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SVEUČILIŠTE JOSIPA JURJA STROSSMAYERA U OSIJEKU

dabar

DIGITALNI AKADEMSKI ARHIVI I REPOZITORIJI

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THE RIGHTS OF OLDER PERSONS WITH DISABILITIES IN THE REPUBLIC OF CROATIA

Abstract:

One of the consequences of the omnipresent demographic trend of the population ageing is the increasing number of persons with disabilities on a global scale. The disability rates among older age groups are higher than the ones among younger age groups, and older persons are disproportionately represented within the category of persons with disabilities. This trend is especially pronounced in Europe, therefore in Croatia, too. The basic assumption of this paper is that identifying the specific problems of older persons with disabilities is important for creating adequate policies and measures with the goal of improving the position of this population. So this paper tries to answer the question of whether there is a difference between the position and needs of older persons with disabilities and the position and needs of other age groups with disabilities, i.e. the position and needs of older persons without disabilities. The paper also gives an overview of the existing legal framework for the protection of rights of older persons with disabilities on the international, regional and national level and analyses the position of this population in the Republic of Croatia.

Keywords: *older persons with disabilities, demographic ageing, international law, the European Union, the Republic of Croatia*

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I. INTRODUCTION

The population ageing combined with a high prevalence of chronic, noncommunicable diseases (diabetes, cardiovascular diseases, mental disorders) lead to an increasing number of persons with disabilities on a global level. The disability rate among older population is higher than the one among younger population and rises with chronological age. Therefore, older persons are disproportionately represented within the category of persons with disabilities. Regarded as separate groups, older persons and persons with disabilities share some common characteristics (they are often perceived as a burden on society and a social problem, are often exposed to a higher risk of poverty and social exclusion, are often victims of violence). However, there is a question of the position of those belonging to both groups at the same time.

Therefore, this paper analyzes the available statistical data and current studies on older persons with disabilities and gives an overview of the existing legal framework for the protection of this vulnerable population. The position of older persons with disabilities in the Republic of Croatia is viewed within the context of social inclusion/exclusion, use of social services and rights within the social welfare system and occurence of violence against these persons. The identification of normative and implementational shortcomings as well as specific needs of older persons with disabilities are a precondition of creating adequate policies and measures for improvement of the position of this population.

II. OLDER PERSONS WITH DISABILITIES - INTRODUCTION

2.1 The term of older person with disabilities

In order to better understand the specific problems older persons with disabilities encounter, it is necessary to differentiate terminologically between ageing, old age, an older person and an older person with disabilities. However, the attempts to define the aforementioned terms have encountered many difficulties. While ageing is a natural, physiological and individual process, depending upon many factors, old age is the last developmental stage in the life of a human.[1] Therefore, ageing is a progressive, constant and gradual process of decreasing of the structure and function of organs and organ systems which lasts from conception until death[2], and old age is a socially constructed phenomenon, whose beginning is mostly connected to a specific chronological age (regardless of the psychophysical condition of an individual). In most European countries, so as in the

[1] For more details, see: I. Rešetar Čulo, 'Zaštita prava starijih osoba u Europi – trenutno stanje, nedostaci i izazovi', *Pravni vjesnik,* 14/2, 2014, p. 118.

[2] I. Stipešević Rakamarić, 'Zavod za javno zdravstvo Varaždinske županije', http://www.zzjzzv.hr/?gid=2&aid=165, (accessed 8 September 2015).

Republic of Croatia, too, the older age limit is set to the chronological age of 65 years. Persons aged 65 and above are considered to be older persons.[3]

Ageing results in various changes, which according to their nature, can be differentiated into the following categories: biological changes (gradual slowdown and decrease of body functions), psychological changes (changes in psychological body functions over time) but also social changes (changes related to an individual who is getting older and the society the individual lives in).[4] The process of primary, physiological ageing is contributed by so-called secondary ageing, i.e. pathological changes and decrease with years as a consequence of external factors, including disease, environmental influences and behaviour.[5] Although older persons are exposed to a higher risk of specific diseases and injuries, the stereotypes, according to which all older persons are sick or disabled, are based upon the misunderstanding of the natural process of "normal ageing".[6] Regardless of person's age, "normal ageing" imposes very few limitations to the everyday activities and it can be slowed down by modifying the risk factors for chronic noncommunicable diseases like high blood pressure, smoking and sedentary way of life.[7] A sudden relapse and decay of any organ system is always a consequence of a disease and not "normal ageing".[8] Disease and poor health condition in general and disability are not synonyms.

It is a big challenge to define the terms "disability" and "a person with disability" without negative connotations which reflect and intensify negative stereotypes and prejudices. A shift from moral through medical and rehabilitation one, towards social and even the subjective model of disability leads to changes in defining these terms.[9] At least formally, disability is nowadays not considered a person's deficiency but rather an interrelationship between an individual and his surroundings, which does not adjust itself to the individual's differences and limits and hinders his participation in society.[10] Weller opines that exactly through the acceptance of the social model of disability in the Convention on the Rights of Persons With Disabilities (2006)[11], the Convention shifted towards the conceptual fusion of social, economic and cultural rights with civil and po-

[3] *Zakon o socijalnoj skrbi, eng. The Social Welfare Act,* (Official Gazette 157/13, 152/14).

[4] I. Stipešević Rakamarić, 'Zavod za javno zdravstvo Varaždinske županije'

[5] *Ibidem.*

[6] *Ibidem.*

[7] I. Stipešević Rakamarić, 'Zavod za javno zdravstvo Varaždinske županije'.

[8] *Ibidem.*

[9] E. Kajtár, 'Changing Perspective on Social Inclusion of People with Disabilities: A European – Hungarian Outlook', *Studia Iuridica Auctoritate Universitatis Pecs,* No. 167, 2008, pp. 168 – 169.

[10] A. Slonšjak and J. Papa, *Praćenje Konvencije o pravima osoba s invaliditetom, Vodič za organizacije koje prate ljudska prava,* Zagreb, Program Ujedinjenih naroda za razvoj, 2012, pp. 9 – 10.

[11] *Zakon o potvrđivanju Konvencije o pravima osoba s invaliditetom i Fakultativnog protokola uz Konvenciju o pravima osoba s invaliditetom*, (Official Gazette – International Agreements 6/2007, 3/2008, 5/2008).

litical rights.[12] It all resulted in defining the term of persons with disabilities in a way that such term includes persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Therefore, a long term impairment per se (physical, mental, intellectual or sensory) is not a disability. Disability is a result of a inadequate response of society to some of the above-listed impairments. In the end this inadequate response of society, whether it be architectural obstacles or stereotypes and prejudices towards persons with disabilites, results in social exclusion.

Following the above-listed definition of basic terms, for the purpose of this paper older persons with disabilities include all persons over 65 years of age with long term physical, mental, intellectual or sensory impairments, which in interaction with different barriers can hinder their complete and efficient participation in society on the equal basis with others. Of course, older persons with disabilities are a heterogeneous group which differs in various characteristics (sex, education, type of impairment, ethnicity affiliation etc.). It is also necessary to distinguish between older persons who have become physically, mentally, intellectually or sensory impaired in old age and older persons who have become impaired in earlier life stages.

2.2 Population ageing and prevalence of disabilities in world and the European Union

For the last decades, there has been a pronounced worldwide trend of demographic ageing, i.e. the increase of share of older age groups in the total population. The share of persons over 60 in the total number of inhabitants on the world level has increased from 9% in 1994 to 12% in 2014 and is expected to rise up to 21% until the year 2050.[13] There were approximately 524 millions of persons over 65 years of age in the world in 2010 and this population made up 8% of the entire world population.[14] It is predicted that this number will triple until 2050 and by then there will have been 1,5 billion of persons over 65, which will make up about 16% of the world population.[15] Older persons are the fastest rising age group. The growth rate of this age group in the year 2014 was almost three times higher than the growth rate of the total population.[16] Due to such growth rate, the number of persons over 60 almost

In the Republic of Croatia, the Convention on the Rights of Persons with Disabilities entered into force on May 3, 2008.

[12] P. Weller, 'The Convention on the Rights of Persons with Disabilities and the social model of health: new prespectives', *Journal of Mental Health Law,* No. 74, 2011, p. 75.

[13] *Concise Report on the World Population Situation in 2014*, United Nations, Department of Economic and Social Affairs, Population Division, 2014, p. 24.

[14] *Global Health and Ageing,* World Health Organization, NIH Publication no. 11-7737, 2011, p. 4.

[15] *Ibidem.*

[16] *Concise Report on the World Population Situation in 2014*, p. 25

tripled in the period between 1994 and 2014, and surpasses the number of children under 5.[17] But the older population per se is getting older. The share of persons over 80 (the "oldest old") in the total number of older persons was 14% in 2014, and is predicted to reach 19% until the year 2050.[18] Should these predictions come true, there could be 392 millions of persons over 80 by the year 2050, i.e. triple numbers of today's population over 80.[19]

Europe is a continent with the oldest population in the world. The share of persons over 65 in the total population number of the EU-27 member states amounted to 17,8% in 2012.[20] According to some forecasts, the share of persons aged 0 to 14 in the total population in the EU-28 states will remain constant until 2060 (about 15%), the share of persons in the age group from 15 to 64 will decrease from 66% to 57%, whereas the share of persons over 65 will increase from 18% to 28%.[21] It is also predicted that the share of persons over 80 in the total population number will increase from 5% to 12% and almost equalize to the share of persons in the youngest age group (0-14 years).[22]

The globally present phenomenon of demographic ageing affects all aspects of life and, along with a high prevalence of chronic diseases connected to disability (diabetes, cardiovascular diseases and mental disorders), is considered one of the main causes of the increasing number of persons with disabilities in the world.[23] According to the estimates of the World Health Organization there is more than one billion of persons with disabilities (about 15% of world population).[24] Between 2,2% and 3,9% are persons with extreme forms of disability.[25] Every sixth person in the European Union is a person with disability, which means that there are approximately 80 millions of persons with disabilities.[26] The connection between population ageing and increase of number of persons with disability is simple: older persons are exposed to a higher risk of disability, and world population is increasingly getting older.[27] This results in higher disability rates among older persons

[17] *Ibidem.*

[18] *Ibidem.*

[19] *Ibidem.*

[20] S.A.Robustillo et al., *EU Employment and Social Situation, Quarterly Review,* European Union, 2013, p. 7.

[21] *The 2015 Ageing Report, Underlying Assumptions and Projection Methodologies,* European Commission, Economic and Financial Affairs, 2014, p. 18

[22] *Ibidem.*

[23] *Summary World Report on Disability*, World Health Organization, 2011, p. 8

[24] *World Report on Disability,* World Health Organization, 2011, p. 29.

[25] *Ibidem.*

[26] *European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe,* European Commission, Brussels, 2010, p. 3

[27] *World Report on Disability,* pp. 34 – 35.

compared to the disability rates among younger age groups and disproportional representation of older persons within the category of persons with disability.[28] For example, in Germany, out of the total number of persons with disability in 2007, 54,3% of them were over 65 years of age.[29] This is in accordance with the data that the prevalence of disabilities among older persons in the European Union is much higher than among younger age groups.[30] Namely, 54% of persons over 65 are persons with disabilities, compared to 18% of persons in the age group from 16 to 64.[31] More than a third of older persons over 75 in the European Union has some sort of disability, and more than 20% of them have a more severe form of disability.[32]

2.3 Population ageing and disability in older age in the Republic of Croatia

The trend of demographic ageing has been also pronounced in the Republic of Croatia. According to the 2011 census, the share of persons over 65 in the total population of the Republic of Croatia comprised 17,7% (758633 persons).[33] In accordance with global demographic trends, in our country there is also an increase in very old population. Therefore, the share of population over 80 in 1953 was 0,8%, whereas in 2011 it amounted to 3,9%.[34]

Considering that the population of the Republic of Croatia is among the older ones in Europe, the increase of number of persons with disability is also expected. According to the data from the Report on Persons with Disability in the Republic of Croatia, on the day of March 12, 2015 there were 508350 persons with disabilities, 306614 (60%) of which were men, and 201736 (40%) were women.[35] Therefore, persons with disabilities comprised about 12% of the total population of the Republic of Croatia. The largest number of persons with disabilities, 259887 (51,1%) of them, is in the work-active age (19-64 years).[36] In the age group from 0 to 19 years, 42836 persons with disabilities (8,4%) were

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[28] *Ibidem,* p. 35.

[29] *Ibidem,* p. 35

[30] *Initial Report of States parties due in 2012 – European Union, CRPD/C/EU/1, 2014,* https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/232/64/PDF/G1423264.pdf?OpenElement, (accessed 15 September 2015) para. 17.

[31] *Ibidem.*

[32] *European Disability Strategy 2010-2020,* p. 3.

[33] Lj. Ostroški, '*Popis stanovništva, kućanstava i stanova 2011., Stanovništvo prema spolu i starosti*', Zagreb, Hrvatski zavod za statistiku, 2013, p. 10.

[34] *Ibidem.*

[35] T. Benjak, *Izvješće o osobama s invaliditetom u Republici Hrvatskoj (2015),* (hereinafter referred to as: Izvješće o osobama s invaliditetom u Republici Hrvatskoj (2015), Hrvatski zavod za javno zdravstvo, 2015, p. 5.

[36] *Ibidem.*

recorded.[37] The share of persons over 65 in the total number of persons with disabilities comprises 40,5% (205639 persons).[38] The highest prevalence of disability in older age was recorded in the Krapina-Zagorje County, and the lowest in Istria County.[39] If we consider the data on the share of older persons in the total population of the Republic of Croatia (17,7%), and the share in the population of persons with disability in the Republic of Croatia (40,5%), it can be concluded that almost every third person over 65 is a person with disabilities, and that older persons with disabilies are disproportionately represented in the total number of persons with disabilities. There is a noticeable increase of older persons with disabilities among the total population of persons with disabilities on the annual level. Namely, in the beginning of 2013 this share was 38,9%[40], in the beginning of 2014 39,1%[41], and in the beginning of 2015 it amounted to 40,5%[42].

In the Osijek-Baranja County on the day of March 12, 2015 there were 31731 persons with disabilities, 20252 (64%) of which were men, and 11479 (36%) women.[43] Therefore, persons with disabilities comprise 10,4% of the total population of the County.[44] The share of older persons with disabilities in the total number of persons with disabilities comprises 34%, the share of children with disabilities is 9%, whereas the share of persons with disabilities in the age group from 19 to 64 amounts to 57%.[45]

Older age is commonly divided into early old age, which includes a period from 65 to 74 years, middle old age, which includes a period from 75 to 84 years, and deep old age, which refers to a period over 85.[46] This division is important because within the category of older persons itself there are differences in the number of persons with disabilities, number of persons with difficulties in performing everyday activities and the number of permanently disabled persons, depending on the fact whether an older person belongs to a younger age group (early old age), middle age group (middle old age) or older age group (the oldest old). According to some estimates, on a global scale, 20% of all persons over 70,

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[37] *Ibidem.*

[38] *Ibidem.*

[39] Izvješće o osobama s invaliditetom u Republici Hrvatskoj (2015), p. 6

[40] T. Benjak, *Izvješće o osobama s invaliditetom u Republici Hrvatskoj(2013)*, Hrvatski zavod za javno zdravstvo, 2013, p. 5.

[41] T. Benjak, *Izvješće o osobama s invaliditetom u Republici Hrvatskoj(2014)*, Hrvatski zavod za javno zdravstvo, 2014, p. 5.

[42] T. Benjak, Izvješće o osobama s invaliditetom u Republici Hrvatskoj (2015), p. 5.

[43] *Ibidem,* p. 29.

[44] *Ibidem.*

[45] *Ibidem.*

[46] S. Roksandić et al., 'Zdravstvena prava za starije osobe u Republici Hrvatskoj', *Medicus,* Vol. 14, No. 2, 2005, p. 314.

i.e. 50% of all persons over 85 has some sort of disability.[47] Regarding the Republic of Croatia, the share of persons with difficulties in performing everyday activities also increases with chronological age. Therefore, the share of persons with difficulties in performing everyday activities in the younger age group comprises 38,44%, middle age group 53,85% and old age group 67,93%.[48] When it comes to physical mobility among older persons who reported having difficulties in performing everyday activities, the situation is the following: there are 1,74% permanently disabled persons in the younger age group, 4,11% in the middle one and 10,74% in the old one.[49] The situation is the opposite when it comes to completely mobile persons among those who report having difficulties performing everyday activities. In the younger age group there are 58,75% completely mobile persons, in the middle one 39,71% and in the old one 22,77%.[50]

Regarding the cause of disability, it is important to point out that disability in older age group appears mostly as a consequence of chronic diseases connected to the disability (diabetes, cardiovascular diseases and mental disorders).[51] Even the sudden appearance of heavier impairments in older age caused by stroke or falls is connected to the person's health condition.[52] According to the data from the primary health care the most common groups of the determined diseases and conditions among older persons are: diseases of circulatory system (with the share of 20,8%), diseases of musculo-articular system and connective tissue (12,4%), diseases of respiratory system (7,9%) and hormonal dysfunctions, nutritional diseases and metabolic diseases (7,7%).[53] The most common causes of disability in older age in the Republic of Croatia are lesions of the locomotor system (cca. 30% of all causes of disability), lesions of other organs and organ systems, lesions of the central nervous system and mental disorders.[54]

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[47] N. L. Chappel and A. H. Cook, 'Age Related Disabilities – Ageingand Quality of Life' in J. H. Stone and M. Blouin (eds.): *International Encyclopedia of Rehabilitation*, http://cirrie.buffalo.edu/encyclopedia/en/article/189/ (accessed 27 October 2015)

[48] *Strategija socijalne skrbi za starije osobe u Republici Hrvatskoj za razdoblje od 2014. – 2016.,* Zagreb, Ministarstvo socijalne politike i mladih, 2014, p. 9.

[49] *Strategija socijalne skrbi za starije osobe u Republici Hrvatskoj za razdoblje od 2014. – 2016., p.9..*

[50] *Ibid.*

[51] J.A Kelley-Moore, *et al:* 'When Do Older Adults Become „Disabled", Social and Health Antecedents of Perceived Disability ina a Panel Study of the Oldest Old', *Journal of Health and Social Behavior,* Vol. 47, 2006, p. 129.

[52] *Ibid.*

[53] T. Poljičanin and T.Benjak, *Hrvatski zdravstveno-statistički ljetopis za 2014. godinu,* Zagreb, Hrvatski institut za javno zdravstvo, 2015, p. 309.

[54] Z. Leutar et al., 'Socijalna uključenost u zajednicu starijih osoba s invaliditetom', *Hrvatska revija za rehabilitacijska istraživanja,* Vol. 50, No. 2, 2014, p. 119.

III. RIGHTS OF OLDER PERSONS WITH DISABILITIES

3.1 The protection of rights of older persons with disabilities on the international and regional level

The Convention on the Rights of Persons with Disabilities from 2006 is one of few international documents[55], which refer specifically to older persons, i.e. age. Thus by the provision of Art. 25(b) of the cited Convention, States Parties are obliged to, among other things, provide health services intended to minimize and prevent further disabilities, including disabilities in children and older persons. Older persons are also explicitly mentioned in the Art. 28(2b) of the Convention on the Rights of Persons with Disabilities, pursuant to which States Parties are obliged to ensure people with disabilities, and especially women, girls and older persons with disabilities, access to social protection and poverty reduction programs. Age is explicitly stated in the Art. 13(1) of the Convention on the Rights of Persons with Disabilities which calls for introduction of procedural and age-appropriate accommodations for access to justice, and Art. 16 which calls for introduction of measures of protection and support for victims of exploitation, violence and abuse, adjusted to victim's age. Age is also referred to in the item (p) of the preamble of the cited Convention as one of the grounds of discrimination faced by persons with disabilities, and in Art. 8(1b) of the Convention within the context of raising awareness and fighting against stereotypes.

The Convention on the Rights of Persons with Disabilities is the first international document on the protection of human rights which European Union, as a regional organization, is participant to. Therefore in 2014, the European Union submitted a first report to the Committee on the Rights of Persons with Disabilities on the measures taken for meeting the obligations given by the Convention. In that report it is stressed that over 50% of persons over 65 years of age in the European Union are persons with disabilities.[56] The *European Disability Strategy 2010-2020* from 2010 has a goal to empower persons with disabilities in order for them to be able to enjoy their rights, participate in society and economy of the European Union.[57] The Strategy is based on the elimination of barriers to the inclusion of persons with disabilities in society, and the European Commission has identified eight main areas where action is required: Accessibility, Participation, Equality, Employment, Education and training, Social protection, Health, and External Action. In addition to these documents, it should be noted that by the Charter of Fundamental Rights of the European

[55] For example, age is explicitly mentioned in Art. 7 of the *International Convention on the Protection of All Migrant Worker and Members of Their Families*. According to that article, discrimination based on age is prohibited in the exercise of the rights guaranteed by that Convention. *International Convention on the Protection of All Migrant Worker and Members of Their Families,* United Nations, *Treaty Series,* sv. 2220, p. 3.; Doc.A/RES/45/158.

[56] *Initial Report of States parties due in 2012 – European Union, CRPD/C/EU/1,* para 17.

[57] *European Disability Strategy 2010 – 2020,* para 2.

Union (2000)[58] the European Union „recognizes and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life" (Art. 25 of the Charter). By the Art. 26 of the Charter, the European Union also recognizes and respects the rights of persons with disabilities to measures designed to ensure their independence, social and professional inclusion, and their participation in community life. In the Art. 10 of the Treaty on the Functioning of the European Union[59] it is stated that during determination and implementation of its policies and activities, the European Union is focused on fighting discrimination on the basis of age and disability, among other things.

As for the protection of rights of older persons with disabilities, on the level of the Council of Europe, the most significant documents are the European Social Charter (1963)[60] and the Convention for the Protection of Human Rights and Fundamental Freedoms (1950)[61]. Thus, the Convention for the Protection of Human Rights and Fundamental Freedoms guarantees by its protocols civil and political rights to all persons, including the older persons with disabilities. Protocol 12 of the Convention is especially important for the protection of the rights of older persons with disabilities, since it contains a provision on the general prohibition of discrimination in the enjoyment of all rights stated by the law. The European Social Charter stipulates by the Art. 15 that every person with disability has a right to professional education, as well as social and professional rehabilitation, regardless of the origin and nature of their disability, while simultaneously committing States Parties to take appropriate measures in order to accomplish these rights. Art. 4 of the Additional Protocol to the European Social Charter (1988)[62], whose text became Art. 23 of the Revised European Social Charter (1996)[63] governs the rights of older persons with disabilities to social protection. A key document on the protection of rights of persons with disabilities, which directed activities of the European states in the field of the protection of rights of persons with disabilities for nearly ten years is the Action Plan of the Council of Europe to promote the rights and full participation in society for people

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[58] *Charter of Fundamental Rights of the European Union,* (Official Journal of the European Communities, C 364/14, 2000).

[59] *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, (*Official Journal of the European Union, C 83/01, 2010).

[60] *Zakonu o prihvaćanju Europske socijalne povelje, Dodatnog protokola Europskoj socijalnoj povelji, Protokola o izmjenama Europske socijalne povelje i Dodatnog protokola Europskoj socijalnoj povelji kojim se uspostavlja sustav kolektivnih žalbi* (Official Gazette – International Agreements 15/02 and 8/03).

[61] *Konvencija za zaštitu ljudskih prava i temeljnih sloboda,* (Official Gazette – International Agreements 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10).

[62] Full text of the *Additional Protocol to the European Social Charter* see in: *Zakon o prihvaćanju Europske socijalne povelje, Dodatnog protokola Europskoj socijalnoj povelji, Protokola o izmjenama Europske socijalne povelje i Dodatnog protokola Europskoj socijalnoj povelji kojim se uspostavlja sustav kolektivnih žalbi* (see note 60)

[63] *European Social Charter (revised),* official websites of the Council of Europe, http://conventions.coe.int/Treaty/en/Treaties/Html/163.htm (accessed 18 September 2015)

with disabilities: Improving the quality of life of people with disabilities in Europe 2006-2015 (2006)[64] (hereinafter referred to as: Action Plan of the Council of Europe). It emphasizes how ageing of persons with disabilities, especially the ones in the need of intensive care due to the nature of their disability, represents a new challenge to societies across Europe.[65] What is also emphasized in the Action Plan is that concerted action with the aim of enabling older persons with disabilities to remain in community as long as possible, which requires assessment of individual needs, planning ahead as well as the availability of necessary services.[66] While designing policies for older persons it is necessary to take into consideration the issue of disability, and in planning actions based on the guidelines it is necessary to consider all issues and factors which affect participation of older persons with disabilities in everyday life and activities.[67]

Within the context of the protection of older persons with disabilities, it is essential to stress the importance of the Recommendation CM/REC(2014)2 of the Committee of Ministers to Member States on the promotion of the human rights of older persons (2014)[68] as only comprehensive (although legally non-binding) document on the rights of older persons on the European level. This document represents concretization of goals outlined in the European Social Charter and contains 54 principles for the protection of older persons, divided into seven categories: sphere of activity and general principles, non-discrimination, independence and participation, protection against violence and abuse, social protection and employment, welfare and administration of justice. The Recommendation outlines an implementation of a series of measures to ensure dignity of older persons, protection against violence and participation of older persons in all aspects of life, health improvement and well-being of older persons, as well as providing home help and care services for older persons, but also in the institutions, and palliative care for the older persons. From the aspect of the protection of the rights of older persons with disabilities, the importance of the Recommendation lies in the fact that it contains a number of principles created by taking into consideration all the particulars of old age, including the increased risk of disability.

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[64] *Recommendation Rec(2006)5 of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015,* official websites of the Council of Europe, http://www.coe.int/t/e/social_cohesion/soc-sp/Rec_2006_5%20Disability%20Action%20Plan.pdf (accessed 5 October 2015)

[65] *Ibidem,* item 4.5.

[66] *Ibidem.*

[67] *Ibidem.*

[68] *Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of the human rights of older person,* official websites of the Council of Europe, http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/cddh-age/Document_CDDH_AGE/CMRec%282014%292_en.pdf (accessed 5 October 2015)

3.2 The protection of the rights of older persons with disabilities in the Republic of Croatia

The Croatian Constitution[69] (hereinafter referred to as: the Constitution) is the basis for the regulation of relations in all areas concerning human rights, and discrimination elimination. Art. 3 of the Constitution proclaims the principle of equality as one of the highest values of the constitutional order and the foundation for interpreting the Constitution, while Art. 14 guarantees rights and freedoms regardless of any form of discrimination. Pursuant to the provisions of Art. 58(2) of the Constitution, the state provides special care for the protection of persons with disabilities and their inclusion in social life. The state ensures the right to assistance to those who are unable to meet their basic needs, for all the weak, helpless and the other neglected persons, either because of the unemployment or incapacity for work (Art. 58(1) of the Constitution).

Provisions of numerous laws are imperative for the protection of the rights of older persons with disabilities in the Republic of Croatia: The Anti-Discrimination Act (2008)[70], the Social Welfare Act (2013), the Foster Care Act (2011)[71], the Act on the Protection of Persons with Mental Disorders (2014)[72], the Law on Unique Body of Expertise (2014)[73], the Pension Insurance Act (2013)[74], the Family Law Act (2015)[75], Free Legal Aid Act (2013)[76], the Domestic Violence Protection Act (2009)[77], the Croatian Criminal Code (2011)[78], the Compulsory Health Insurance Act (2013)[79] and others. Because of the Act on Croatian Register of Persons with Disabilities (2001)[80], which determines the way of collecting, pro-

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[69] *Ustav Republike Hrvatske, eng. Constitution of Republic of Croatia,* (Official Gazette - International Agreements 56/90, 135/97, 8/98., 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10 – consolidatedtextand 5/14).

[70] *Zakon o suzbijanju diskriminacije, eng. Anti-Discrimination Act,* (Official Gazette 85/08 and 112/12).

[71] *Zakon o udomiteljstvu, eng. Foster Care Act,* (Official Gazette 90/11 and 78/12).

[72] *Zakon o zaštiti osoba s duševnim smetnjama, eng. The Law on the Protection of Persons with Mental Disorders,* (Official Gazette 76/14).

[73] *Zakon o jedinstvenom tijelu vještačenja, eng.Law on single expertise body,* (Official Gazette 85/14).

[74] *Zakon o mirovinskom osiguranju, eng. Pension Insurance Act,* (Official Gazette 157/13, 151/14, 33/15 and 93/15).

[75] *Obiteljski zakon, eng. Family Law,* (Official Gazette 103/15).

[76] *Zakon o besplatnoj pravnoj pomoći, eng. Free Legal Aid Act,* (Official Gazette 143/13).

[77] *Zakon o zaštiti od nasilja u obitelji, eng. Law on Protection Against Domestic Violence,* (Official Gazette 137/09, 14/10 and 60/10).

[78] *Kazneni zakon Republike Hrvatske, eng. Croatian Criminal code,* (Official Gazette 125/11).

[79] *Zakon o obveznom zdravstvenom osiguranju, eng. Compulsory Health Insurance Act,* (Official Gazette 80/13 and 137/13).

[80] *Zakon o Hrvatskom registru o osobama s invaliditetom, eng. The Law on Croatian Register of Persons with Disabilities,* (Official Gazette 64/01).

cessing and protecting data privacy of persons with disabilities, and whose management was entrusted to the Croatian Institute for Public Health, statistical data on persons with disabilities is systematically collected in our state. In order to ensure better coverage and continuous improvement of quality of epidemiological data with the aim of facilitating access to relevant data and based policy and decision-making regarding this vulnerable section of population, a new Act on Croatian Register of Persons with Disabilities is in the process of being legislated.[81]

The policies regarding the protection of the rights of older persons with disabilities are based on the National Strategy for Equal Opportunities for Persons With Disabilities from 2007 – 2015[82] (hereinafter referred to as: National Strategy for Equal Opportunities) and the *Strategy of Social Welfare for* the Elderly in the Republic of Croatia for the period of 2014 – 2016, from 2014 (hereinafter referred to as: Strategy of Social Welfare for the Elderly). With the National Strategy for Equal Opportunities for Persons with Disabilities, which is based on a Convention on the Rights of Persons with Disabilities of the United Nations and the Council of Europe Action Plan, new solutions are sought to ensure a comprehensive approach in all areas of interest for persons with disabilities, such as: family, life in the community, education, health care, social welfare and pension insurance, housing, mobility and accessibility, professional rehabilitation, employment and work, legal protection and protection from violence and abuse, informing, communication and awareness raising, participation in cultural life, participation in political and public life, research and development, recreation, entertainment and sport, associations of persons with disabilities in civil society, and international cooperation (Paragraph 1.3. of the National Strategy for Equal Opportunities). The aim of this Strategy is to make the Croatian society as sensible and adaptable as possible for the necessary changes in favor of equalization of opportunities for persons with disabilities, that is, to create conditions for their active involvement and equal participation in society, respect for the inherent dignity and special interests, to avoid any discrimination, and also strengthen all forms of social solidarity (Paragraph 1.3. of the National Strategy for Equal Opportunities). The goals of Strategy of Social Welfare for the Elderly are related to the improvement of the normative framework and the system of providing assistance and services, provision of timely information on the rights and services from the system of social welfare for the older persons, and the development of different forms of social services which contribute to the inclusion of older people in community life.[83]

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[81] *Nacrt Zakona o Hrvatskom registru osoba s invaliditetom, eng. Draft Law on the Croatian Register of Persons with Disabilities,* http://www.zdravlje.hr/zakonodavstvo/savjetovanje_sa_zainteresiranom_javnoscu/arhiva/zakon_o_hrvatskom_registru_osoba_s_invaliditetom2, (accessed 17 September 2015).

[82] *Nacionalna strategija izjednačavanja mogućnosti za osobe s invaliditetom od 2007. do 2015. godine iz 2007. godine, eng. The National Strategy for Equalization of Opportunities for Persons with Disabilities from 2007 to 2015,* (Official Gazette 63/07).

[83] *Strategija socijalne skrbi za starije osobe,* p. 4.

IV. STATUS OF OLDER PERSONS WITH DISABILITIES IN THE REPUBLIC OF CROATIA

When observed as separate groups, older persons and persons with disabilities share some common characteristics. Specifically, older persons, just like persons with disabilities, are unfortunately viewed as a burden to society as well as social issue, which, combined with heterogeneity of these groups, specific needs and vulnerability of older population and population of persons with disabilities, leads to those groups being exposed to numerous violations of human rights. However, there's an issue with the situation of those persons belonging to both groups. Does the status of older persons with disabilities differ from the status of other age groups of persons with disabilities? Does the status of older persons with disabilities differ from the status of older persons without disabilities? Identifying specific problems of older persons with disabilities is important for creating adequate policy responses, with the aim of improving the situation of this vulnerable social group. It's those special measures of social policy that can influence persons with disabilities in a different, specific way.[84] In order to ensure the equality of all persons, it is necessary to have a systematic response of the society to the needs of those who seek equality.[85] In the previous chapter we gave a brief outline of the legal framework for the protection of older persons with disabilities. Further on in the text we will review the status of these persons in the Republic of Croatia from the aspect of their inclusion in society, the availability of social services and rights, and incidence of violence against these persons.

4.1 Poverty and social exclusion of older persons with disabilities

In literature it is widely regarded that there is a negative correlation between the disability level, high chronological age and level of life quality of older persons with disabilities.[86] Higher level of disability and higher chronological age result in a perception of less control over one's activities.[87] According to the data of a study done in 2010 in the Republic of Croatia on a sample of 114 older persons with disabilities, one third of older persons with disabilities are unsatisfied and highly unsatisfied with their life quality, and only 4,46% are extremely satisfied.[88]

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[84] Z. Leutar et al., 'Socijalna politika i kvaliteta života starijih osoba s tjelesnim invaliditetom', *Revija za socijalnu politiku,* Vol. 14, No. 3-4, 2007, p. 343.

[85] N. Hansen and L.Turnbull, 'Disability and Care: Still Not „Getting It" ', *Canadian Journal of Women and the Law,* Vol. 25, No. 111, 2013, p. 112.

[86] A.Štambuk et al., 'Neke dimenzije kvalitete života starijih osoba s invaliditetom', *Hrvatska revija za rehabilitacijska istraživanja,* Vol. 48, No. 1, 2012, p. 85.

[87] *Ibidem.*

[88] *Ibidem,* p. 93.

The economic situation, but also the subjective assesment of material conditions, greatly affects the evaluation of life quality of older persons with disabilities.[89] According to the same survey, 44,9% of older persons with disabilities rated their financial situation as poor and very poor, 44,7% respondents rated their financial situation as mediocre, and only 7,4% respondents rated their situation as very good or excellent.[90] However, persons with lower disability levels and higher life satisfaction evaluate their material conditions as more optimal.[91] In 47,6% cases, pension is the main income source for the older persons with disabilities.[92] Personal disability compensation is received by 19% of older persons with disabilities, and 9,5% respondents receive social welfare.[93] Other sources of income include right to assistance and care allowance (20,2% older persons with disabilities).[94] Great differences in payment amounts are also mentioned, depending on the basis of the rights respondents got them from.[95]

Older age by itself is one of the predictors of poverty. According to the statistics of the Ministry of Social Policy and Youth, 1781 person aged 65 and over has received personal disability compensation in 2012, accounting for 0,08% of all the recipients of personal disability compensation.[96] In the same period, 41805 persons aged 65 and over received right to assistance and care allowance, accounting for 53,39% of all the recepients of assistance and care allowance.[97] At-risk-of-poverty rate for persons over 65 was 23,4% in 2013, while at-risk-of-poverty rate for the entire population was 19,5%.[98] Persons with disabilities are also at high risk of poverty. According to the study conducted in 2006, 55,8% persons with disabilities in the Republic of Croatia are of poor financial means, and a staggering 85% of persons with severe disabilities stated that they are barely able to make ends meet.[99] There is no systematically collected data on poverty of older persons with disabilities, but since data shows that older persons and older persons with disabilities are at increased risk of poverty, one can assume that the poverty risk multiplies if a person is both older and with disabilities.

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[89] *Ibidem,* p. 92.

[90] *Ibidem,* p. 87.

[91] *Ibidem,* p. 87.

[92] Leutar et al., p. 333.

[93] *Ibidem.*

[94] *Ibidem.*

[95] *Ibidem.*

[96] *Strategija socijalne skrbi za starije osobe,* p. 11.

[97] *Ibidem,* p. 12.

[98] *Pokazatelji siromaštva u 2013. godini – konačni rezultati,* Hrvatski zavod za statistiku, Zagreb, 2014.

[99] Z. Leutar, 'Osobe s invaliditetom i siromaštvo', *Revija za socijalnu politiku,* Vol. 13, No. 3-4, Zagreb, 2006, p. 301.

There is a similar colleration between the social exclusion, age and disability. A high percentage of older persons with disabilities in the Republic of Croatia (52,3%) do not consider themselves active community members, 24,3% consider themselves partially active, and only 8,4% fully active.[100] The same study showed that older persons with disabilities almost never go to theater, forums or lectures in their place of living, and 24,3% do not know whether there are associations for people with disabilities in their local communities.[101] When it comes to formal and informal sources of support, older persons with disabilities receive the biggest support from their spouses and children, extended family, friends and neighbors, while support received from health workers, experts in social welfare centers and church is also similar.[102] The support received from associations and message boards is viewed as insignificant by older persons.[103]

4.2 Use of social services and rights in social welfare system of the Republic of Croatia

The data on self-care points to the need of establishment and implementation of social services aimed at older persons with disabilities, on a family and local community level.[104] To be specific, older persons with disabilities regard their options in using public transport, buying groceries and getting around the area as very poor.[105] Social services should be available and take into account real needs of their users. Older persons with disabilities exercise their social system welfare rights less than younger persons with disabilities because they are less informed.[106] In a study conducted in 2007 on the life quality of older persons with disabilities, not knowing whom to turn to for help was the main reason for not receiving social benefits, according to the respondents (42,6%).[107] As we stated in the previous chapter, out of all the available rights and social benefits, older persons with disabilities mostly use personal disability compensation and assistance and care allowance. According to the statistics of the Ministry of Social Policy and Youth, on December 31, 2012, 15686 persons aged 65 and over were placed in homes and other legal entities for the elderly and disabled, of which 4165 persons aged 65 and over, under the decision of

[100] Z.Leutar et al., 'Socijalna uključenost u zajednicu starijih osoba s invaliditetom', p. 127.

[101] *Ibidem,* p. 130.

[102] Štambuk, p. 89.

[103] *Ibidem.*

[104] *Ibidem,* p. 92.

[105] *Ibidem,* p. 88.

[106] Leutar, 'Socijalna politika i kvaliteta života starijih osoba s tjelesnim invaliditetom', p. 343.

[107] *Ibidem,* p. 338.

the Social Welfare Center.[108] In the statistics of the Ministry of Social Policy and Youth, there is no age group data for the users of assistance and care services, but only the total number of users under the decision of Social Welfare Center which amounts to 1195, from which the majority are older persons.[109] Services from programs "Home help for seniors" and "Day care and home assistance for seniors" cover (according to the 2012 data) 15550 persons, that is, 2,1 % of the total number of older persons.[110]

Older persons with disabilities are more in need of various social services. According to certain estimates, about 20% of older persons in developed countries are in need of home assistance and care services.[111] However, the network of social services for older persons in the Republic of Croatia is not adapted to the real needs of older persons with disabilities. It is characterized by the uneven distribution of social service providers throughout the Republic of Croatia, the lack of beds in institutions for persons who wish to reside there, which results in long waiting lists; the lack of support and help for older persons and their family members in the local communities; the lack of transparent criteria for the approval of the use of social services and insufficient awareness of rights and services for older persons with disabilities.[112]

4.3 Violence against older persons with disabilities

Generally, the victims of violence usually belong to vulnerable social groups, such as: women, children, older persons, persons with disabilities etc. However, there is a question of whether older persons with disabilities are more exposed to the risk of violence than older persons without disabilities. Although there is no systematically collected data on violence against older persons as well as violence against older persons with disabilities, studies have shown that older persons with disabilities, older persons of poor health and older persons, who generally depend on other people's help are more exposed to violence than older, healthy persons.[113] As an example, one can use the fact that the rate of exposure to violence against the older persons with dementia is higher than that of older persons without cognitive difficulties. To be more specific, the probability that a person will become a murder victim by a family member is three times higher if they suffer from

[108] *Strategija socijalne skrbi za starije osobe,* p. 13.

[109] *Ibidem,* p. 14.

[110] *Ibidem,* p. 15.

[111] J.W. Rowe and L.P. Fried, 'Meeting the Health Care Needs of Ageing Societies', *Brown Journal of World Affairs,* Vol. 20, Issue 1, 2013, p. 65.

[112] *Izvješće pučke pravobraniteljice za 2014. godinu,* Ured Pučkog pravobranitelja, 2015, p. 69– 71.

[113] *European report on preventing elder maltreatment,* World Health Organization, Regional Office for Europe, Copenhagen, 2011, p. 31.

Alzheimer's disease or some other form of dementia.[114] As stated by Milić Babić, the increased risk of violence against persons with disabilities is enabled by society through discrimination and stereotypes about these people.[115] One could find a similar correlation in cases of violence against older persons.

In the Republic of Croatia only several studies have been conducted about the occurrence of violence against older persons and persons with disabilities. However, there is no data on the prevalence of violence against older persons with disabilities. The results of a study conducted in 2007 in Zagreb, on a sample of 1000 respondents aged over 65, show that the most common form of violence against older persons in their families is psychological abuse.[116] About 11,4% of respondents have experienced such violence.[117] About 1% of respondents have endured physical abuse, 1,8% material abuse, and 0,1% sexual abuse.[118] The first study on violence against persons with disabilities in the Republic of Croatia was conducted on a modest sample of 59 persons with intellectual difficulties.[119] In that study, 50,8% of those surveyed confirmed they had been hurt by the other party, while 49,2% stated they had never been hurt.[120] Among those who have endured abuse, 40,7% experienced verbal abuse, while 33,9% experienced physical abuse.[121] In order to provide efficient protection against violence for older persons with disabilities, it is necessary to not just educate and sensitize society about this issue, but also form a database on victims of violence, their personal and socio-economic characteristics, forms of violence and perpetrators of violence.

V. CONCLUSION

Demographic ageing presents a tremendous challenge for public health system on a global level and is one of the factors which greatly affects the worldwide increase in the number of persons with disabilities. In this context, the issue of adequate measures for the protection of human rights of older population with disabilities becomes incredibly im-

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[114] *European report on preventing elder maltreatment, p.31..*

[115] M. Milić Babić, 'Nasilje i osobe s invaliditetom', *Ljetopis socijalnog rada*, Vol. 16, No. 3, 2009, p. 603.

[116] S. Rusac, 'Nasilje nad starijim osobama na području Grada Zagreba', *Ljetopis socijalnog rada,* Vol. 16., No. 3, 2009, p. 580.

[117] *Ibidem.*

[118] *Ibidem.*

[119] A.M. Josipović et al., 'Nasilje nad osobama s intelektualnim teškoćama', *Nova prisutnost,* Vol. VI, No. 3, 2008, p. 364.

[120] *Ibidem.*

[121] *Ibidem*, pp. 365-366.

portant. Specific issues of older persons with disabilities in relation to the general population, including older persons as well as persons with disabilities require the introduction of policies and measures adapted exactly to these very issues.

In the Republic of Croatia, the issue of protection of rights of older persons with disabilities is (at least formally) recognized, but not adequately answered. A number of legal texts and strategies contain provisions applicable to the protection of these persons. However, based on the analysis of the status of older persons with disabilities, there are several challenges and systematic issues in our state faced by this especially vulnerable population. One that needs to be highlighted is the uneven distribution of social service providers, which results in the lack of availability of those services in certain areas of the Republic of Croatia. Also notable are the insufficient capacities in institutions for those who wish to reside there, as well as non-transparent criteria for the accommodation approval. The lack of information on rights and services available to older persons with disabilities, and the underdevelopment of the support network for older people and members of their families in local community also present a big issue. All of the above, combined with widespread negative stereotypes about the older persons with disabilities, leads to poverty and social exclusion of this population.

The challenge of demographic ageing and related number increase of persons with disabilities should be approached systematically, by taking into consideration all the specificities of disability in old age. It is also necessary to ensure the availability of information on certain services, in a way that would be user-friendly for the older persons. But, facing the challenge of an increasing number of persons with disabilities due to demographic ageing presumes continuous preventive action and promotion of the concept of active ageing. When creating policies and measures designed for older population with disabilities, the starting point should be systematically collected data on this population, as well as attitudes and opinions of persons affected by those policies and measures.