, which recognize the activities carried out by civil society organizations for the public good /in the public interest, as well as by the “Bylaw on the Means for program support or missing part of funds for financing programs of public interest implemented by associations”. However, there is no clear definition of public good/public interest in related laws (Act on Games of Chance, which are a significant source of public funding, must be amended accordingly, as well as several tax laws). Article 38 of the Law on Associations provided the competition as the sole basis for allocation funds from the budget for the programs of the public interest carried out by the civil society organizations. In terms of that, the financial support is provided only for projects but not for the institutional development of civil society organizations. There is no single national institution with authority for the allocation of public funds to civil society organizations, and there are no clear procedures for the participation of civil society organizations in all stages of public funding. The financial resources are distributed through Line 481 which is not diversified, so it is not clear and transparent how much money is intended for particular civil society organizations. Since sport associations, religious communities, and political parties and "other NGOs" are presented collectively as line 481 every year in the draft budget adopted by the Assembly, it is not possible to see exactly how the Serbian government has allocated for each group. Tens of millions of euros per year is spent on "grants for NGOs" from the budget line 481 and majority of budget line goes to the financing of sports associations, religious communities and political parties, and for "other NGOs” where DPOs are included remain only the crumbs. The initiative for diversification of budget line 481 that has been signed by 188 NGOs was submitted to the Ministry of Finance on 26 April 2010. No changes were initiated after this initiative.

The tax legislation in Serbia does not provide any exemption from the property tax to real estate for associations, foundations and similar civil society organizations which carry out activities that are of public interest. The law does not recognize individual charitable giving as a basis for the deduction of taxes.

Although the interaction between the Government and civil society has improved in recent years, these concerns still exist only in fragments and there are no structured form of cooperation between the two sectors. Office for Cooperation with Civil Society of the Republic of Serbia is the main institutional mechanism to support the development of dialogue between the Government of the Republic of Serbia and civil society organizations. The Office provides support to governmental institutions in the understanding and recognition of the role of civil society in the decision-making process. However, there is a tendency that the office becomes a bottleneck, because the institutions use it as the only channel of communication between two sectors.

The Social Inclusion and Poverty Reduction Unit, as a government agency with a comprehensive understanding of civil society, continued to facilitate the exchange of information with civil society organizations in the field of social inclusion in the context of EU integration.

Most civil society organizations are consulted in the final stages of formulation of draft laws/policies, without getting enough information in advance and at the time when no change is possible. Moreover, even in cases where civil society and the state collaborated in the drafting of laws/policies/strategies, draft versions presented to the Parliament were usually changed without taking into account the comments and suggestions of civil society organizations, and without the knowledge of civil society organizations that the law formally enters the legislative procedure. Throughout several past years, National Organization of Persons with Disabilities of Serbia has submitted 64 amendments through MEPs out of which only 11 were approved.

1. Please provide information on existing legislation and policies aimed at ensuring that persons with disabilities and their representative organizations, including children with disabilities, are consulted and involved in decision-making processes that directly or indirectly concern them;

In August 2014 Government of Serbia has adopted Guidelines for inclusion of civil society organizations in a process of adoption of public regulations, especially in terms of expected process of negotiation EU membership and implementation of UNCRPD. On the proposal of DPOs, documented has incorporated disability-related changes provisions which as a result gave clear guidance for public administration to enable participation of people with disabilities in the processes of adoption of public regulations including provisions on obligations for providing reasonable accommodations at public hearings, public consultations on law drafts and other public events related to public decision-making processes.

There are no any specific pieces of legislation or policies aiming to include DPOs nor more specifically organizations representing children with disabilities in decision-making processes.

1. Please provide information on any consultative body or mechanism established to consult and engage with representative organizations of persons with disabilities, including information about their composition, criteria for membership (nomination, appointment, election, etc.) and functioning;

Ministry of Social Affairs has established Sector for protection of persons with disabilities (located within the Ministry). Sector announces annual programs and calls for proposals for civil society organizations including DPOs, mainly for social service provision and is involved in drafting the laws directly related to persons with disabilities failing under jurisprudence of Sector.

See also the answer on question 5.

1. Please provide information on the efforts undertaken at national, regional and/or local levels to strengthen the capacity of representative organizations of persons with disabilities, in order to facilitate their participation in legislative, policy and other decision-making processes;

Parliamentary Caucus on Disability Rights was created on Dec. 05, 2013 with significant support from 40 MPs from 11 political parties and Memorandums of Cooperation between local DPOs and local governments developed in signed in only three municipalities. Nevertheless, snap elections were called on January 30 and the subsequent elections held on March 16 2014, which resulted in the ousting of several political parties from the parliament and over 120 (close to 50%) new first time MPs elected. As such, new efforts need to be made to educate newly elected MPs on disability issues, to gauge their interest in supporting the re-establishment of Disability Caucus, which would serve as a mechanism for direct communication between DPOs and MPs, and to advocate for its institutionalization in order to ensure its sustainability.

According to our data, only 11 municipalities out of 168 in Serbia has developed and adopted Local Disability Action Plans as municipal strategic two or three-year policies. This was the result of the projects by DPOs which involved strengthening of local DPOs to formulate public policies based on UNCRPD priorities and to map and prioritize the needs of PWDs at the local levels. Besides, only 5 municipalities has formed Local Councils for persons with disabilities composed of representatives of DPOs and municipal officials and public enterprises at the local levels.

1. Please explain whether and how persons with disabilities participate in monitoring the implementation of the United Nations Convention on the Rights of Persons with Disabilities (art. 33, para. 3), and in the nomination of experts to the Committee on the Rights of Persons with Disabilities (art. 34, para. 3);

Although Serbia adopted the Law on the Confirmation of the CRPD it does not established Independent Body or mechanism for the monitoring of implementation, of this Convention in the sense of Article 33, Paragraph 2.

The State bodies that exist do not have a mandate to monitor the implementation of the Convention. In terms of Article 33, Paragraph 1 referring to forming the Interdepartmental Government bodies in charge of undertaking the adequate actions in various sectors and at different levels, there is the Council for Persons with Disabilities which has been operating since 2002. The main tasks of the Council have changed in time but they are still not realized in accordance with what it has been prescribed. The Council operates only formally, not realizing its goals and tasks for which it has been established. The Council meets very rarely, approximately 2 to 3 times a year, due to which one cannot talk about its coordinating role between a civil society, that is, the organizations of persons with disabilities and the state. Even when the meetings of the Council are held, the implementation of the Convention in practice has never been the subject of those meetings.

In addition to this body, the Government of the Republic of Serbia established another Council on March 27th, 2015 with mandate to monitor the implementation of the recommendations of United Nations Human Rights Mechanisms and to review and monitor implementation of recommendations the Republic of Serbia receives in the process of the Universal Periodic Review of the United Nations Human Rights Council and United Nations Treaty Bodies - various committees, including the Committee for the Rights of Persons with Disabilities. However the mandate of this Council is restricted only to the monitoring of the implementation of recommendations State receives related to all UN Conventions.

As for the process of State reporting under UNCRPD when Initial State Report was compiled, the State in its Initial Report para. 372 listed all DPOs and other CSOs which were allegedly consulted and involved in the process. However, the claims in para. 372 were false as some DPOs and CSOs were listed and they were not involved at all in the process.

1. Please identify the main challenges faced by the diversity of persons with disabilities in participating in mainstream and disability-specific decision-making processes at the national, regional and local levels, including challenges faced by persons who experience multiple discrimination (e.g., on the basis of disability, age, gender, ethnic origin, geographical location).

One of the conditions for greater participation of persons with disabilities in policy making requires more training of persons with disabilities about their rights, the way in which they can be engaged in self-advocacy and to ask from the various services to provide them with everything they need to be equally informed of all developments.

Participation of persons with intellectual and psychosocial disabilities in decision-making processes in Serbia is practically non-existent due to various political and social causes. The main reason for the violation of rights of persons with intellectual and psychosocial disabilities in practice is prevalent system of deprivation of legal capacity or extension of parental rights. The terms of deprivations are regulated by the Family Law, and the procedure is carried out through two related but separate processes: deprivation of legal capacity as the court proceedings (in accordance with the Law on Extra-Judicial Procedure) and setting up guardianship by a guardianship authority as an administrative procedure (in accordance with the Law on administrative Procedure)[[1]](#footnote-1). More than half of the persons deprived of their legal capacity (53.2%) had a history of institutionalization. In 99% of the cases the type of disability is clearly specified, usually in the form of medical records pointing to the fact that these people are deprived of legal capacity just because they have some form of disability, which completely violates the principle of equality. The disturbing fact is that in Serbia from 2011, the number of cases of legal capacity deprivation is rapidly increasing.

A person deprived of his/her legal capacity cannot be registered in the electoral rolls, i.e. will be removed from it, and when their business capacity is reinstated by a finally-binding court decision, they shall be enlisted into the electoral rolls again[[2]](#footnote-2). Also, persons deprived of their legal capacity cannot be founders or members of political parties[[3]](#footnote-3), founders of the associations[[4]](#footnote-4) or volunteers[[5]](#footnote-5).

Equally important is that the materials and information about public policy and political activities are not presented in the form, which is easy to understand.

DRPI Research study on political participation of PWDs in Serbia included interviews with 59 PWDs on their individual experiences in the four areas of political participation: Participation in decision-making, Participation in public life, Information/communication and Participation in elections. The principles of human rights that have been taken as the basis for this research are: Dignity, Autonomy, Participation, inclusion and accessibility,

Non-discrimination and equality and Respect for diversity. The following socio-demographic characteristics are taken into account: gender, age group, type of disability, place of origin, membership in DPOs, membership in political parties, participation in elections and way of voting as well as the way of informing during the political campaigns.

When it comes to participation in public life, this area implied social engagement through political parties or civil society organizations and disabled people’s organizations and is represented somewhat less than in the two aforementioned

(83.05%). The area of Influence on decision making in the experiences of the respondents is represented least, in the percentage of 72.88%, which implies that this area is least recognized by persons with disabilities as a form of political participation and that persons with disabilities often have no or very little impact on adoption and implementation of laws, policies and programmes that affect them directly or indirectly.

Data has shown that the vast majority of interviewed persons with disabilities are members of DPOs (97%).

**Influence on decision-making**

When it comes to human rights principles represented within this area, the research has shown that 47.46% participants cited experiences when they faced exclusion and lack of accessibility in decision-making process. The following excerpts from the

interview in support this:

*M[[6]](#footnote-6): Did the organizers of such meetings, discussions, public consultations and hearings, take into consideration the needs of the participants of the meeting in the sense that they have prepared some accessible formats of material or electronic versions?*

*I: No, until they were not suggested to do so, it means from the moment ... not before, but the moment when I would express a desire and a need for it, then I would sometimes get it.* - Female, 21 (with visual impairment).

Besides, 39% interviewees cited that they have no power over decision-making processes and stressed lack of autonomy in such situations. This suggests that persons with disabilities are often excluded from decision-making processes that directly concern them and that they often are not consulted, thus they are not in a position to influence the decision. Exclusion from the decision-making process is related to the lack of preconditions for participation in decision making, such as an accessible venue of consultation meetings at various levels of government, public events in political life as well as information in accessible formats for persons with disabilities who are in need of the same.

*“Simply put, persons with disabilities will have as much impact in the decision-making processes as they are strong and capable target groups to address their problems. We have lived in a time when people were deciding about the destiny of a person with a disability. Currently we don’t have enough capacities among persons with disabilities to share the story of what they actually need. So you have a case, that some sort of social rights or social benefits are more important than the crucial rights, not in the society and politics, but among persons with disabilities. As long as this target group is not politically interested to influence on reality and be active part of disability movement, until that moment, nothing will change much.”* - Male, 34 (mobility impairment).

People with disabilities often feel excluded from decision-making processes which is illustrated by following quotations:

*“There are no any promises, nor I think that anybody really cares. I mean, it’s awful. You are put in the position when municipality organizes public hearings and round tables and I’m invited to attend – only participant with disability and they never wanted to provide me personal assistant nor anybody asked me if I’m able to manage to come by myself. They organize catering, for example, at the round table and I can’t take it by myself and nobody cares…I’m the only one excluded and left behind…”* Woman*,* 60 years old, mobility impairment

“*We as DPOs are totally isolated. Nobody listens to us. We complained about draft of Law on Mental Health and filed in our amendments because they written all kinds of odd provisions in there but the Ministry didn’t even consider it not did they reply anything, they just moved forward with their draft as it were.* Man, 52 years old, psychosocial disability

*“Simply put, system is made that way so persons with disabilities can’t influence decision-making processes. I’m familiar with some people from our DPOs who are member of certain decision-making bodies at national level, but they can’t influence any change.”* Woman, 51 years old.

*“Three years ago, Council of Europe and Ministry of Social Affair of Republic of Serbia organized one round table in order to promote Council of Europe Action plan for Persons with disabilities. Surprisingly, even if there had been so many accessible public venues and spaces, they organized the meeting in hotel Balkan which was not accessible. They invited me as coordinator of Task Force for normative acts of National Organization of Persons with Disabilities of Serbia and three more colleagues, all wheelchair users and they are all in management bodies of National Organization of PWDs – all 4 of us were invited there. Personal assistant of one of our colleagues went in there, checked the hotel and asked “How are we supposed to get in since the meeting room is in the basement without elevator?” They responded to us that hotel waiters will carry us. Of course, we reacted and referred to Ministry and our colleague called State Secretary directly. He said to write official appeal to Ministry and he will make sure that person who was in charge of organizing the event gets fired from the job position, but in the end our colleagues decided not to go that far but that was one of the examples which difficulties we’re facing.”* Man, 45 years old, mobility impairment

**Participation in public life (through engagement in DPOs and civil society)**

The analysis of compliance and violations of human rights principles in the field of Participation in public life which includes social and public engagement in civil society organizations suggests that the principle of Participation, inclusion and accessibility principle of human right is the one that has been brought the most in connection with the experiences mentioned by the respondents (74.58% of respondents). As expected, the majority of negative experiences were made in this regard (55.93%), in relation to the denial of their right to participate in public life due to the inaccessibility of public events, places of residence and so on.

*M: When arranging these meetings, do they take into account accessibility, the*

*venue, materials which are possibly used in meetings, do you have any examples of*

*barriers?*

*I: Sometime the venues were physically inaccessible, but the material was often not*

*or material was subsequently received, I obtain it later .... a lot later. -* Female, 31 (mobility impairment)

The analysis of participation in public life by gender has shown that when it comes to **exclusion from public life** (EXCPL), women are more excluded than men (57.58% compared to 53.85%). On the other hand, when it comes to **active** **participation in public life** (INCLPL), which includes activism in civil society organizations, political parties and various public events, women are also in a worse position than men (only 27.27% as compared to 46.15%). The difference is also evident when analysing the **Principle of respect for diversity**, which indicates that women are more faced with labelling and contempt in public life (21.21%) compared to men (7.69%). Also, women are faced more with discrimination in this area (INEQPL), in 12.12% of cases compared 7.69% of cases in men.

There are also significant differences in **participation in public life between the different age groups** of persons with disabilities. Thus, it is evident that thepopulation of young persons with disabilities (20%), older, i.e. between 60 and70 years old (50%) and the oldest (0 %), the least involved in public life(INCLPL) compared to the population of middle-aged (between 31 and 45 -82.35%, and between 46 and 60 years of age - 80%). **Exclusion of the oldest citizens with disabilities** (EXCPL) is also significant as compared to the younger group of persons with disabilities.

**Additional questions for civil society, including persons with disabilities and their representative organizations:**

1. Please provide information on the existence of organizations of persons with disabilities in your country, including organizations of children and women with disabilities, as well as their composition and internal decision-making processes and procedures;

National Organization of Persons with Disabilities of Serbia (NOOIS) gathers 15 traditional impairment-based national association and one association representing women with disabilities called “…Out of Circle”. The main condition for full membership is that the national association has at least 500 members, that exists at least 5 years and has at least 5 local affiliations. Traditional impairment-based organizations exists for several decades being founded in the socialistic period after 1945. New cross-disability associations are emerging more and more being oriented on service provision for their community members. They not considered as “representative and usually have less access to State funding than traditional ones.

1. Please identify the main challenges faced by the diversity of persons with disabilities as members of mainstream or disability-specific non-governmental organizations, and in participating in the activities of such organizations, including challenges faced by persons who experience multiple discrimination.

Persons with disabilities too often don’t have any power over decisions which programs and services will be implemented and delivered through their associations – especially “traditional” and impairment-based ones. This is illustrated by following quotations from individual interviews with persons with disabilities done through DRPI monitoring study in Serbia in 2013:

*“I’m member of Multiple Sclerosis Society of Serbia since 1993, 21 years already. I didn’t get nothing from this association apart from recommendation to be provided with the wheelchair from Foundation of Princess Katarina. But I heard that MS affiliation in Belgrade is giving away all kinds of useful things, sport wear, sneakers, pillows, not to mention other things... Since I live far away from Belgrade, I have never been part of these combinations. My association sends me their magazine once a year informing us on our rights to certain benefits and treatments and I don’t have any other contact with them. I just pay them membership fee each January and all I get is this magazine. Whenever I call them, they say that they have just recently got some humanitarian aid but they gave away everything and I won’t get it because I didn’t call them in time.” Man, 59 years old, mobility impairment*

*„They had been inviting me quite often when they had organized some workshops and I participated in two of such workshop related to art crafts but I had C in Art in elementary school when my dad was drawing instead of me and I told them that I’m not interested at all in such workshops but they didn’t take me for serious. I’m not interested nor talented for painting and drawing so I thanked them and I didn’t want to participate anymore.”* Woman 61 years old, mobility impairment[[7]](#footnote-7)

One should bear in mind that almost all traditional impairment-based associations of people with disabilities as predominant structures of disability movement in Serbia are totally dependent of State funding which largely influences their willingness and capacity to be critical towards State actions and truly represent requests and desires of their members – persons with disabilities. State funding provided to DPOs is barely enough to maintain basic structure of employees and elementary costs of daily functioning of DPOs. However, struggling to maintain these portions of funding, DPOs are losing advocacy capacities and are in unfavorable position in society.

**Note: We don’t have any objections with regard to posting our reply on the website of OHCHR**

1. Legal analyses is presented in the following publications: *Practicing Universality of Rights: analysis of the*

   *implementation of the UN Convention on the Rights of Persons with Disabilities in view of persons with*

   *intellectual disabilities in Serbia,* Disability Rights Initiative of Serbia MDRI-S, July 2011; *My right to make decisions*, author Kosana Beker, publisher Initiative for Inclusion VelikiMali, May 2010 [↑](#footnote-ref-1)
2. Law on Election of Deputies, Article 13, Paragraph 6, and the Law on Altering and Amending the Law on

   Election of Deputies, Article 1 [↑](#footnote-ref-2)
3. Law on Political Parties, Articles 8 and 21, ”Official Gazette of the Republic of Serbia“, No 36/2009 [↑](#footnote-ref-3)
4. Law on Associations, Article 10, ”Official Gazette of the Republic of Serbia“, No 51/2009 [↑](#footnote-ref-4)
5. Law on Volunteering, Article 12, ”Official Gazette of the Republic of Serbia“, No 36/2010 [↑](#footnote-ref-5)
6. “M’ stands for monitor while “I’ stands for interviewee. [↑](#footnote-ref-6)
7. Keravica R., “Monitoring of individual experiences of people with disabilities in Serbia”, Disability Rights Promotion International, Regional Center for Europe, 2013 [↑](#footnote-ref-7)