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INTRODUCTION TO AGEING AND HUMAN RIGHTS OF OLDER PEOPLE

Pilot research study on financial elder abuse

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"It is harder to crack prejudice than an atom."
Albert Einstein

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Faced with global demographic ageing, governments across the world will have to find answers to many questions. One of the questions is how to ensure that older people's rights are respected: the right to income security in the older age, the right to adequate access to medical and social services, the right to choose freely, the right to dignified and safe living, the right to work. This publication is our contribution to building of the society for all ages and a tool to help influence decision makers so they can better recognise older people's human rights and prevent financial/economic elder abuse.

Finally, we would like to use the opportunity to express our gratitude to all the older people – volunteers and members of self-help groups supported by the Red Cross of Serbia – who have contributed to ensuring the voice of older people is heard. We are grateful for their enthusiasm, advice and support.

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INTRODUCTION TO AGEING AND HUMAN RIGHTS OF OLDER PEOPLE

Demographic facts on ageing

In the last several decades the discussion has arisen on demographic ageing, demographic transition and demographic changes. The end of 20th and the beginning of 21st century have demanded focus on all the causes and effects related to population ageing. At the same time, demographic ageing will be the most prominent demographic trend in the 21st century as well. The trend of extension of the life expectancy at birth and at the age of 60, as well as the decreasing fertility rates changed the demographic structure of countries across the globe. On one hand this is a triumph of development but on the other it carries its own challenges that the society must face (Age International, 2015).

The process of population ageing causes a myriad of social, economic, health, cultural and scientific effect and there is a great need to find ways of turning challenges into opportunities. Countries across the world will have to adapt their policies, economies, health and social services to the needs of older people in order to ensure good quality of care, secure income and access to goods, more flexible employment, better inclusion and participation of older people in all the segments of the society. Some of the most important achievements of the last several decades include development of policies aiming to reduce inequality and improve social inclusion. It is especially important to ensure respect of human rights of older people (UNFPA, 2014).

The data shows that in 1980 the ratio of world population above the age of 60 was 8.6%. By 2014 the ratio grew to 12% which translates to 868 million people above the age of 60. The estimates are that by 2050 this population will grow to 22% of the world population. The majority of older population – 62% – lives in developing countries, and this ratio is expected to rise to 80% by 2050. Japan is currently the only state in the world where the ratio of people above the age of 60 is higher than 30%. The predictions have it that by 2050 there will be another 64 states with the same situation (UNDESA, 2014/4). The eldest continent will by 2050 undoubtedly be Europe with total ratio of people above 60 estimated at 33.6%. Globally speaking, the number of people above 60 increases by approximately one million each month and two thirds of these people live in developing countries. (HelpAge International, GAWI, 2014).

Over the last half a century life expectancy at birth has increased by almost twenty years. Between 2010 and 2015 life expectancy in developed countries was 78.6 years and 68.1 in developing countries. Life expectancy at birth in the 2040-2050 period will be 83 years in developed countries and 74 for the developing ones. Statistical data shows that ever since the

year 2000 the ratio of people over 60 was higher in global population than the ratio of children under five, and it is predicted that by 2050 their ratio will be higher in global population than that of children under 15 (UNFPA, HelpAge International, 2012).

There is a deeper aspect to demographic ageing and that is the ageing within the population of older people. The ratio of people above the age of 80 grows at the highest rate and is a phenomenon in all the countries of the world regardless of their geographic or developmental position. The number of "oldest old people" – ones above the age of 80 – rises faster than any other age group within the population of older people. At global level, in the period between 1950 and 2050 the annual average increase of the ratio of people above 80 in the population is 3.8% and is twice as high as the increase of the ratio of people above 60 which is 1.9%. For illustration's sake: in 1950 one out of fifteen persons above the age of 60 was also above the age of 80; in 2000 this ratio was one out of nine and it is estimated that by 2050 one out of five persons above the age of 60 will be older than 80. (Population Division, DESA, United Nations, 2002). By 2050 the number of "oldest old people" will increase fourfold and will reach 395 million (UNDESA, 2012, Revision 2013).

Serbia follows the trend of demographic ageing with the most of the rest of European countries. According to the 2011 census, the ratio of persons above the age of 65 in the population is 17.4%, whereas the ratio of people above the age of 80 is 3.5%. Average age of Serbian population in 2013 was 42.40. The demographic ageing process will intensify, so the demographic projections of the Statistical Office of the Republic of Serbia estimate that the ratio of people above the age of 65 in Serbia will rise to 21% by 2030 whereas the ratio of "oldest old people", those above 80, will rise to 5% (Statistical Office of the Republic of Serbia, 2011). Life expectancy for women and men at the age of 60 is 79 (HelpAge International, GAWI, 2014).

All this data suggests that it is important to advocate for as precise as possible disaggregation of data by age as this will allow us to closely follow demographic trends and provide us with necessary foundation to create better and more successful policies and access to services based on human rights. Sadly, we are all witnesses that important global research studies often still only include women in the reproductive age – between 15 and 49 – or men between the ages of 15 and 59 (UNDESA, 2013).

Population ageing is a global trend and it demands urgent action of all the segments of a society. Ageing is not like a tsunami, it does not strike without a warning leaving devastation in its wake and it certainly does not pose an obstacle to social and economic development. Population ageing is a multidimensional process that creates a context for policy creation in the coming decades (European Commission, 2014).

Feminisation of ageing

An important component of demographic ageing is "feminisation of ageing". Women comprise 54% of the population above the age of 60 and 63% of the population above 80. Globally speaking, in 2014 women have outlived men by 4.6 years. On the average, a woman who is sixty today can expect to live until she is 82 whereas a man of the same age can expect to live until he is 79 (UNDESA, 2014/4). For every 100 women above the age of 60 there are 84 men, and for every 100 women above the age of 80 there are 61 men (UNFPA, HelpAge International, 2012). In Serbia women comprise 56.96% of the population between the ages 65 and 79 and 63.34% of the population above 80.

Older women are not a homogenous group. They have different experience, knowledge, capabilities and skills. However, their economic and social position depends on a number of factors (demographic, political, cultural, social, familial as well as environmental) (UNDESA, 2013). It is estimated that by 2050, single biggest population group will consist of older women. Older women are more likely to be widowed and live alone with low probability of remarrying. (Age International, 2015).

Economic position of older women is under a great influence of their marital status – bigger than is the case with men. Data shows that one third of women live single as opposed to only 15% of men. Losing a marriage partner makes older women more vulnerable to the risk of poverty. In some developing countries there is a lack of legislation that would grant older women the right to inherit their husbands' property upon their passing. Marital status, alongside the social status, influences everyday duties, health and wellbeing of an older person. Older persons who are living in a marital union are at a lower risk of exhibiting symptoms of depression and are more satisfied with their lives overall (UNDESA, 2010).

In our society it is not uncommon for older women to be bypassed when it comes to inheritance or for them to willingly waive their rights to inheritance on behalf of their children. This is above all a cultural issue.

Data shows that pension is the main source of income for older women but pensions of older women are on the average lower than pensions of older men. Main cause of this gender gap in income is of course the fact that women on the average make less money while being employed than men, they are more likely to work part time and having atypical contracts that put them on unequal footing. Women are more likely than men to stop in their career paths or get early retirement and continue working as informal caregivers. These are all causes of lower income during employment and lower pension (or, in some countries the type of pension) later in life. The consequence is that women across Europe have lower income and that in majority of countries older women are still at a higher risk of poverty than

men, especially women above the age of 75 (Instituto per la Ricerca Sociale and Fondazione Giacomo Brodolini, 2011).

Older women are often active as informal caregivers. This kind of informal work is as a rule unpaid but, on the other hand, it is of essential importance for families and the society (HelpAge International and the Center for Financial Inclusion at Accion, 2015). Older women often end up providing care to both their older parents and their grandchildren at the same time which enables young women to be actively engaged with the labour market.

Situation in Serbia is similar to that in other countries. Based on the data provided by Statistical Office of the Republic of Serbia, women make the biggest part of the economically dependent population – 57.6% and 57% of women list pension as their main source of income. Women make for slightly more than 50% of all age pension beneficiaries whereas almost two thirds of all disability pensions beneficiaries are men. In both categories women receive on the average lower pensions than men – almost 20% lower for age pensions and more than 16% lower for disability pensions (Statistical Office of the Republic of Serbia, 2014).

At the same time it is important to keep in mind that ageing multiplies discrimination and that women face double and triple discrimination as the time passes – discrimination based on gender, discrimination based on age and if the older women also experiences mental difficulties she also faces discrimination based on illness or disability which in turn increases the risk of abuse.

Intimate partner abuse includes marital spouses, partners and strangers in cases of stalking and rape. Some researchers suggested expanding data collection to include older women but as f this day, those suggestions have not been adopted (UNDESA, 2013).

At the expert meeting on neglect, abuse and violence against older women organised between 5th and 7th November 2013 in the UN New York Headquarters another huge gap was identified: the lack of data on discrimination and abuse of older women and, as mentioned, the focus of researchers being almost exclusively on women in the reproductive age, stopping at the age of 49. For example, even during the UN Women campaign "Prevent violence against women" older women were not recognised as a group at a higher risk of violence. Older women are frequently excluded from studies focusing on violence against women as if they were not women. Older women are frequently excluded from discussions on safe houses and telephone helplines and specific circumstances and needs of older women are frequently ignored. In the last year the awareness of older women, victims of domestic abuse has increased, both in terms of prevalence and in terms of similarities and differences to abuse perpetrated on younger women. Newer qualitative and quantitative research should show us cultural differences, specific needs of older women and necessary and missing services tailored for older women (UNDESA, 2013).

Contributions of older women in private and public life as leaders in their communities, entrepreneurs, caregivers, advisors, mediators and other roles women typically play, are invaluable.

If we intend to challenge discrimination of older women the issues of gender equality and ageing must be presented to policy creators so that human rights of older women can be protected.

Older people and migration

Migration is another important factor influencing population ageing. Migrations change demographics. Data shows that 181 million people at the moment do not live in the country of their origin. In the next 45 years it is expected for 2.2 million of people to migrate from developing to developed countries. USA will get the highest number of migrants at 1.1 million (Malmberg, 2006). In some cases this slows down population ageing (Canada and Europe as examples), the migrants being younger and typically having more children and they also represent important workforce in terms services of care for older people.

On the other hand, migration of work age adults accelerates the ageing in certain countries, as was noticed in some Caribbean and Eastern European countries. This is a fairly complex issue that needs to be tackled by policy creators because there is also the phenomenon of pensioners migrating from country to country (for example, UK pensioners migrating to Spain) and social and health services need to be adapted to this situation. There is another migration trend to have I mind: migration of former emigrants who are returning to their country of origin and their age is above the median age of the population.

Some demographers expect migration to play a more important role in future population ageing, especially in countries with lower fertility rates. This phenomenon is not to be ignored despite the fact that at the moment policy creators do not seem to understand relations between migration and population ageing and fail to account for it in creating legislation (Gavrilov and Heuveline, 2003).

From the human rights standpoint, there is a UN convention focusing on migrants – International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families – however there is no convention focusing on the rights of older people and it is necessary to find a way to legally protect both of these population groups as many among the migrants work in providing care to older people.

Older people and urbanisation (internal migration)

Speaking of migration, one should always be aware of internal migration, the normal, daily occurrence across the globe, that is leaving the rural areas and moving to cities: moving away from agriculture and focusing on service and industry based economy. For older persons living in remote rural areas this means worsening of social support, decreasing of availability of service and infrastructure. This in turn means that services that are legally guaranteed to them become inaccessible in some cases. With changing of the age structure in rural areas as well as family structures, older people can end up being left behind, without support systems that they have rights to. Older people have guaranteed health and social protection however in order to access these services she or he must reach the nearest town but there is no adequate or any transport available. Policy creators must think of how to ensure older people in rural areas are accessing their guaranteed rights.

At the same time, big cities and megalopoli (cities with more than 10 million inhabitants) continue to grow at a fast pace. Data shows that in 2003 there were 20 megalopoli in 15 developed countries – largest of them being Tokyo with 35 million people. Staring from 2007 virtually half of the world's population lives in cities and predictions have it that by 2030 three out of five people on Earth will be living in cities. It is therefore necessary to ensure cities are adapted to older people's specific needs which started being the recurring topic in WHOs discussions since 2006. It was demonstrated that cities adapted for older people were at the same time safer for other population groups (World Health Organization, 2007).

However there is a huge problem here too: the pace at which cities grow is not followed by development of infrastructure an urban planning so it is not uncommon to have big cities and megalopoli that are very much at odds with the needs of population of different ages, especially older people. Problems spring in terms of inadequate transport, accommodation, polluted air and waste management. Socio-economic differences and social isolation of older people are especially pronounced in megalopoli (Malmberg, 2006).

As for Serbia, the number of internal migrants in the 2011-2013 period is stable and is 123,620 persons on the average. The number of older migrants in the same period was on the average 6,926 which makes for only 5.63% of the total number of persons changing their place of residence in the Republic of Serbia. This data speaks of the dramatically disproportional age structure of rural Serbia (Statistical Office of the Republic of Serbia, 2011).

Ageing and changes in family structure

Globalisation and modern ways of life brought forth also the changes in family structure. In most developing countries older people still live with their children – typically at least one grown up child stays with ageing parents. Multigenerational households traditionally ensure mutual support and sharing of family resources. In the less developed regions three quarters of older people live with their children and grandchildren whereas in developed regions only one third does. In developed countries typically we have two or one person older households. There are also differences between developed countries, multigenerational families are rarer in Northern and Western Europe than they are In South-eastern Europe and Japan. Put in numbers; one out of four persons above 60 lives on their own in developed countries compared to one in twelve in developing countries. Although many older people living on their own are active and involved with the activities of their community it is still true that those living alone are more vulnerable especially with deteriorating health and other misfortunes. Studies covering both developed and developing countries have shown that older people living on their own are more prone to feeling lonely and depressed, have weak social links and irregular contacts with their children, as well that they are more prone to having their health deteriorate in comparison to those living in multigenerational families.

When speaking on family support it is not easy to classify forms and directions of support. In multigenerational families support is provided in both directions – older people provide care to younger members but even when they are receivers of care themselves they typically help care for their grandchildren, in household chores and the community. In some developing countries there is also the phenomenon of "skipped" generations, where the parents migrated in search of employment or when they can not take care of their children for different reasons. Households of this kind are at a higher risk of poverty and are usually situated in rural areas (UNDESA, 2010).

In the last several years the percentage of older people living on their own has increased in many countries while the percentage of those living with their children has decreased. In developed countries the percentage of one person older households grows much faster.

Families change, marriages are entered at a later age, divorce is more frequent and increased participation of women in the workforce and increased participation of women in the workforce usually result in increased demands of older people and/ or in the reduced care for them (UNFPA, 2010).

It is very important that those who create public policies and platforms for social protection have clearer understanding that children, adolescents, adults and older people do

not live in isolation one from another and that they are in reality intertwined with their lives being connected in different spheres – those of emotions, finances and care provision (Age International, 2015).

Ageing and health

Talking of ageing and health, we have to ask one question: do we live longer in good health or are the additional years of life marked by bad health status and how do we preserve our health in later years?

Although demography is still the most prominent scientific field working on population dynamics, involving scientists from other fields is desired and necessary. There is the need for multidisciplinary approach, expansion beyond the usual statistical measuring of change components, fertility, mortality, migration. Along with population ageing and demographic transition in the last 60 years demographists and epidemiologists have talked about "epidemiological transition". Epidemiological transition refers to changes in leading causes of illness and death with them moving from decrease in acute communicable diseases towards chronic non-communicable diseases (cardiovascular diseases, cancers, injuries) and degenerative diseases. Chronic non-communicable diseases now present the biggest burden for global health and adults and older people are at a higher risk of those. Namely, older people most frequently suffer from chronic non-communicable diseases such as cardiovascular ones, cancer and diabetes and often they have several health problems simultaneously (Omran, 2005).

The newest change related to global disease burden shows that in the last 20 years the expected life span spent in good health has grown at a slower rate than the overall expected life span. Comparing the data of 20 years ago with the today's figures we can see that the current situation is worse looking at the number of years spent in good health and without disabilities. For every year after the age of 50 only about 9.5 months of healthy, disease-free living is gained (Age International, 2015). Expected life span at 60 in Japan is another 26 years with the expected life span in good health being 20.3 years. In Serbia, the expected life span at 60 is 19 with 15.7 expected to be disease free (HelpAge International, GAWI, 2014).

In relation to this, it is necessary to be aware of the rise of potential costs related to chronic non-communicable diseases. It is estimated that economic loss related to three non-communicable diseases (heart diseases, stroke, diabetes) in 23 countries with low and middle income added up to 83 million USD between 2006 and 2015. Population above the age of 60 is burdened with these diseases in more than 87% of the cases (World Health Organization, National Institute on Aging National Institutes of Health, U.S. Department of Health and Human Services, 2011).

In England it is estimated that the annual increase of the costs of ageing related health services will account for 2.3% of GDP – 53 billion USD – whereas the increase in costs of long term care will be 1.4% of GDP – 15 billon British pounds (Silcock and Sinclair, 2012).

The Serbian Institute for Public Health "Dr Milan Jovanović Batut" has in 2013 performed the third national population research. The research contains data on health status, usage of health protection services and the use of medication. It also contains data on health status of older people. In Serbia 22.4% of older people estimate their health as very good or good, 40.2% as bad or very bad. The majority of this second group belong to the population with lowest education level and highest poverty rates. As for the ratio of chronic non-communicable diseases in this population: increased blood pressure **65.6%**, increased blood fats **22%,** diabetes **17.8%**, early depression symptoms **10.8%**, chronic respiratory disease **8.4%** and asthma **6.8%.**

Three quarters of older population (75.8%) declared that they are suffering from a longer term disease or health problem. Serious difficulties in doing household work have been reported by 33.6%, and 11.1% have problems performing personal care activities.

The research also provided data on injuries of older people which is one of the more significant public health problems and causes of death. The most frequent location where older people suffer injuri4es is older person's home, which suggests that their living quarters need to be adapted in order to prevent injuries as much as possible. In 2013, 6% of older people got injured and 67.3% of those received medical attention. It is worrying to learn that only 8.7% if older people received the seasonal flu vaccine which puts Serbia at the bottom of the list with one of the lowest percentages of older people receiving vaccines. Two thirds of older people stated that they are satisfied with the medical services they receive. (Boričić, et al., 2014).

Chronic non-communicable diseases hit older people at a disproportionally high rate and are linked to disabilities, lowered quality of life and increased costs of health and long term care. Today, approximately 80% of older people suffer from at least one chronic disease and 50% have at least two (National Center for Chronic Disease Prevention and Health Promotion, 2009).

Older age increases the risk of disability too. Disability is a complex concept and does not relate only to physical disabilities but also includes sensory damages (hearing or sight) as well as mental health disorders (most frequently depression and dementia). Prevalence of disabilities among persons below the age of 18 is 5.8 %, among the persons between 65 and 74 it is 44.6%, then increases to 63.7% for persons between 75 and 84, and for those above the age of 85 it is 84.2% (Age International, 2015). The latest census data in Serbia shows that persons above 65 make for 60.3% of population living with disabilities and 27.6% of the overall population aged 65 and higher. This data supports the assumptions that difficulties increase with ageing The average age of a person living with disabilities in Serbia is 66. 9 (63.8 for men, 69.1 for women) (Statistical Office of the Republic of Serbia, 2014).

The challenge is how to make health services more accessible and of a higher quality while at the same time keeping the health system expenses under control.

The extension of human lifespan increases the risk of dementia. Dementia is one of the biggest social, health and economic problems of the 21 century. Globally, every ninth person above the age of 65 has Alzheimer's disease diagnosed and this number grows in proportion with the age so that every fourth person above the age of 85 suffers from Alzheimer's. It is estimated that by 2050 the number of persons living with Alzheimer's will increase from 36 to 115 million. Out of the total number of people living with dementia in the world 58% lives in countries with low or middle income – a group that includes Serbia. It is expected that the ratio will rise to 71% by 2050. Even in highly developed countries the number of older persons with diagnosis of dementia is between 20 and 50%. Dementia leads to total dependence of older persons on other people's care and support and causes enormous costs for the individual, family and society. (Alzheimer Disease International, 2015).

According to the estimate of the Association of Citizens "Alchajmer", 13% of people above the age of 65 in Serbia suffer from Alzheimer's. However it is devastating to learn that only 4% of the diagnosed Alzheimer's patients take adequate therapy (established by cross checking to the data on medication consumption and the number of diagnosed persons). In the Republic of Serbia there is no central register of patients with Alzheimer's (Association of Citizens "Alchajmer", 2012).

The expenses related to dementia have been estimated at 604 billion USD in 2010. Older people suffering from dementia are generally speaking "invisible" in the public health planning. Research has shown that half of the expenses related to dementia have to be covered by the family of the person living with the illness. One of the most important recommendation in this area is to ensure early diagnosis as this enables older persons to make the important decisions that affect their lives on time (HelpAge International, 2012).

The result of the increased deterioration of health at the later age is the increased need for long term care services above the age of 80. Long term care is a combination of different services with the aim being to meet medical and non medical needs of people with chronic diseases, persons with some form of disability and all persons who are unable to take care of themselves for a prolonged period of time. Disability is here viewed through capacity to perform Activities of Daily Living (ADL), such as bathing, getting dressed, mobility, feeding oneself, as well as additionally through Instrumental Activities of Daily Living (IADL), which include household maintenance, taking medication, preparing meals, procurement, using telephone and other communication technology, managing funds… Long term care services are above all based on labour so the price of the long term care system will grow as the number of older people in the population grows.

Today, services in the community are considered the optimal model for long term care services, looking at it from the aspect of preserving older person's dignity as well as the aspect of the cost of services. In cases when long term care services are beyond the community's capacity or the beneficiaries do not want it, institutional accommodation needs to be adapted to the needs of the individual. Improving care in smaller communities will enable many people to live longer in their own homes which will contribute to their social inclusion and personal wellbeing. At the same time, it is to be remembered that this is the way to reduce the costs for individuals as well as the government. Considering that more of the burden for provision of care is carried by informal caregivers with the passage of time, it is important to ensure support for them too. Knowing the needs of caregivers and providing support in their duties can lead to reduced need for institutional services which will in turn reduce costs.

In addition, support to informal caregivers, such as training or other forms of advice, contributes to better quality of provided care. In the US it is estimated that the economic value of the informal caregivers' work has in 2009 added up to 450 billion USD (Feinberg, et al., 2011). Usually informal care is provided by children or the marital spouse. In the EU the percentage of children providing care for their parents is the highest in Portugal, Spain and Czech Republic where it is higher than 50. There is a notable predominance of women among the caregivers. Also, migrants are an important source of services for formal and informal care that should be recognised and regulated through adequate political decisions and laws pertaining to migration (de la Maisonneuve i Oliveira Martins, 2013).

In order to be able to guarantee choice for beneficiaries and their families it is important to provide different options for accessing care. In the context of informal care this means that options of providing informal care and being present at labour market need to somehow be balanced through formal regulation. In the context of formal care accessibility in cities but also in rural areas means that there must be a choice of care types so the beneficiaries can choose those types adequate for their needs – be it formal, informal or institution-based. Long term care needs to be in line with the defined standards of quality and safe environment while the care givers are the third key pillar of good quality care.

Long-term care can be funded directly from public budget funds, or through the system of mandatory insurance. The second solution, regardless of its obvious advantage of always being known what level of funds is available, has at least two problems. The first is that introduction of yet another mandatory contribution raises the price of labour and it is debatable whether governments would be in favour of this solution considering recessions and high unemployment rates. The second problem is that this solution is notably less flexible.

If the long-term care is funded from public budgets, there are generally two models. The first is universal model where services are received if the need for them is recognised and

the other is targeted model where income or property of the person needing care are taken into consideration. As targeting needs administration, these costs must be taken into consideration. In any case, there is no one universally applicable model of long term care provision (OECD/ European Commission, 2013).

In a research performed by the World Bank in 2007 entitled "From red to grey", Serbia is grouped with ageing countries falling behind on reform processes. Here it is explained that the problems Serbia will face are not only caused by demographic transition but also by the underdeveloped response to this phenomenon. The concept of long term care without a doubt should be part of the response of governments to the challenges of demographic ageing (Chawla, et al., 2007).

The main task in this area is increasing the number of years spent in good health and decreasing the number of years spent burdened by disease and disability and, on the other hand, provide older people with functional difficulties adequate support services. Good health at older age will allow older people to release their potential and stay independent and socially included for longer time. Bad health not only decreases the quality of one's life but also affects the family of the older person which needs to provide care either through personal engagement of at least one of the members or through paying for servic4es of care and treatment (Age International, 2015).

Improving health through removing risk factors (tobacco, blood pressure, alcohol, cholesterol, being overweight, inadequate consumption of vegetables and fruit, inadequate physical activity) and prevention of illness contributes to better health and quality of life. Healthy eating, physical activity, reduced stress and access to preventive medical care all contribute to increased number of years spent in good health. Preventive health measures for all age groups reduce costs of treatment and care during the whole lifespan and especially in the older age (UNECE, 2010).

In this context, WHO is of the opinion that preconditions for health (peace, housing, education, food, income, stabile ecosystem, sustainable resources, social justice) cannot be provided by the health sector and that joint action by different sector is in order. Especially important factor is health promotion which involves enabling people to increase control over their own health and improve it (World Health Organization, 1986).

We are aware of many restrictions, fallacies and stereotypes that lead to the uncoordinated response to the health needs of older people. The first step is to change the paradigm in order to understand that investment in health is exactly that – an investment, not a mere expense for the system. This investment yields economic results since investing in health decreases costs of care and increases capacities of families. One of the focuses should be on decreasing the prevalence of chronic non-communicable diseases and focusing on prevention during the whole life span. It is necessary to build a system that promotes good health and healthy life styles across the

whole life span (Age International, 2015). Investing in public health is the most cost effective investment.

Finally, it is important not to forget the human rights perspective. European Charter of Fundamental Rights in its article 25 establishes the rights of older people to lead independent and dignified lives with opportunities to participate in cultural and societal life.

In the World Bank study report entitled "Golden Aging: Prospects for Healthy, Active and Prosperous Aging in Europe and Central Asia" recommendations include promotion of healthy ageing and prosperous ageing. It is necessary to lead with diagnosing problems and move towards formulating sustainable solutions (Bussolo, et al., 2014).

Active ageing

Having the context described above in mind, it is clear why concept of active ageing represents one of the most important components of global strategy that should respond to demographic ageing. All relevant international documents engaged with ageing insist on promoting the concept of active ageing.[1]

World Health Organisation defines active ageing as "the process of optimizing opportunities for health, participation and security in order to enhance quality of life as people age" (World Health Organization, 2002). This definition represents two steps forward in relation to the way different policies treated older age in past. First, there is progress in terms of being based on human rights as it moves the focus from access based on needs to access based on human rights. And second, ageing is viewed as a process in the perspective of the whole life span which is very important when discussing early and late investments in active ageing which we will do later. This definition is based on three pillars.

Health is the first pillar. The link between health and quality of life in the later stages of life is well documented so the policies focusing on activities and ambient that improve health are important to increase expected life span and quality of life.

Participation as the second pillar is about activities in the social sphere such as participation in the labour market, in political life, opportunities for life long education as well as participation in other aspects of community life (arts, volunteering, religion). Therefore activities and projects that support increased paid and unpaid contribution to the society are to be supported by the state.

1 Madrid International Plan of Action on Ageing (MIPAA, 2002), regional Implementation Strategy (RIS, 2002) as well as recommendations of ministerial conferences in Leon (2007) and Vienna (2012). European parliament has announced 2012 as the year of active ageing and intergenerational solidarity.

The third pillar is security. This relates to policies and activities that should ensure dignity and necessary care to those older persons who are not able to obtain them themselves.

The concept of active ageing as one of the responses to the challenges mentioned above is based on the perspective of the whole human life span. Childhood, adolescence and adult age have crucial influence on the quality of life in the third or fourth age. The way in which we grow old is not prescribed in advance and it can be influenced. Activities that support active ageing have proven their effectiveness in terms of increasing the quality of life in the older age although their efficacy decreases as the age goes up. Therefore we should differentiate between two kinds of investments in active ageing: early (childhood, adolescence, early adulthood) and late (middle and late adulthood). Persons with lower health risks are later faced with significant deterioration of health (Vita, et al., 1998). Although this mostly refers to investments at individual level it is crucial that there are investments also at the level of the whole society (policies or institutions supporting active ageing as well as adequate health and social protection).

Early investments, especially those during the education process have fundamental and long term effects. It could be said that early investments in active ageing yield bigger results (extension of life span, later occurrence of functional disabilities, better participation in the social sphere). The most important early investment is education. The educational status reflects health (socio-economic status is in relation with educational status and has a big influence on health), participation (educational status has notable influence to the ratio of participation of older people through labour or volunteering) and security (education influences income over the whole life span).

Late investments are less effective than early ones but they still have positive influence on the quality of living in the older age. Although prevalence of chronic diseases is on the rise at the same time we are experiencing a compression of morbidity related to disabilities or serious decreases of functional health, so that significant decrease of health occurs later in life (Fries, 1980). Physical activity and adequate eating habits as well as avoiding the harmful influence of tobacco and alcohol are examples of late investments in active ageing. It has been demonstrated that physical activity has positive influence on cognitive processes as well as on the overall sense of satisfaction with one's life (Tesch-Roemer, 2012).

As for participation, combating loneliness is one of the most important late investments. Access to the labour market and flexible age of retirement, flexible working environment and opportunities for volunteering are important systemic late investments.

As for security it is crucial to ensure stable income as well access to services regardless of the social status.

Ageing and financial security

Income at the old age is, alongside the preserved health and participation in social life, one of the key elements of the quality of age in the later stages of life (HelpAge International and the Center for Financial Inclusion at Accion, 2015). Demographic ageing is posing a question of sustainability of pension systems in their current form. On one hand, there are increasing numbers of older persons receiving pensions for longer periods of time and on the other there are proportionally fewer persons in the labour-active age who pay contributions to the pension funds (International Monetary Fund, 2005). A paper of the European Commission that discusses adequate, secure and sustainable pension systems recommends five ways to reform the existing pension systems. The first is to connect the age of retirement with the increasing expected life span, the second is related to the restrictive access to early retirement, the third recommends support to longer presence in the labour market through the concept of lifelong learning, adjusting the labour conditions to older workers as well as the concept of healthy and active ageing. The fourth is related to making the age limit for retirement equal for men and women and the fifth is about developing additional forms of creating savings as to increase the income in the older age. Although it is obvious that existing pension systems need to be reformed and adjusted to respond to demographic ageing of the population, it is at the same time important that the burden of duty to ensure adequate income in the older age is uniformly distributed between the state and the individuals (European Commission, 2012).

When discussing the financial security in the older age it is important not to forget older people who spent a lot of their lifespan working in the informal sector and are not entitled to pension. This has contributed to the development of the idea of ensuring the minimum social security (social protection floor) that should exist regardless of employment history and paying contributions, guaranteed by the state to every individual – including older people. This idea should ensure fulfilment of essential guarantees of human rights as formulated through international treaties (International Labour Office, World Health Organisation, 2009). One of the models that could provide this to older people would be introduction of universal pension schemes, non-reliant on contribution, financed directly from the government budget.

The pension coverage in Latin America is 52% for women and 62% for men. In Western Europe the figure for women is notably higher – 86% whereas for men it is 99%. (HelpAge International, GAWI, 2014). In Serbia the age pension coverage is 79.3% for women and 93.3% for men (Matković i Stanić, 2014).

In Serbia age pensioners are at a lower risk of poverty in comparison to general population and this trend has become even more pronounced with the influence of global economic crisis and increasing unemployment. However, if taking into account the older

persons who have not achieved the conditions for pension the situation is a little different and, according to the 2007 data the percentage of persons in the general population who have lived below the poverty line was 8.8 but ten per cent for older people. In 2010 these ratios changed so the percentage of people living below the poverty line in the general population (0-64 years of age) was 9.5 but for people above the age of 65 it was 7.9. This can be explained primarily through the effects of the economic crisis. Having this in mind, there is a necessity to define an efficient way to provide people without the right to age pension with some kind of income as to ensure the minimum of dignified living
(Matković and Stanić, 2014).

At this moment the coverage of older people in Serbia with pensions is around 85 per cent which suggests that introduction of a universal non-contribution based scheme would be expensive and inefficient but it is important to create a model that would ensure reaching the remaining 15%. It is estimated that 100,000 people above the age of 65 in Serbia has income lower than the administrative poverty line or no income at all. Experiences with the existing system of financial social welfare shows that due to complicated administrative procedures these models are not efficient – only around 11,000 older people exercise their right for this form of support (Matković and Stanić, 2014).

It should also be kept in mind that a large part of the population currently of the labour active age either pays minimal contributions to the pension fund or pays no contribution – partly due to high unemployment rates and partly due to working in the grey portion of the labour market. In 2013 only 49.2% of persons between the ages of 20 and 65 were covered by pension insurance. These persons will increase the number of socially vulnerable people in Serbia once they enter retirement (Matković i Stanić, 2014).

The right to financial security at the older age is founded in the documents defining human rights and international labour standards. Universal Declaration of Human Rights in its article 25 guarantees social security for those who can not work due to illness, disability, motherhood, work related injury, unemployment or old age (International Labour Organization, 2014).

Older people and employment

Demographic ageing poses a huge challenge to societies facing this phenomenon.

One of the ways to respond to the challenge is to extend the labour active age. State pension systems in most European countries are based on intergenerational solidarity which means that today's labour active generations' contributions area source of funds for today's pensioners. Economic crisis, high unemployment rate among people under 30 and the overall

ratio between employees and pensioners all contribute to making these systems unsustainable if they are not fundamentally reformed. Extended working life will be one of the unavoidable measures in reforming pension systems in Europe. In the UK it is already planned to move the mandatory retirement age to the age of 66 for both men and women by 2020 and then to move it to 60 by 2028. Similar reforms of the pension system are expected in other countries that are in the process of demographic transition

There is no consensus on the definition of older worker – from author to author older workers are defined as people in the age range between 45 and 60. In any case, older workers are an increasing part of the workforce and at the same time the fastest growing part. In developed countries some 20% of the workforce is comprised of persons above the age of 60. This trend will continue and the ratio of older workers in the workforce will by 2050 climb to 33% (Ross, 2010).

The frequency of work-related injury among older workers is the same or lower as for other age groups but the consequences of injuries are more severe which results in longer sick leaves (U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, 2012). For general population the average duration of a sick leave is eight days whereas for the population over 55 it is 12 and for the population over 65 it is 18. Despite the difference in the number of days of absence from work, there are no significant differences in work results between age groups after they return to work. As for the injuries resulting in death, for the population above the age of 65 the frequency is three times higher than for younger workers. Research shows that younger workers have a higher risk of being injured whereas older workers have a higher risk of injuries leading to death (Crawford, et al., 2010, p. 189).

The above data shows that adjusting work conditions but also the job market to the increasing numbers of older workers demands not just on site changes but also changes in the legal framework (flexible retirement, banning of age discrimination), promoting lifelong learning and active ageing.

Decision of older workers to postpone retirement is not motivated solely by monetary thinking but also by the combination of having preserved one's functional capacity, the nature of their work, health status and the possibilities of adjusting the work conditions to the capacities of the older worker (UNECE, 2011).

The factors that increase the probability of earlier retirement include decreased work capacity, increase in body weight, reduced physical activity as well as organisational changes. Improving the workplace ergonomics is important so that older workers can optimally use their capacities. Adequate lighting has an important role in adjusting the working conditions to older workers. Having in mind that older workers are more prone to being injured

by falling and that this results in fractures, again more frequent for older workers – it is important to remove potential risks from the working environment (such as slippery floors).

In addition to adjusting the physical environment for older workers it is also important to adjust the working hours to the needs of older workers. Shorter working hours can be an important incentive to extend one's working life, as well as the possibility of telecommuting.

Legal framework is important to incentivise and motivate older workers to remain active for a longer period. Therefore it is important to have legislation that prevents age discrimination and efficient institutions that will implement this legislation. Of course it would be naïve to expect that discrimination will be erased automatically by adopting adequate legal framework. It is necessary to challenge age stereotypes as well as to promote positive aspects of ageing and contributions that older people make to society.

At the same time, reforms to pension systems are necessary. It is not enough to just move the mandatory retirement age up – a selection of measures must be adopted that will make it easier for older workers to remain active. Primarily, this is about flexible solutions related to retiring – which is to say that mandatory retirement age should be abolished and replaced by a range of ages when workers can decide whether they want to retire. This is important not just because of economic effects but also because retirement earlier than expected as well as extended work life despite expected retirement both may significantly influence development of depression symptoms in older workers (Falba, et al., 2009, p. 175). Phased retirement with gradual reduction of working hours can also be motivating for older workers. Here it is perhaps important to note that retirement is decreasingly less seen as a permanent state and that we will see more and more frequently older workers becoming once again active in the labour market despite attaining the pensioner status. This phenomenon is called "unretirement".

Global AgeWatch Index measures quality of life and wellbeing of older people across the globe and in 2014 it managed to collect and analyse data on 91% of the world's older people population sourcing the information from 96 countries. The lowest positions Serbia took – 92nd place – refer to employment options and lifelong learning. The data shows that only 33% of older workers (above the age of 55) are employed. There were some attempts by the government to subsidise employment of older workers but sadly they were unsuccessful so this will lead to another big problem with these workers nearing the retirement age. Once they go to mandatory retirement they their pensions will be minimal and they and their families will be living on or below the poverty line (HelpAge International, GAWI, 2014).

All of these facts demand interventions at different levels: changes in legislation (age discrimination, pension systems), changes in the ways education is designed (lifelong learning concept) and, perhaps crucially improving personal health (active ageing concept). At the same time it is necessary for different society structures (government, professionals, unions,

civil sector and especially organisations and associations of older people) to invest efforts into challenging discriminatory stereotypes of older workers as being of a lower value. Older workers bring experience and reliability with them, which can compensate for the loss of certain skills that inevitably comes with the process of ageing.

Older people and economic contribution

At least a half of global population over 60 is still economically active while a third of older people between the ages of 70 and 74 and a fifth of those above the age of 75 are still working. Maintaining active and independent life for as long as possible is crucial for older people and the society. When resources are scarce their active participation in economy becomes even more important (IFRC, 2007).

One of the prominent trends in UNECE region (Europe and North America) is increase in the number of women who at the same time provide care for their children and their older parents (so called sandwich generations). There is also a growing trend of older persons who provide care to their grandchildren as their children are either working or have emigrated in search of employment. In some countries it turns out older people have had better outcome in the economic crisis so there are situations where older persons provide livelihood (housing, financial support) to younger, working age persons who are unemployed or have lost their jobs (United Kingdom, Netherlands, Moldova) (UNFPA, 2014).

The data clearly shows that grandmothers and grandfathers give their contribution to the development of their societies by providing care for their grandchildren, not only in developing countries but also in developed ones. In Italy and Greece for instance almost a fourth of grandmothers and grandfathers takes care of their grandchildren to the tune of approximately 30 hours per week. Research "Grandparents Plus" in Europe showed that one out of three families tend to rely on "grandma and grandpa services" (Grandparents Plus, 2013).

When trying to calculate financial contribution of older people we should not forget the role of older people as volunteers working in the community in different ways. Older people have skills and knowledge important for development of families and communities.

On the other hand, older people are increasingly becoming a force to reckon with in terms of consumption, with specific needs followed by purchasing power. Economic integration of older people is possible only if attention is paid to needs, interests and wishes of older people. And this is possible if adequate protection of older people is established along with their empowerment as to avoid discrimination. Policy creators need to take specific interests and habits of older people into account as many among the older people have during their lifetimes accumulated funds that they can use for consumption. "Design for all ages" could improve quality of lives of older people and make them easier (UNECE, 2009).

In order to have a healthy economy it is important to know that older people as household owners spend approximately 176 billion USD per year on goods and services. It is necessary to adapt public transport for older people, ease their access to local stores and services, adapt households as to reduce the risks of falling and, most importantly, encourage and support older people to remain economically active for as long as possible (The Housing and Ageing Alliance, 2008).

Research done by a UK charity Royal Voluntary Service was one of the first attempts to quantify the role of older generations. Taking into account tax payments, spending, the role of older people as informal providers of social services and volunteering, it was estimated that the contribution older people make to the UK economy some 59 billion USD higher than the amount they get through pensions, social and health services (Brindle, 2011).

Older people and discrimination in crises and emergencies

Since 2000 the number of people injured or killed in natural disasters added up to more than 1.1 million with another 2.7 billion affected by these events. The other consequence of the disasters is their influence on the economy. Over the past 12 years the total of damage created by natural disasters added up to 1.3 trillion dollars and this trend continues to grow by the average pace of 100 million dollars per year over the past decade (UNISDR, WMO, 2012). As for Serbia, the damages from the last big flooding in May 2014 was estimated at more than two billion USD (Centre for Research on the Epidemiology of Disasters, 2009).

In 2005, 75% of those killed in Katrina hurricane in the US were above the age of 60 and in 2011 during the catastrophic tsunami in Japan 56% of all persons killed were older. On the other hand it is devastating to learn that only 0.2% of relief assistance distributed during these emergencies was targeting older people (Age International, 2015).

Whenever we speak about population ageing we must not forget emergencies. Experience so far has shown that older people tend to be in the most vulnerable category of population and that in such situations they are at a higher risk of neglect, injuries, disease and even death. Still, governments and even civil sector tend to overlook their needs. Older people thus stay invisible and tend to be forgotten in development, disaster preparedness and response and their potential is ignored despite the fact that their knowledge and experience can be invaluable in such moments. All this may lead to individual instances of discrimination but omission on the part of the authorities to act is another form of discrimination. Among other things there are four important risk factors that can lead to age discrimination in emergencies: 1. Limitations in the mandates of agencies; 2. Lack of adequate data; 3. Lack of legislation or policies specifically dealing with older people and 4. Inadequate resources. It is necessary to

improve policies and decrease risk factors so that older people may be included and enjoy full equality in a society that has a need for resources (IFRC, 2007).

Limited mobility of some older people makes their evacuation more difficult and reduces their capacity to protect themselves from injuries. There are other issues to have in mind too: emergency food distribution is very rarely (at global level) adequately designed to meet the specific needs of older people and their nutrition needs. In the immediate aftermath of a disaster the focus is on first aid but looking at the mid term, system has to respond to the chronic medical needs of older persons. It is about provision of medication that they may have forgotten to take with them, it is about organising evacuation and temporary accommodation so that their canes, glasses, hearing aids and adult diapers are secured and at their disposal. Older people find adjusting to life after disasters difficult, especially when they have to stay in collective accommodation centres. Older people living in isolated and remote rural areas are at a special heightened risk and potentially disadvantaged position as they are harder to reach and may be cut off from the world.

Ageing as opportunity and challenge

Despite the differences between countries, there are also some common features. The main common feature is the increase of expenses of social and health care that is related to demographic changes. The capacity of the public sector to support these expenses is questionable even in the most developed countries. Therefore governments across the world should attempt to respond to demographic changes in the most rational way and adjust services to the new situation. In line with this there is much emphasis on identifying measures that are cost effective – and those fall squarely within the area of strengthening the capacities of individuals, families and communities. Strengthening individuals means enhancing personal competencies and responsibility to think of one's older age well in advance, and promoting active ageing throughout one's lifespan which will positively influence the extension of that lifespan and provide one with more years spent in good health. Strengthening the families is about creating new services and benefits that will allow families to provide better care to their members. The last but not the least strengthening communities means that in addition to institutions and private sector there should be better inclusion and use of the support coming from the civil sector. (Gorman, 2002).

It is necessary to change the viewing angle, to look at the ageing from its positive side, to stop looking at older people as burden for the society but see it all as the triumph of scientific and social developments, to see older people not as a problem, but as a solution. Older people have skills and knowledge from different areas and there is a need to let them use those skills and knowledge, be active and improve not only their own lives but also contribute to the

betterment of their communities. Ageing must be interwoven with all the policies, especially development policies if we are serious about taking on its challenges. We need to understand that "demographics are not destiny" but in order to seize opportunities and overcome challenges, we need brave and swift decisions, based on the present but also on the future, that will enable our society to age successfully (Age International, 2015).

When does the old age start? Definitions of ageing

"Getting old is not a pleasant experience but it is the only known way so far to have a long life."
Saint-Beuve Augustin Charles, French poet

Georges Minois asked: "When is a person old? At 55? 60? 65? 75? Nothing is more ephemeral than the outline of the old age, this physiological-psychological-sociological complexity. Is a person of the same age as their veins, heart, brain, their spirit or their personal data? Ort is it the gaze of others that will one day qualify us as old?" (Minois, 1994).

What does an older person look like? There is no single and simple answer to this question because older people are anything but a homogenous group. Older person may be a woman or a man, active and less active, mobile or with limited mobility, healthy or with chronic diseases, able to work but also having difficulties performing daily activities, may be joyful but also depressed, may be overweight but also very thin, may fiercely fight for their rights or completely uninformed about their rights, may live in the city or in the countryside or an institution, may be well educated or undereducated – we could go on but the gist is clear: an age group with many big differences.

Ageing is a complex and dynamic process starting with birth and ending at the deathbed. Obviously, ageing is not defined by mere passage of time but a unified definition of ageing does not exist. In any case, regardless of your age there are people who will still think of you as a young person and others will see you as older.

Ageing is universal, it happens to everyone, it is inevitable, unstoppable and of course irreversible: we will never be younger than we are today.

Thus there is no one comprehensive concept of ageing as a phenomenon. As described, ageing is a complex phenomenon not limited to passage of time. Therefore to understand ageing and attempt to define older age it is necessary to think of physiological, social and cultural aspects.

Chronological definitions start with biological nature of older age and explore different degrees of functional deterioration. Using this criterion, older age is defined through years and it starts at 60 or at 65, with legislation recognising persons of this age

as "older adults" or senior citizens; in Serbia the out dated term "old people" is still in use. From this standpoint, ageing is about changing one's role in the society, especially in terms of working and employment (Huenchuan and Rodríguez-Piñero, 2011).

Physiological definitions look at the physical process of ageing and according to them ageing is linked to chronological age but not directly proportional to the number of years. These definitions of ageing are primarily about decreased functional capacities and gradual decrease of bone density, muscular tonus and changes in perceptivity. Psychological changes are manifested at intellectual, emotional and motivational planes. (Huenchuan and Rodríguez-Piñero, 2011).

Finally, as for social definitions, they are primarily about attitudes and conduct that we consider adequate and usual for a certain age. Here, as is the case with gender equality, we have cultural and historical approach to ageing. These definition take into consideration biological processes of ageing as well as subjective changes of the individual and hers/ his productivity (Huenchuan and Rodríguez-Piñero, 2011).

Definition of ageing is not a question limited to academic importance. Different definitions influence not just the perception and attitude of the society towards ageing but also the creation of public policies as well as the systems of social and health protection targeting older people.

In any case, ageing is a personal, individualised experience. Different descriptions of ageing are a result of reality – during the whole lifespan of individuals there are differences between them and these differences are practically at their most pronounced in the process of ageing. Genetic factors are important but also the factors of the environment, living conditions and life styles of the person (Smiljanić, 1987).

A research study done in 28 countries of the European Union (2008/2009) was an attempt to answer the question of how Europeans see themselves and others in relation to older age, what is their opinion on when the youth ends and older age starts. The results demonstrate big cultural differences between the interviewees from different countries. The average age in which older age "starts" is 62, which is below the mandatory retirement age. In Greece older age starts at 68.2 and in Turkey at 55.1. Even less of a consensus was reached when answering the question of when does the youth end – at 34 in Sweden to 52 in Greece. The average European thinks that youth ends at 40 (Age UK, 2011).

The Red Cross of Serbia has in 2013 performed a pilot research study covering nine Serbian municipalities. The results show that according to the answers of Serbian citizens, older age starts at 61.1 which is near the European average.

Speaking of older people we must be aware that we speak of persons who are between the ages of 60 and 110 – a group more heteronomous than any other age group.

According to different authors, older age can be divided into three stages. Early older age – "young older people" – is the period between the ages of 65 and 75 or 80. The second stage is the period of average older age – "oldest old people" – spanning from 75 or 80 to around 90. The third stage is usually called "very old" or "eldest older people" and it refers to the people above the ages of 85 or 90. If we were to compare a person at the age of 65 to the person who is 95 we should first look at the numbers. There is a thirty year gap between them – the same gap between a five year old and a thirty five year old. However, we see more similarity between the persons in the first comparison and this is where we are wrong. It is not uncommon at all for the 65 year old to be closer to middle aged persons than to ones who are above the age of 85 – physically and psychologically. (Warner Schaie i Willis, 1996).

Myths or prejudices about ageing

Speaking of ageing and older age we sadly come to realise that both younger and older people have wrong perception of ageing, falling under the influence of myths, stereotypes and prejudice. Negative image of older people is a path to age discrimination and often a premise for elder abuse.

Data shows that 44% of the EU citizens considers age discrimination to be a very serious phenomenon and 35% have reported age discrimination (which is more than for gender or race discrimination). 51% expressed concern that employers are more likely to favour persons in their twenties. It is devastating to learn that 57% believes that persons above the age of 70 make no economic contribution to the society and 53% of the interviewees have no friends older than 70 (Age UK, 2011).

WHO has in 2008 – as a reaction to accelerated demographic ageing, especially in Europe – produced a document "Demystifying the myths of ageing" to serve as a guide to older persons, their families, service providers and politicians. In order to meet the needs of this growing population group, on order to adapt services and workspaces to older people, it is necessary to change the image of older people (World Health Organization, 2008).

Older people are viewed as a problem, burden and threat to economic development of the society. This image is a stereotype that can not be allowed and offers a mere caricature if the role of older people in the society. Older people are active members of the society and they provide crucial contributions to families and the society. WHO highlights 12 myths:

Myth one is that "**People should expect to deteriorate mentally and physically.**" This is partially true. Although older persons may experience deterioration of their health status this can certainly be softened through exercising healthy life styles that include healthy eating, physical activity and social inclusion.

The second myth is "**Most older people have similar needs.**", which is patently untrue – people are different as individuals since birth. With ageing these differences do not get smaller. Older persons have different needs in relation to their gender, ethnicity, culture, education level, functionality. These differences need to be recognised and acknowledged.

The third myth is "**Creativity and making a contribution is the province of young people.**", which is also patently untrue because there are no age barriers for creativity and talent. This myth was supported by mandatory retirement policies that practically supported the ide of older people being unable to economically contribute to social development.

That age is not important for creativity and creation was proven many times during history: Michelangelo finished painting the Basillica di San Pietro in Rome at the age of 70, whereas Goethe wrote Faust at 82, Verdi finished composing Othello at 74 and Falstaff at 80 (K. Warner Schaie, Sherry Willis, 1996)

The fourth myth is "**The experience of older people has little relevance in modern society.**" This myth is also completely false. It is true that the world today is vastly different from the one older people were growing up in but many older people participate in digital inclusion. There are also things in the accelerated culture of today that older people can teach their grandkids because they have more time and they also have knowledge about culture, customs, old crafts.

Myth number five says "**Many older people want to be left in peace and quiet.**" It is a fact that some older people want to spend a portion of their time reading those books they have not had the time for before but they certainly do not want to live in social isolation and the intensity of their wish to have some time of their own is not stronger than for other age groups.

The sixth myth is "**Hospital beds and nurses are the main issue**", which a report of the European Commission proved as partially true. On one hand it is important to establish the determinants of health of the older population and on the other to insist on preventive measures and include older people in all policies.

Myth number seven says "**Providing for older people takes away resources from young people**" and this is again completely untrue. We are witnesses of the fact that adapting the environment and some of the services to older people not just contributes to increased quality of their life but benefits all ages across the board.

Myth number eight is completely false: "**Spending on older people is a waste of resources**". Providing more funds for care for older people in fact creates savings. For instance, motivating older people to stay active and use their social network will reduce the need for care.

Ninth myth is "Older people are not suited to modern workplaces" and it ignores the fact that mandatory retirement does not correspond with real capacity for work. Experience accumulated over many years and wisdom that this creates allow older workers to optimise

their efforts so that they recognise priorities faster and never waste energy on unnecessary activities.

Myth number ten says "You can't teach an old dog new tricks". Some of the newer research show that flexibility of the brain remains intact especially when it comes to learning visual information (Hannan and Brodaty, 2014).

Eleventh myth is "Older people expect to move aside". But it is a fact that older people are better informed than ever. They have knowledge and experience from different areas and this includes the knowledge related to healthy ageing. On the other hand they are becoming a force to be reckoned with in terms of consumption so the market needs them.

The final myth is "Things will work out for themselves." In an ageing world, letting things work everything out for themselves is the last thing we should do. We need to adapt policies, social and health services as well as workspaces to population ageing but we also need to include older people in designing of services and decision making (World Health Organization, 2008).

Some other authors highlight the myth of "older age as illness". Older age is frequently viewed as illness. However, even as illness is more likely to happen at the older age this does not mean that all older persons are necessarily ill all the time. There are older persons living many years in good health with their functions preserved. Another myth that seems to be a variation on the previous one is that dementia is a part of the normal ageing experience. Yes, the risk of dementia increases with ageing and extension of lifespan but not all older people are demented.

Another myth is that all older persons have mobility troubles: we are witnesses of many persons in their eighties running marathons or exercising some other physical activity. The myth that would have all older people dependent on others is completely untrue as there is a huge number of older people who are not only personally active but also take care of their older parents and their grandchildren at the same time (Transgeneration Design Matters, 2011).

Exploration of ageism and related prejudice has a very short history compared to other forms of prejudice. However, the data we have so far shows us that prejudice exists, that they are multiple and that people often have contradictory stances on older persons. Sometimes the prejudice is a part of the cultural model that emphasises the fear of death, often they are linked to older people's mobility, the wrong perception of older people being a burden to society rather than a resource. Stereotypes about ageing are widespread and can be found in all segments of the society. In order to have them eliminated it is necessary to employ coordinated efforts at all levels, starting with education (from kindergarten level onwards through the whole education process) and emphasising media communication so that it is clear that ageing is not something to be afraid or ashamed of but a normal part of life (Nelson, 2011).

Research shows that prejudice related to gender and race is on decline while prejudice related to age is on the rise (Age International, 2015).

Fighting stereotypes, prejudice and ageism means we have to build a positive image of older people. Society needs to realise that they are not a burden but a resource, that they have wisdom and experience and that they are to be respected, not pitied. Their rights are guaranteed and this guarantee does not expire with age.

Short history of human rights

Respect and protection of human rights has in the late 20th and early 21st century become an important topic for governments, politicians, institutions, civil sector and individuals. The idea of protecting and respecting human rights has created a lot of passion in the recent human history and is one of the fundamental goals of the whole human race. However, in spite of the development of societies and significant binding treaties on human rights, we still witness brutal human rights breaches and freedoms all over the globe. Human rights are supposed to be a shared responsibility, their protection a continuous activity, dialogue and spreading of the awareness on their importance. In our daily lives we enjoy human rights in many different situations but these rights can be and are sometimes threatened or breached. Through educating others on human rights we represent the voice of the individual who should not be reduced to a piece of statistical data but recognised as real human beings whose rights are under fire.

When discussing human rights we have to be aware of the fact that the development of civilization carried with it the development of the concept of human rights. The idea is not recent and it has been discussed for the last 2000 years. Its development went in parallel with development of civilization. Speaking from historical standpoint there are roughly three stages in development of human rights. The first stage is about philosophical and religious roots of the idea, the second is about political reification of the idea in national states and the third stage is its reification through United Nations.

The first written record discussing the idea of human rights originated in 539 BC when the army of Cyrus the Great, king of ancient Persia conquered the city of Babylon. Cyrus the Great liberated all the slaves and proclaimed everybody's right to their own religion. He also set the foundations for racial equality. Today, this proclamation is known as Cyrus Cylinder (United for Human Rights, 2008).

The idea then spread to India, Greece and Rome. In ancient Greece stoics have championed the idea of equality among men and the fundamental ideas such as respect for human life and dignity have their roots in the theory of natural rights developed by sophists. Although ancient Greek civilization gave us the ideas of equality and democracy it was also a slave owning society with great inequalities so these ideas were only relevant for free men.

Slaves' status was not improved with discussion of these ideas and women's freedoms were also limited.

The situation was similar in the Roman Empire. Jurists claimed that there are natural rights that belong to every person and Roman Law is the foundation of the development of civil and criminal law (Anđelić, 2008). Despite great inequalities in these societies they have nevertheless represented a beginning of a slow, long process that resulted in full development of the ideas of human rights and the obligation to protect and respect them.

In a discussion of human rights it is impossible not to mention the breakthrough towards one's rights granted by birth done by the English philosopher, the founder of empiricism, John Locke who was of the opinion that every state's reason for existence was to protect the rights of men – such as the right to live, the right to freedom and the right to private property. He also developed the concept of controlled and limited state authority which set the foundations for limitations of absolute arbitrary power of the ruling authorities (Gajin, 2012).

Idea of human rights can also be found in the majority of world's religions when they speak of tolerance, coexistence and respect for differences. Religious teachings – Hinduism, Judaism, Christianity and Islam – clearly demand equality, responsibility and empathy and work on developing those in their followers. However history showed us that there are huge practical problems in transforming religious doctrine into practical duties. Over the course of the whole human history and even today, in the 21st century, religious discourse has frequently been abused and misused – used to spread hatred and animosity even though this is at odds with religious teachings and human rights. (Pstrocki, 2007).

Many important political documents have also paved the way to the Universal Declaration of Human Rights. One of them is Magna Charta Libertatum from 1215 which saw England limit its monarch's power. Then there is Petition of Rights from 1628 that guaranteed inviolability of a citizen and "Habeas Corpus Act" of 1679 protected citizens from arbitrary arrest and detention and is an important premise for the idea if human rights in the applicable law. These documents related to England but they were in force in the English colonial territories too. In the United States of America they have referred to Locke and created a "Catalogue of Human Rights". Virginia Bill of Rights from 1776 has announced the following rights as inviolable: the right to life, freedom and private property, the right to freedom of assembly and the freedom of press, the right to free movement and to a petition, the right to legal representation and to vote. This document, along with the Declaration of Independence and the American Constitution from 1787 comprises the first serious body of core legislation on the road to recognition and protection of human rights (Anđelić, 2008).

French civil revolution represented the yearning for civil freedoms and equality. In September of 1791 the first French Constitution was adopted following the Declaration

of the Rights of the Man and the Citizen. The Declaration is one of the first modern human rights catalogues with its 17 articles. In addition to freedom and equality the document lists guaranteed rights and freedoms such as the right to private property, to security, the right to resist oppression as a natural, indefeasible right, the right to freedom of belief and the right to freedom of expression. Looking at the documents on human rights from the historical perspective, we can see the continuity and gradual expansion of rights and freedoms (Gajin, 2012).

However, these were national, not universal legislative documents and have reflected political and cultural values of a nation in a specific country. They were still – as they were adopted – discriminatory towards other ethnic groups or women and slavery was still acceptable (as in Thomas Jefferson being an actual slave owner) (Human rights knowledge, 2012). American constitution is often pointed out as an example of respect for freedom and equality but originally it does not even mention women and federal states were allowed to individually decide on voting rights. So a significant number of women in some American states were deprived of one of the fundamental human rights – the right to vote – and if they were allowed to vote, there were restrictions related to age, status or property (Anđelić, 2008).

The continuity in the development of human rights can also be recognised in the following documents: Paris Agreement of 1856 and Berlin Agreement of 1878 that were signed by the leading European countries of the era (Germany, Austria-Hungary, France, United Kingdom, Italy and Russia) with Turkish Ottoman Empire. The agreements stipulated the ban on slave trade and protection of Christian minorities in the Turkish Empire. Berlin Agreement is also notable because it provided legal status o certain religious communities. The next notable document was the Pact of the League of Nations signed in 1920 that guaranteed certain rights to ethnic, language and religious minorities but did not have general regulations on human rights. (Milenković, 2010).

Changing nature of human rights

Modern history of human rights begins after the Second World War. The first response to global threats was founding of the United Nations in San Francisco in 1945 – a global organisation that today has 192 members with its primary goals being peace and international security, development and human rights (Walter, et al., 2010). The most important and fundamental step related to human rights made in the modern age is the Universal Declaration of Human Rights adopted by the UN General Assembly on 10 December 1948 and formulated as "a common standard of achievement". It contains regulations on civil, political, economic, social and cultural rights that should be guaranteed to all human beings (Office of the United Nations High Commissioner for Human Rights (OHCHR), 2012).

Human rights are therefore not prescribed and acknowledged by national legislation but guaranteed. Declaration set the standards that are universal, inalienable, inseparable and interconnected. At birth we are bestowed with rights that are guaranteed through our very existence and can not be taken away (Wolfgang and Nikolova, 2005).

„ All human beings are born free and equal in dignity and rights. ". The Declaration has 30 articles that guarantee specific freedoms (United Nations, 1948).

Universal Declaration of Human Rights made it possible to transcend national framework and improve and expand the concept of human rights – territorially, by covering all member states, as well as essentially by ensuring all rights are included. The Declaration is a comprehensive and binding document for all the member states that have signed it (Mohorović, 2006).

After the Universal Declaration other documents related to human rights followed at the UN level but there were also regional documents produced focusing on the same topic.

Czech lawyer Karel Vasak has in 1977 suggested dividing human rights in three generations. The first generation is about citizens' and political rights, the second about social, economic and cultural rights and the third, newest is about collective or developmental rights, so called solidarity rights. This last category suggests that human rights are not a mere legal institution but a phenomenon that develops and changes and follows the developments of the society. The rights of the first generation – citizen's and political rights – include two subtypes: norms related to physical and citizen's safety (e.g. ban on torture, slavery, inhuman treatment, arbitrary detention, equality before the law) and norms related to civil and political freedoms (e.g. freedom of religion, freedom of opinion, freedom of assembly and voluntary association, political participation in the community). The rights of the second generation, socio-economic human rights also include two subtypes: norms related to meeting social needs (such as nutrition, housing, health protection, education) and norms related to economic needs (the right to work, the right to adequate compensation, the right to adequate living standards, the right to social security). The third generation of rights – the solidarity or developmental rights – are newer and are still in development but they are also the most progressive and in a way they are a reaction to the harshest effects of Globalisation (Vasak, 1979; Landman, 2005). These rights include the rights to public goods and the rights to protection of the living environment (Landman, 2005).

We can see that human rights are not written in stone and unchanging. They are flexible and react to new challenges. We already see the questions related to intergenerational solidarity and the rights of the coming generations whose rights may

be threatened because of our treatment of natural resources. (Bertelsmann Stiftung, et al., 2013).

We can certainly say that in the late 20th and early 21st century the world became aware of the human rights not being a static institution but a developing, changing concept that serves to recognise new problems that threaten every person's right to life. Also, equality does not mean sameness – it means being open and able to recognise different ways of exercising the same rights in different groups. (Todorović i Vračević, 2/2014).

Dynamism and changing nature of human rights is reflected in their incessant expansion. Human rights have in the course of their historical development stopped being an internal issue of a particular nation and have become a subject of international obligations which means that states have renounced a portion of their absolute sovereignty (Rudić, 2000).

The sheer number of recognised human rights today is one of the great philosophical achievements of the modern age. Evolution of human rights will continue pursuing development, enrichment and building, striving to have new human rights recognised but also to identify new threats to fundamental human rights (Walter, et al., 2010). Human rights are walking a long path and their goal is to reach universality that will be defined by inclusion – not exclusion (Hardwick, 2012).

Why connect ageing and human rights?

Discussing the development of human rights leads to the concept of human rights of older people. In the last five years improvement of the rights of this age group has been a topic of many conversations and papers: We are witnesses of the fact that their specific rights are often not recognised and in some cases they are brutally breached.

The reasons to put human rights of older people on the global agenda of policy makers as well as on the national agendas are related primarily to demographic changes. The number of older people is growing globally, at a swift pace but also, age discrimination and prejudice against older people are for the most part tolerated and the international law does not have adequate protection mechanisms to ensure human rights of older people are safe.

Older women and men have the same rights as all other people. We have all been bequeathed the same rights at birth and this does not change with age. What does change is the way in which we exercise these rights – which should be intuitively recognised however, from the international law perspective human rights of older people are for the most part invisible. (HelpAge International, 2009).

Majority of the documents and treaties on human rights do not refer to one's age as grounds for discrimination and breach of human rights which means these references are lumped

in "other" or "the rest" categories. (Mokhiber, 2011). Whereas the rights of women, children, inmates and persons living with disabilities are protected through international conventions and standards, similar standards do not exist for older people and there is nothing to recognise their vulnerability to breaches of human rights.

At the same time older people are at a higher risk of abuse, violence and exclusion but older persons are more often viewed from the perspective of charity and as beneficiaries of services rather than from the perspective of development. Many governments see ageing as an issue related to social and health protection but not to social development. This then reduces older persons to mere beneficiaries of social welfare instead of treating them as people who should be exercising their human rights just as any other group in the society. Again, it is not to be forgotten that this is not a homogenous population group and that older people tend to be different among themselves perhaps even more than other age groups. It is not useful to homogenise them artificially. Policy creators should also not turn a blind eye to the fact that older people are becoming an increasingly powerful part of the voting population which means their political influence is on the rise. Governments that fail to engage their rights and needs risk losing support of a growing segment of the voters.

Huge gaps in the applicable human rights standards can also be identified when exploring the human rights of older people. Many states fail to engage the forms of discrimination targeting older people. Historically speaking, at the UN level, human rights of older people have for the most part been invisible while the current national standards on human rights of older people and breaches of those rights are uneven and inconsistent. The result is that only a handful of countries collect data on breaches of the older people's rights. These breaches will remain unaddressed as long as there is a lack of information on their nature, frequency and causes. This is confirmed by the data from the period between 2000 and 2008 during which the UN Commission for Human Rights working with the High Commissioner for Human Rights' office collected reports from 124 countries and only three of those contained concrete measures taken to suppress age discrimination and only one highlighted the risk of abuse in nursing homes (United Nations Department of Economic and Social Affairs Division for Social Policy and Development Programme on Ageing, 2009). Is this evidence of lack of initiative of governments to ensure respect for human rights of older people or are they simply blind to older people's rights?

Respect for human rights of older people benefits the whole society. Failure to protect them leads to breaches of older people's rights which in turn leads to their exclusion, poverty, discrimination and elder abuse. Better protection of older people's rights will provide the society with opportunities to better use the potential of older people: their experience, knowledge and wisdom. There is clear evidence that when older people are provided with social security, poverty rates decrease across the board, child labour decreases and enrolment of children to

schools increases. A concrete example can be made of Brazil where the gap between the real and mandatory enrolment to schools was decreased by 20 percept in the population of girls living in households with older members receiving agricultural pensions and in Yucatan (Mexico) introduction of universal pensions boosted the rate of visits to general practitioners by 22% (UNFPA, HelpAge International, 2012).

An important element of the challenge in protecting older people's rights is the lack of measures and services for older people whose functional skills have decreases, especially demented persons and older persons living with disability (United Nations, 2010). One of the most important rights is the right to early diagnose for dementia as this enables the person to plan her/ his future treatment and life rather than have their rights violated through deprivation of legal status. Protecting this right would benefit both the family and the society through saving their resources.

Understanding the gravity of this global problem and the effects it could have on our communities, society and economy, it is clear that older people must be granted the right to be free from discrimination, to security, freedom from abuse, social protection, health, work and lifelong learning, personal property and inheritance.

In the early eighties the UN started working on the phenomenon of ageing using greater focus and more systematic approach. So far several documents have been adopted that discuss older people exclusively and these documents include human rights. The Vienna International Plan of Action on Aging of 1982 contains 62 recommendations for governments and the civil society for more efficient solutions to problems related to population ageing. United Nations Principles for Older Persons have also been adopted via Resolution A46/91 and they recommend that governments create their national programmes for older people based on respect for their independence, social participation, social care, self- realisation and dignity of older persons. Madrid International Plan of Action on Ageing (MIPAA) from 2002 advocates building a society for all ages and identifies three priority directions of action: older people and development, improving health and welfare of older people, and ensuring supportive environment. The same year United Nations Economic Commission for Europe (UNECE) adopted Regional Strategy for Implementation of Madrid International Plan of Action on Ageing and this document includes ten obligations of member states (Petrušić, 2009).

So far three regional ministerial conferences on ageing were organised: Berlin (2002), Leon (2007) and Vienna (2012) and their main conclusions relate to inclusion of older people in all areas, activities and policies, adjustment of systems of social and health protection to better serve older people, promotion of a positive image of older people, poverty reduction and social inclusion, improving the quality of life and promotion of the concepts of active ageing and lifelong learning. These documents are important for the development of international

frameworks and changing attitudes related to policies, they discuss specific topics and present guidelines for creation of public policies. However, these documents are crippled in one major way: they are not binding for governments across the globe and create merely moral obligation. Implementation of these "soft regulations" as well as their funding are very much reliant on the capacities of governments as well as their political will. Review and analysis of MIPAA has shown significant gaps as many obligations tend to be accepted on paper only.

There are some UN conventions that explicitly mention older people. Virtually, only The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families explicitly mentions discrimination based on age. The Convention on the Elimination of Discrimination against Women mentions the right to social security for older women. Convention on the Rights of Persons with Disabilities mentions older persons in the context of rights to social security and access to health services. These documents are for some states evidence to claim that a Convention on Human Rights of Older People is not needed and that the existing documents are sufficient to protect human rights of older people while other states advocate for adoption of a new UN convention focusing on older people's rights. Their argument is that the existing conventions to not cover all the aspects of ageing. References to ageing in the above listed documents are clearly insufficient as not all older persons are women or live with disabilities. Still, it is important to underline the significance of these documents as their adoption resulted in practical improvements for the mentioned population groups. They also indicated where to invest future efforts in order to improve the position of older people (Murphy, 2012).

Another set of documents important for protection of older people's rights are ar regional level – the EU documents such as The Convention for the Protection of Human Rights and Fundamental Freedoms from 1950, Revised European Social Charter from 1996, Revised Strategy for Social Cohesion from 2004. Preamble of the Single European Act from 1986 and Article 6 of the Treaty of the European Union have formally introduced the obligation for EU to respect the rights established by European Convention for the Protection of Human Rights. The Amsterdam Treaty from 1997 prohibits all forms of discrimination including based on age. The Charter of Fundamental Rights of the EU from 2000 includes respect of the right to social insurance and social services providing protection including in the older age. The Lisbon Treaty from 2007 highlights the struggle against exclusion and discrimination, promotion of intergenerational solidarity and equality. Anti-discriminatory rules in the EU are also defined through several directives that were adopted over the years (Petrušić, 2009). There is visible progress made at regional level so the latest document of the EU are Recommendations for Promotion of human rights of older persons adopted by Council of Europe on 19 February 2014. This document aims to promote and ensure complete protection of older people's human rights

and their fundamental freedoms. It aims to promote dignity of older people and their autonomy, independence and social participation, it aims to provide adequate information to older people, health and social protection as well as opportunities for employment as well as protection of older people from violence and abuse. This document lists examples of good practice and names establishing the institution of Commissioner for Protection of Equality in Serbia as one of them (Council of Europe Committee of Ministers, 2014).

As for the republic of Serbia, we can point out several important laws that mention older people explicitly. The 2006 Serbian Constitution prohibits all forms of discrimination including tat based on age. The Law on Prohibition of Discrimination from 2009 also prohibits age based discrimination. Serbian government has also adopted a Strategy for prevention and Protection from Discrimination for 2013-2018 as well as the Law on Prevention of Discrimination of People with Disabilities in 2006. The laws that are supposed to protect older people's rights to physical and mental health are as follows: The Law on Health Protection from 2005 with amendments from 2009 and 2013; The Law on Health Insurance from 2005; The Law on Public Health from 2009; The Law on Protection of Patients from 2013; The Law on Protection of Persons with Mental Difficulties from 2013. The Law on Social Protection from 2011 is supposed to protect the rights of older people to adequate living standards and social services. The Law on Pension and Disability Insurance from 2003 talks about the right to social security, while the right to life and dignified dying should be ensured through Strategy for Palliative Care from 2009. The right to physical, mental and emotional integrity and respectful treatment should be ensured by the Criminal Law from 2005 and the Family Law from the same year. The right to education and culture should be ensured through the Law on Adult Education from 2013 and Labour Law from 2014 contains regulation mentioning older workers. As for the rights of older women, Serbia has the Law on Gender Equality from 2009, the National Strategy for the Improvement of Position of Women and Improvement of Gender Equality 2008-2014, National Strategy for suppression and prevention of domestic abuse of women.

The National Strategy on Ageing 2006-2015 is the first comprehensive document that regulated public policies for older people and created key directions and areas of action in order to improve the status of older people in Serbia following recommendations set by MIPAA and regional implementation strategies.

Generally speaking we can identify four types of deficiencies when it comes to protecting older people's rights. The first is normative and relates to the fact that in some states there is no adequate legislation that would protect older people's rights. In many states person's age is not recognised as basis for discrimination or the standards that should be used to protect older people are scattered through different documents dealing with human rights. Frequently the instruments for protection of older people's rights are invisible at national level to both government and the public and duties of actors and individuals in the private sector are not well defined and well developed.

The second type of deficiency is in implementation – in some states there is existing legislation but its implementation is unsatisfactory. There is a problem of respecting and fulfilling accepted duties in implementation and a failure to provide specific guidelines for existing legal regulations that would ensure their implementation.

The third form of deficiency is related to monitoring of violations of older people's rights. This deficiency is characterised by absence of independent regulatory bodies in charge of monitoring fulfilment of duties related to protection of human rights as well as the insufficient capacities of existing regulatory bodies to play their legally prescribed role. No less important is the insufficient recognition of the role of these bodies among citizens themselves.

The fourth type is about the lack of adequate, age disaggregated data that would help gain a more precise insight in the situation at the moment as well as into the effects of particular measures or policies (Murphy, 2012). The deficiencies in data in terms of lacking disaggregation, inconsistencies, tardiness in reporting as well as gaps in data collection are all open issues that need to be resolved efficiently. Also, the data needs to be collected and distributed through cooperation of different actors including national statistics offices, international organisations, civil society organisations and private sector, through strengthening capacities to ensure statistically reliable data, finding new sources of data including age disaggregated data. Using different data sources including the data generated by citizens themselves is important for policy creation and facilitates transparent decision making. This can be viewed as part of the information revolution as well as the revolution in generating and accessing data that will enable us to follow the development of societies including human rights of older people in the context of development agenda post 2015. Investments in systems and capacities of countries to handle statistics will have to be accelerated significantly (UNECE, 2015).

In some developed countries progress has been made in terms of protection of human rights. All these facts indicate the need to advocate for efficient ways to consistently implement and improve the existing regulation related to human rights of older people or to adopt a new UN Convection on older people's rights.

Newer initiatives in protection of older people's rights

Identifying the need to discuss this issue at institutional level, some states, primarily Latin American ones, have insisted on moving this debate under the umbrella of United Nations. The UN General Assembly resolution 65/182 of 21 December 2010 established Open Ended Working Group on Ageing. By founding this Group, UN has for the first time in its history established the ongoing process of exploring and analysing ageing and how to better recognise and protect older people's human rights. The main role of this Group is to strengthen

the position of those fighting for older people's human rights. For now it is obvious that not all member states of the UN agree on the need to adopt a new UN convention on older people's rights so the Group has a wider mandate than just discussing the possible convention. The Group is tasked with exploring international framework of fighting to protect human rights of older people, to identify their gaps and suggest how to overcome them which may include creating new instruments for protection of human rights. The Group includes all member states, civil society organisations as well as older people themselves. The role of civil society organisations is to provide relevant information and advocate with the Group for those issues that older people identify as crucial.

So far the Group met five times and discussed primarily different mechanisms for protection of human rights – either a new UN convention on older people's rights or adapting already existing documents such as the San Jose Declaration (United Nations, 2010). So far there is no clear consensus among the member states on the need to adopt the new UN convention on older people's rights but everybody agrees that continuing the discussion on regulation related to human rights is important.

Another crucial step in protecting older people's human rights was establishing the Independent Expert on the enjoyment of all human rights by older persons. The Independent Expert was established by the UN Human Rights Council in May 2014and is a step in the right direction. This position is honorary and voluntary so the Independent Expert is not a UN employee, expresses her opinions independently and does not represent her government. This contributes to impartiality – a crucial element of the Independent Expert's work. The first Independent Expert is Ms Rosa Kornfeld-Matte from Chile, a person with enormous academic and practical experience in protecting older people (Office of the High Commissioner for Human Rights, 2014).

Global Alliance for the Rights of Older People (GAROP) also provides significant contribution to improved protection of older people's rights. It is a network of 115 civil society organisations established in 2011. Their goal is to strengthen and promote the voice of older people and advocate for the new UN convention on older people's rights. They work hard on representing the voice of older people across the globe. Their second goal is to strengthen the civil society organisations through consultation and printing guides and tools for advocacy at international and national levels. GAROP supports creation of international and regional instruments for human rights as well as stronger tools for strengthening the rights of older people. GAROP is dedicated to capacity building at national level through supporting organisations to create efficient instruments for protection of older people's rights. (GAROP, 2015).

In early 2015 GAROP has in 50 countries performed a research exercise called "In our own words". It was designed so that older people themselves get the opportunity to identify

problems and solutions in relation to discrimination and violations of human rights of older people. They were answering questions on whether they were denied certain some human rights and wrre asked to identify them. Their answers indicate denial of general principles supporting human rights such as autonomy, respect and dignity but also numerous specific rights that touch different aspects of their lives. The interviewees identified principles and human rights important for them and suggested comprehensive and systematic approach to better protection and promotion of human rights of older people. They highlighted a specific risk for older people who are functionally dependent and live in institutional accommodation – their rights dependent on other people. Also highlighted was the issue of older prison inmates including their right to adequate accommodation in prisons. This research confirmed once again that older women are at a higher risk of having their rights violated. (The Global Alliance for the Rights of Older People (GAROP), 2015).

The research highlighted the following principles and human rights of older people:

Principles

- Non-discrimination
- Respect
- Dignity
- Autonomy
- Equality
- Self-fulfilment and personal development
- Full and effective participation
- Social inclusion
- Intergenerational solidarity
- Recognition of intrinsic value and worth as a human being

Human rights

Non-discrimination

The right to non-discrimination in all aspects of their lives including health care, financial services, employment, goods and services, inheritance and property and taxation. The responses also reflected experience of intersectional discrimination including on the grounds of age and gender, cultural/linguistic diversity, disability, physical or mental status, economic status and access to technology.

Right to autonomy and independence

The right to autonomy in different aspects of older people's lives including in making decisions about their support and care and their leisure time, their right to self-determination and choice and to personal freedom.

Right to equal recognition before the law

The right to equal recognition before the law including the right to be complete citizens, including the right to be registered and to be an equal member of the family and of society.

Right to self-fulfilment

The right to continue to live lives of self-fulfilment and personal development up until the last day of life, to be hopeful and to have a future, and to take on new challenges and opportunities.

Right to life

The right to life including when they are killed for allegedly being witches.

Right to a dignified death

The right to die with dignity, including choosing where and when to die, the right to holistic palliative care, including pain relief, and to end of life care.

Right to effective participation

The right to full and effective participation in all spheres of life: public, political, cultural, economic, in development activities, in decision making at household, community and national levels, and in social and leisure activities within the family and in the community.

Right to age in place

The right to choose living their arrangements, where and with whom they live and to remain in the community, regardless of physical or mental status.

Right to housing

The right to housing including that which is affordable, of good quality, appropriate, accessible, and designed to accommodate the older person's requirements.

Right to the environment

The right to live in a safe and healthy environment, including access to drinking water, sanitation and other services.

Right to accessibility and mobility

The right to accessibility and mobility, including accessible transport that is affordable, physically accessible, available, particularly in rural areas, and can be used without fear of abuse.

Right to long term support for independent living

The right to long term support including to a range of person-centred, quality, holistic social care and support services. The right includes the right to choose the type of care and support received: where (in own home, in community, in residential facility), when and from whom. It includes the right to freedom of movement in residential care settings. Ensuring quality of support includes the training of care providers and support and assistance for family members providing care. It also includes access to redress and complaints mechanisms.

Right to a family life

The right to a family life including the right to privacy and to a private life.

Right to freedom from violence and abuse

The right to freedom from all forms of violence and abuse including from financial exploitation, physical and psychological violence, neglect and abandonment. It includes the right to access to justice, redress and support for victims.

Right to freedom from torture, cruel, inhuman or degrading treatment

The right to freedom from torture when the violence meets this threshold.

Right to work

The right to work including non-discrimination on the basis of age in recruitment, the prohibition of mandatory retirement on the basis of age, decent working conditions and meaningful work, access to re-training for a changing workplace and support for unpaid work, including the care of others.

Right to an adequate standard of living

The right to an adequate standard of living including income security, access to basic necessities and amenities, including water and sanitation, nutritious and affordable food, clothing and the right to the continuous improvement of living conditions.

Right to social security and social protection

The right to social security including access to adequate pensions.

Right to health

The right to health including accessibility of health services in terms of both non-discrimination on the basis of older age and distance and access to transport; affordability of services and treatment; availability of geriatric services, of medicines, of mental health care (including dementia and Alzheimer's Disease); appropriate health care and medication; quality of treatment and of diagnosis; timely treatment; and autonomy in terms of informed consent for, and choice of, treatment.

Right to information

The right to information including information in accessible and appropriate formats. It includes information on a range of goods and services and on older people's rights and entitlements.

Right to education

The right to education including life-long learning and skills training, for example vocational and on information and communication technology (ICT).

Right to property

The right to property including the right to own property, to dispose of your own property and assets in the way that you want, and inheritance rights.

Right to access to justice

The right to access to justice including the right to legal services.

Right to freedom of expression

The right to freedom of expression including the right to be heard and to pass on knowledge and experience.

Right to freedom of movement

The right to freedom of movement including in residential care settings.

Right to freedom of association and assembly

The right to form older people's groups and associations.
(The Global Alliance for the Rights of Older People (GAROP), 2015).

The issue of population ageing is a challenge for governments in implementing multisectoral programmes where local governments are usually at the forefront. Successful

interventions involve many partners – national government as a policy creator, institutions, private sector, civil sector, community groups and media (Age International, 2015).

Everything described so far indicates that evidence on discrimination of older people is convincing enough and that it demands a more efficient way to guarantee older people's human rights but also – perhaps even more importantly – ensure that they are exercised

(The Global Alliance for the Rights of Older People (GAROP), 2015)

"Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world." Eleanor Roosevelt

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Part II (Nevena Petrušić)

ECONOMIC ABUSE OF OLDER PEOPLE AS A FORM OF VIOLATION OF HUMAN RIGHTS

– Pilot research study –

I INTRODUCTORY REMARKS

According to the 2011 national census in Serbia, older people, persons above the age of 65 make 17.25% of the population with 14.92% men and 19.46% women. In the region of southern and eastern Serbia – the least developed one – the share of older people in population is higher than average – 18.98% with 16.65% men and the very high rate of 21.26% women. In the last decade the share of people above the age of 80 has risen from 1.94% to 3.59%. Out of 434,548 older people households in Serbia, 278,121 are single person households.[2]

Older people are part of the socially excluded and vulnerable population. Their overall socio-economic position is very unfavourable. Persons above the age of 65 make for almost a quarter of all those living below the poverty line,[3] and their risk of poverty is 40-50% higher in comparison to general population. According to the National Institute for Social Welfare 43.3% of older people who have in 2012 been beneficiaries of social welfare services are in the population of socially and economically vulnerable persons.[4] Among older people in institutional accommodation only 12.86% have the means to pay for it themselves.[5] The housing conditions and the structure of expenses of older people are also less favourable in comparison to general population. The existing systems of social and health protection do not meet the needs

2 2011Census data available at the website of the Statistical Office of the Republic of Serbia http://webrzs.stat.gov.rs (accessed on 12. 05. 2014).

3 National strategy for sustainable development, 2008, p. 55.

4 Combined report on the work of centres for social welfare for 2012, National Institute for Social Welfare, Belgrade, 2013, p. 51.

5 Combined report on the work of institutions for accommodation of adults and older people in Serbia for 2012, National Institute for Social Welfare, Belgrade, 2013, p. 51.

of older people and there are obvious weaknesses in other means of social support, assistance and protection for older people.[6] Such data clearly indicates structural discrimination targeting older people as well as its consequences.

The voice of older people and their problems fail to reach public policies and physical, psychological and economic elder abuse – as a form of gender based violence targeting those without power to resist – remains a taboo. There is a notable lack of studies and public discussion on this topic and the society has not ensured adequate assistance and support measures. Patriarchal stereotypes contribute to enduring invisibility of violence and other means of oppression of older people – especially older women – because older persons are reluctant to report such instances due to shame, fear as well as poor knowledge on protection mechanisms and doubts that institutions can indeed provide help.

Although complete data on the status of older people and violations of their rights does not exist, the data collected by civil society organisations shows that older people are frequently exposed to different forms of indirect and direct discrimination, that they are victims of different forms of violence, abuse and neglect in their families, but also in institutions for their accommodation as well as in the wider societal context,[7] which is a result of a multitude of factors. .

Older people are the largest population among persons in institutional accommodation. In 2012 they made 84.05% of all beneficiaries of nursing homes. Older people are sometimes institutionalised against their will and during the decision making process more attention is paid to the needs of their family members – such as the need for more living space – and less to the needs and wishes of the older person.[8]

The number of older persons deprived of legal status is shockingly high. Only in 2012, 842 persons were completely deprived of legal status and another 96 were partially deprived,[9] with reasons for the decisions being listed as "illness" and "difficulties in psychological/ physical development ".[10]

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6 For more detail on socio-economic position of older people in Serbia, see : National strategy on Ageing 2006-2015, http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678.

7 Petrušić, N., Todorović, N., Vračević. M., Elder Abuse : A study of domestic violence / - Belgrade: Red Cross of Swerbia, 2012; Satarić, N., Milićević-Kalašić, A., Ignjatović, T., Deprived through ignorance, Belgrade, Amity, 2013. http://www.amity-yu.org/images/Publikacije_Istrazivanja/obespravljeni%20iz%20neznanja%20sep2013.pdf

8 Special report of the Protector of Citizens on monitoring in institutions for accommodation od older people in 2010, Belgrade, Protector of Citizens, 2011, p. 72.

9 Combined report on the work of centres for social welfare for 2012, National Institute for Social Welfare, Belgrade, 2013, p. 54.

10 Ibidem

One of the least explored forms of elder abuse is economic (financial) abuse, the form that targets older people in both family and public context. It has different forms, creates exceptionally bad consequences and often endangers the older person's very existence. Although there is no reliable data on the prevalence of economic elder abuse there are estimations that older people are frequently exposed to its many forms. The most frequent of those are: control over funds, taking away money and other valuables, being prohibited from managing personal income or property acquired through personal work or inheritance, misguidance and other disallowed forms of influence on the older person to renounce inheritance/ marital property, not being provided with legally mandatory livelihood and failing to meet duties stipulated by the contract on lifelong care, fraud and exploitation, neglect of older persons, abuse of the institute of deprivation of legal status and guardian status for material gain etc.

Economic abuse is born from a combination of subjective and objective factors. It is a form of violation and breach of human rights of older persons and contributes to their social isolation and marginalisation. The process of democratisation in Serbia as well as Serbia's involvement with European integration both dictate the need for accelerated building of efficient mechanisms for suppression of elder abuse and protection of older people from all abuse, including economic. Therefore it is necessary to gain better insight in the phenomenon of economic elder abuse, its prevalence and main forms. This was the main goal of the pilot research the results of which will be presented below. While creating the concept for the research the initial interest was to explore those forms of economic elder abuse that are most frequently encountered in practice.

The first part of the research is a short exploration of the relevant legal framework. We have provided an overview of binding and non binding international treaties at UN and European Council level. National legislation is divided in two bodies: the first are general regulations related to human rights while the second consists of regulation directly linked to protection from economic abuse and this part is analysed in more detail, pointing out inadequate and imprecise regulation that leave room for wrong interpretation and abuse.

The second part also present the interpreted results of the exploratory research as well as the results of one case study while the third part provides key findings and recommendations.

II LEGISLATIVE FRAMEWORK

In terms of protection of older people from economic abuse, the relevant legal framework consists of international treaties adopted by UN and European Council as well as national legislation: laws and bylaws as well as strategic documents that create the foundation for public policies in particular areas, as well as those that stipulate special measures and activities to improve the position of older people

1. Universal international documents

Considering that UN have not yet adopted a new convention focusing on protection of older people as a discrete vulnerable group – although it has been in preparation for many years[11] – there are other relevant universal documents on human rights that focus on general population as well as those focusing on protection of particular marginalised and vulnerable population groups.

Key documents on protection of human rights: UN Charter from 1945,[12] Universal Declaration on Human Rights from 1948,[13] International Covenant on Civil and Political Rights from 1966,[14] International Covenant on Economic, Social and Cultural Rights from 1966,[15] International Convention on the Elimination of All Forms of Racial Discrimination from 1965,[16] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment from 1984,[17] Convention on the Elimination of All Forms of Discrimination against Women

11 On reasons for adoption of a special convention on older people's right see: Why Do We Need a Human Rights Convention for Older Persons? http://www.globalaging.org/agingnjatch/convention/ njhy/index.htm, Why it's time for a convention on the rights of older people (2009), http://njnjnj.globalaging.org/elderrights/njorld/2009/ Humanrightsconvention.pdf; What difference would a New Convention Make to the Lives of Older People? (2008) http://www.globalaging.org/elderrights/njorld/2008/nenjconvention.pdf

12 Signed on 26 June 1945 on San Francisco, came into force on 24 October1945.

13 Adopted and publicised by UN General Assembly resolution 217 (III) of 10 December 1948.

14 Adopted via Resolution 2200A (XXI) of the General Assembly on 16 December 1966. Came into force on 23 March 1976, „Official Gazette of SFRJ – International Agreements", no. 7/71.

15 „Official Gazette of SFRJ – International Agreements", no. 7/71.

16 Adopted by UN General Assembly at the 1965 session, came into force in 1967 („Official Gazette of SFRJ", no. 31/67).

17 Adopted and open for ratification, signing and accession through a General Assembly resolution no. 39/46 of 10 December 1984. Came into force on 26 June 1987. („Official Gazette of SFRJ – International Agreements", no. 9/1991).

(CEDAW) from 1979[18] and Convention on the Rights of Persons with Disabilities from 2006.[19] We put special emphasis on the Convention on the Rights of Persons with Disabilities which, among other things obliges governments to adopt adequate measures to change or abolish existing legislation, regulation, customs and practices that are discriminatory towards persons with disabilities as well as to ensure that public bodies and institutions adhere to the Convention and follow its stipulations in practice. The Convention emphasises equality before the law and stipulates that a person can not be deprived of legal capacity based on disability only. Article 12 of the Convention stipulates that persons with disabilities have the right to be recognised before the law as any other person, that they are granted legal capacity and that the states parties will take adequate measures to ensure accessibility of support they may need to exercise their legal capacity, as well as ensure that all measures related to exercising legal capacity provide adequate and efficient guarantees in order to prevent abuse in line with the principles of international law relevant to human rights.[20]

International human rights treaties also established treaty bodies with the duty to monitor compliance of member states with the treaties. After providing the successor statement in 2001, Serbia started following international standards of human rights and established the practice of providing national reports to UN bodies and other international bodies. These reports detail

18 Adopted on 18 December 1979 in New York at the UN General Assembly session. SFRJ ratified it via the Law on Ratification of Convention on the Elimination of All Forms of Discrimination against Women („Official Gazette of SFRJ – International Agreements", no. 11/81). SRJ was also a member of Optional Protocol of this convention that was adopted on 6 October 1999 in New York at the UN General Assembly session, and came into force on 22 December 2000 The Law on Confirmation of Optional Protocol of the Convention on the Elimination of All Forms of Discrimination against Women, „Official Gazette of SRJ – International Agreements", no. 13/2002). In force since 28 December 2002.

19 Adopted at the General Assembly session on 13 December 2006 in New York, opened for signing and ratification on 30 March 2007, and came into force on 3 May 2008. Serbia signed the convention and its optional protocol on 17 December 2007 and ratified it through a Law on Ratification of the Convention on the Rights of Persons with Disabilities („Official Gazette of RS", no. 42/09).

20 It is underlined that such guarantees will ensure that the measures used for deprivation of legal capacity will respect the rights, the will and the priorities of the person, that conflict of interest and undue influence will be avoided, that they are proportional and adequate for the circumstances of the person in question, that the process takes the shortest time possible and that the person and the person's circumstances will be at regular intervals reviewed of the appropriate independent and impartial body or a judicial organ. The guarantees will be proportional to the degree to which these measures affect the rights and interests of the person in question. Also, the state parties will take all necessary and efficient measures to ensure all the rights of persons with disabilities to have or inherit property, to control their finances and to have equal access to bank credits, mortgage loans and other forms of financial crediting, as well as the right not to be deprived of their property without their will, are protected.

the fulfilling the agreed duties stipulated by international treaties. The Republic of Serbia is also compliant with all the procedures for appeal under UN instruments on human rights that it has ratified. Also of note for Serbia are general comments of monitoring bodies such as UN Human Rights Committee and CEDAW committee, the Committee on the Rights of Persons with Disabilities etc., as well as closing comments that monitoring bodies provide to Serbia as feedback to its periodical reports on implementation of international treaties.

As a UN member state, Serbia is obliged to respect the standards and follow the recommendations contained in the acts of specialised UN organisations, organs, bodies and agencies, such as the Declaration on the Rights of Disabled Persons from 1975,[21] Convention No. 159 concerning Vocational Rehabilitation of Employment of Disabled Persons from 1983,[22] Principles for the protection of persons with mental illness and the improvement of mental health care from 1991,[23] etc. Also of note are the conventions of the International Labour Organization,[24] as well as the documents of the World Health Organisation,[25] with especially important being the Toronto Declaration on the Global Prevention of Elder Abuse from 2002,[26] which defines elder abuse as „ a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person". It can be of various forms: physical, psychological/emotional, sexual, financial or simply reflect intentional or unintentional neglect. ".[27]

Another important element of the international legal framework for protection of older people is the United Nations Millennium Declaration adopted by the UN General Assembly in September 2000,[28] where leaders of 147 states accepted „*collective responsibility to uphold the principles of human dignity, equality and equity at the global level*".[29] Also of note are the

21 Declaration on the Rights of Disabled Persons, proclaimed through a UN General Assembly resolution 3447 (XXX) of 9 December 1975.

22 Convention No. 159 concerning Vocational Rehabilitation of Employment of Disabled Persons, adopted in Geneva on 20 June 1983, came into force 1985. „Official gazette of SFRJ – International treaties" no. 3/1987.

23 Principles for the protection of persons with mental illness and the improvement of mental health care, UN General Assembly resolution 46/119 of 17 December 1991.

24 Convention talks about discrimination related to employment and professional engagement (br. 111; ILO – C – 111), Vocational Rehabilitation and Employment (Disabled Persons) Convention (br. 159; ILO – C – 159), Human Resources Development Convention (br.142; ILO – C – 142) etc.

25 Almaty Declaration (1978), Ottawa Charter (1986), Jakarta Declaration (1997) etc.

26 http://www.who.int/ageing/projects/elder_abuse/alc_toronto_declaration_en.pdf.

27 See page 2 of the Toronto Declaration.

28 A/RES/55/2.

29 In order to achieve these values a set of Millennium Development Goals (MDG)was defined and explained in the guidelines for the implementation of the Millennium Declaration. MDG have helped quantify the monitoring and evaluation of the results of sustainable

Beijing Declaration and Platform for Action adopted at the IV World Conference on Women organised in Beijing, China in 1995[30] that aim to remove all the obstacles to active participation of women in all spheres of public and private life. A separate section of the Platform for Action is dedicated to violence towards women that violates, threatens and quashes the exercise of human rights and fundamental freedoms of women and that is, as was underlined, a manifestation of unequal balance of power between men and women which lead to domination of men and discrimination of women, putting barriers to complete progress for women. Older women are categorised as especially vulnerable women and measures and activities were suggested in order to prevent and eliminate all form of violence towards women including older women.

Also relevant are plans of actions and UN recommendations specifically referring to older people: The Vienna International Plan of Action on Aging from 1982,[31] as well as United Nations Principles for Older Persons adopted by the UN General Assembly Resolution in 1991,[32] that recommend to governments to create their national programmes targeting older people by respecting the principles of independence, social participation, social care, self fulfilment and dignity of older people. When creating the programmes, governments should bear in mind the need of older people to live in dignity and safety, protected from exploitation and physical and psychological abuse, safe in knowledge they will be treated fairly regardless of their age, racial or ethnic background, disability or any other status as well as that they will be respected regardless of their economic contribution. Also of note is the Political Declaration on Ageing adopted alongside the Madrid International Plan of Action on Ageing[33] at the Second World Assembly on Ageing held in 2002 in Madrid. Priority

development and poverty eradication until 2015 in all countries. In terms of improving older people's position, of note is the first MDG – eradicating extreme poverty and hunger, the third MDG – promoting gender equality and empowering women, and the sixth goal – combat HIV/AIDS, malaria, and other diseases.

30 The documents build on the results of previous conferences and UN summits: World Conference on Women in Nairobi, 1985, The Children's Summit, New York, 1990, United Nations Conference on Environment and Development, organised in Rio de Janeiro in 1992, World Conference on Human Rights, organised in Vienna in 1993, International Conference on Population and Development, organised in Cairo in 1994as well as World Summit for Social Development, organised in Copenhagen in 1995, with their common goal being achieving equality, development and peace (see point 10 of the Beijing Declaration).

31 Vienna International Plan of Action on Ageing, adopted by World Assembly on Aging held in Vienna, Austria from 26 July to 6 August 1982, and confirmed by the decision of the UN General Assembly ofthe same year (Resolution 37/51).

32 Resolution 46/91 of 16 December 1991: http://www.un.org/esa/socdev/ageing/un_principles.html. The same year UN declared 1 October the International day of Older Persons.

33 Political Declaration and Madrid International Plan of Action on Ageing, 2002, A/CONF.197/9. http://www.un-ngls.org/orf/pdf/MIPAA.pdf.

directions of action aim to, among other things improve the wellbeing of older persons and ensure the environment that provides opportunities and support to older people.

Madrid International Plan of Action on Ageing (hereinafter MIPAA) contains concrete recommendations for improvement of social position of older people across the world. Special emphasis is put on physical, psychological, emotional and other neglect, abuse and violence towards older persons, especially women who are at a higher risk of every type of neglect, abuse and violence due to discriminative attitude in the society and barriers for women to exercising their rights, as well as poverty among women and lack of adequate legal protection. Elimination of all forms of neglect, abuse and violence towards older people and creating services for support to older people who are exposed to abuse are two key goals defined in this sector.

Based on the Madrid Political Declaration and MIPAA, the United Nations Economic Commission for Europe (UNECE) has in 2002 adopted Regional Implementation Strategy for MIPAA.[34] This document sets den duties of member states: mainstreaming ageing (promoting ageing as factor in policies in all sectors), integration and participation of older people, support of fair and sustainable economic growth as a response to population ageing, adapting social security systems to respond to demographic changes and their socio-economic effects, enabling labour markets to react to social and economic effects of population ageing, stimulating lifelong learning and adapting the education systems to changing economic, social and demographic realities, efforts to ensure quality of life for all age groups and preserve independent living and health and wellbeing of older people, improving gender equality, support to families providing care to older persons and improve intergenerational and intergenerational solidarity among family members, as well as support to implementation and further activities in implementation of Regional Implementation Strategy through regional cooperation.[35]

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34 ECE/AC.23/2002/2/Rev.6 of 11 September 2002, http://www.unece.org/pau/_docs/ece/2002/ECE_AC23_2002_2_Rev6_e.pdf.

35 In the MIPAA Monitoring, Assessing and Reporting Modalities report submitted by the UN Secretary General to the Commission for Social Development it is stated that exchange of information between states is of crucial importance, including experience and examples of good practice, joint conclusions and priorities for future cooperation and technical support. Regional commissions have developed concrete plans for monitoring and assessing and in 2007 regional conferences on monitoring and appraisal of MIPAA have been organised. This work also included the UNECE Secretariat with support from European Centre in Vienna and Special Working Group for monitoring of the Regional Implementation Strategy of MIPAA.

2. European Council Documents

At the level of European Council the key document in the area of protection of human rights is European Convention on Human Rights (formally Convention for the Protection of Human Rights and Fundamental Freedoms) adopted in 1950 and its protocols,[36] that established legal standards in Europe. The Convention guarantees a number of civil and political rights (articles 2-13) and stipulates that enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (article 14).

Revised European Social Charter from 1996[37] improves protection of fundamental social and economic rights of the citizens of member states. In the area of social protection older people are guaranteed the right to social protection. Article 23 of the Charter stipulates that the member states are obliged to undertake to adopt or encourage, either directly or in cooperation with public or private organisations, appropriate measures designed in particular to enable older persons to remain full members of society for as long as possible. In addition the state parties are obliged to enable older persons to choose their life style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of provision of housing suited to their needs and their state of health or of adequate support for adapting their housing. State parties are also obliged to guarantee older persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

Revised Strategy for Social Cohesion was adopted on 31 March 2004 and contains fundamental assessments and directions for action in all important aspects of the EU social policy.[38] The strategy was based on human rights and underlines the necessity of achieving equality of men and women as well as the need for special focus on realistic overview of rights and needs of individuals and groups in the society that are exposed to a higher risk of potential social vulnerability, which includes older persons, especially those living on their own and without a family to provide some support. Among other tasks, the Strategy stipulates supporting family and encouraging family solidarity with priorities being: social protection, social services, employment and housing.

At European Council level there is a number of documents aiming to improve socio-economic position, health and legal protection of persons with disability such

36 State Union of Serbia and Montenegro ratified the Convention („Official gazette of SCG – International treaties", no. 9/2003).

37 Law on ratification of the Revised European Social Charter („Official gazette of RS", no. 42/09).

38 Serbia ratified this Strategy („Official gazette of SCG", no. 18/05).

as: Recommendation No. R (92) 6 of the Committee of Ministers to Member States on a Coherent Policy for People with Disabilities,[39] Recommendation 1592 (2003) by the Council of Europe Parliamentary Assembly "Towards full social inclusion of people with disabilities",[40] 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.[41]

As for protection from domestic abuse and other forms of gender based violence, European Council has adopted a number of documents including Declaration on policies for combating violence against women in a democratic Europe from 1993,[42] Recommendation Rec(2002)5 of the Committee of Ministers to member States on the protection of women against violence from 2002[43], that reaffirms that abuse towards women is a result of unequal balance of power between men and women, that it leads to discrimination of women and violation of their human rights and fundamental freedoms which is at odds with the initiative to create equality and peace in democratic Europe, Domestic violence against women, Recommendation 1582 (2002),[44] from 2002.

Of special importance is the newest Council of Europe Convention on preventing and combating violence against women and domestic violence adopted in Istanbul on 11 May 2011 that Serbia ratified and enabled it to come into force.[45] This convention (colloquially

39 Recommendation No. R (92) 6 of the Committee of Ministers to Member States on a Coherent Policy for People with Disabilities, adopted on 9 April 1992. http://wallis.kezenfogva.iif.hu/eu_konyvtar/projektek/vocational_rehabilitiation/instr/coe_3.htm.

40 Recommendation 1592 (2003) by the Council of Europe Parliamentary Assembly "Towards full social inclusion of people with disabilities" of 29 January 2003 http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta03/erec1592.htm.

41 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, http://www.coe.int/t/e/social_cohesion/soc-sp/Rec(2006)5%20Disability%20Action%20Plan.doc.

42 Declaration on policies for combating violence against women in a democratic Europe, adopted during the Third Ministerial Conference on Equality between Men and Women held in Rome 21-22 October 1993.

43 Recommendation Rec(2002)5 of the Committee of Ministers to member States on the protection of women against violence of 30 April 2002, http://www.humanrights.coe.int/eljuality/Eng/WordDocs/2002r5%20Violence%20recommendation%20English.doc

44 Domestic violence against women, Recommendation 1582 (2002), adopted by their Board of Ministers on 27 September 2002 http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta02/EREC1582.htm

45 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Istanbul, 11/05/2011, came into force on 1/07/2014. See: The law on ratification of Council of Europe Convention on Preventing and Combating Violence against

called Istanbul Convention) is the first and so far only European legally binding instrument related to abuse of women, that establishes the standard of "complete dedication" in prevention, protection, legal proceedings, and sanctioning of acts of violence. The Convention adopts a clear gender perspective as it indicates structural ties between violence against women and gender inequalities. It also contains clear requests and standards in relation to legislation and strategic framework as well as standards related to prevention, comprehensive measures for legal and institutional protection and support to victims, legal processing and sanctioning of perpetrators as well as the programme of their treatment. Implementation of the Convention demands significant changes in legal and strategic framework for prevention and suppression of violence towards women.[46]

3. National sources

1.1. Legislation o human rights and prohibition of discrimination

In addition to the Constitution of the Republic of Serbia from 2006,[47] that guarantees a host of civil, political, economic and social rights, there are other pieces of legislation important for enjoyment of human rights, such as anti-discrimination laws. The Law on Prohibition of Discrimination[48] establishes a complete and comprehensive system for protection against discrimination. Age is identified as grounds for discrimination which is explicitly forbidden and the document also defines different forms of discrimination relying on international and European standards. The Law on Prevention of Discrimination of Persons with Disabilities from 2006[49] manages the regime of protection from discrimination based on disability, special cases of discrimination of persons with disability, process of protection of persons exposed to discrimination as well as the measures that the state takes to encourage equality and social inclusion of persons with disabilities. The Law on Gender Equality from 2009[50] creates the conditions for policies that ensure equal opportunities, enjoyment of human rights by women and men, creating regulation and taking special measures to prevent and erase discrimination based on gender and personal characteristics related to gender including special measures that provide effective protection from gender based violence.

Women and Domestic Violence, „Official Gazette of RS – International Treaties". no. 12/2013).

46 See more: Branković, B. News from the future: Functioning of general services – operationalization of due diligence, UNDP, Belgrade, 2013, page. 15 and on.

47 „Official gazette of RS", no. 98/2006.

48 „Official gazette of RS", no. 22/09.

49 „Official gazette of RS", no. 33/06.

50 „Official Gazette of RS", no. 104/09.

1.2. Legislation related to protection from domestic abuse

3.2.1. Domestic abuse – basis and definitions

According to the commonly used definition domestic abuse is any form of physical, psychological, sexual or economic abuse perpetrated by one family member towards the other family member regardless of whether this act is incriminated by applicable legislation or whether the perpetrator was reported to law enforcement.[51] The newest Council of Europe Convention on preventing and combating violence against women and domestic violence from 2011 defines domestic violence as "all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim" (Article 2).

Domestic abuse is most commonly perpetrated against women, children and helpless persons[52] which confirms the stance that the phenomenon of domestic violence is made possible through gender discrimination and lack of society's responsibility for violence towards those without power or ability to resist.[53] Different factors influence the occurrence of domestic violence: socio-economic, social, cultural, psychological and numerous other factors. The societies with recent armed conflict experiences and societies under stress, such as Serbia, transitional process and war are additional, very strong generators of domestic violence.[54]

51 More on defining domestic abuse: Konstantinović Vilić, S., Nikolić-Ristanović, V.: Kriminologija, SKC, 1998, p. 122; Konstantinović, V. S., Pravna zaštita od nasilja, Ženski istraživački centar za edukaciju i komunikaciju, Niš, 1999, p. 7; Lukić, M., Kriminološka analiza nasilja u porodici, magistarska teza, Niš, 2003. In the attempt to explain the causes of domestic abuse, especially partner abuse, many theories were created: the mental illness theory, the theory of intergenerational transfer of abuse, theory of abuse cycles, theory of anger, theory of power and control etc. (See: Razumevanje nasilja prema ženama, istraživanja, programi delovanja i uloga institucija, (ur. Ignjatović, T.), Autonomni ženski centar, Belgrade, 2002 and the literature listed in this publication.

52 See: Inter-Balkan Conference on Legal Strategies to Combat Domestic Violence, Sofia, Bulgaria, 1997; Logar, R., Austrijski model intervencije u slučajevima nasilja u porodici, European Network Women Against Violence, Serbian Translation Autonomous Women's Centre, Belgrade, 2005, p. 3; Nikolić-Ristanović, V., Od žrtve do zatvorenice, Viktimološko društvo Srbije, Belgrade, 2000, p. 17).

53 In all societies, violence is usually a mark of the partner with most power and takes place in relations where difference in power levels between subjects is greatest. (See: Nikolić Ristanović, V., Ka objašnjenju i prevenciji nasilja u porodici u Srbiji: multivarijantni pristup, u: „Pravom protiv nasilja u porodici", ZIC, Niš, 2002, p. 7; Lukić, M., Model zaštite od nasilja u porodici, Neka pozitivnopravna rešenja u svetu i kontraverze u njihovoj primeni, „Temida", no. 2/99, p. 9).

54 See in more detail: Nikolić Ristanović, V., Ka objašnjenju i prevenciji nasilja u porodici u Srbiji: multivarijantni pristup, u: „Pravom protiv nasilja u porodici", ŽIC, Niš, 2002, p. 9-15 and the list of literature therein. In the attempt to explain the causes of domestic abuse, especially partner abuse, many theories were created: the mental illness theory, the theory of

Empirical research of the domestic violence phenomenon in Serbia so far showed that this form of violence is on the rise, that its targets are most frequently women, children and older and helpless persons, that most frequent perpetrators tend to be marital and extramarital partners, that persons who ere targeted by domestic violence still tend not to report the violence and that families where domestic violence takes place are environments where fundamental human rights are threatened and violated.[55]

Older people, as a defined vulnerable group, are often exposed to different risks of violence, abuse and neglect, which leads to violations of human rights and freedoms and contributes to their social isolation and marginalisation. Starting point for contemporary views on elder abuse is the WHO definition outlined in the document "World report on violence and health" published in 2002 that defines elder abuse as "a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person".[56] This definition puts clear emphasis on the abuse of power and control and places elder abuse in the same context of power relations as the abuse towards women and children.[57]

Elder abuse in family context is viewed as a special form of domestic abuse[58] and is defined as *any means of physical, psychological, sexual or economic abuse*[59]*perpetrated on an older person by another member of the same family and that jeopardises safety and trust and establishes control and power over the older person regardless of whether this form of behaviour is incriminated by applicable legislation or whether the perpetrator was reported to law enforcement*.[60]

Elder abuse is commonly classified in seven categories, depending on the forms it takes and consequences it causes: physical, sexual, emotional, economic, neglect, abandonment, and

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intergenerational transfer of abuse, theory of abuse cycles, theory of anger, theory of power and control etc. (See: Razumevanje nasilja prema ženama, istraživanja, programi delovanja i uloga institucija, (ur. Ignjatović, T.), Autonomni ženski centar, Belgrade, 2002 and the literature listed in this publication. See also: Babović, M., Ginić, K., Vuković, O., Mapiranje porodičnog nasilja u Centralnoj Srbiji, Belgrade, SeConS, 2010

55 Domestic violence in Serbia, p. 13.

56 http://wwwlibdoc.njho.int/publications/2002/9241545615_eng.pdf

57 See: Ajduković, M., Risac, S., Ogresta, J., Izloženost starijih osoba nasilju u obitelji, Revija za socijalnu politiku, 1/2008, page 4.

58 Konstantinović –Vilić, S., Nikolić-Ristanović, V., Kostić, M., Kriminologija, Niš, 2009, page 135.

59 On forms of this type of abuse in detail: Poredoš, D., Tošić, G., Nasilje u obitelji nad osobama starije životne dobi, http://www.psihijatrija.com/psihijatrija/grane%20GERONTOPSIHIJATRIJA/PoredosD%20NasiljeStarijadob.pdf

60 On causes of elder abuse, in detail: Rusac, S., Nasilje nad starijim osobama, Ljetopis socijalnog rada, 2/2006, http://hrcak.srce.hr/7709

self-neglect,[61] but in practice older persons are usually exposed to a combination of these forms, usually continuing over prolonged periods of time.

For a long time elder abuse in family context was not a subject of more detailed research as older people were not considered a separate vulnerable category of population. The first comprehensive researches into prevalence of this type of criminal behaviour were done in mid-eighties in USA and the phenomenon of elder abuse was systematically monitored ever since. The official term – elder abuse – was also adopted at the same time.[62] Another term used for abuse of older persons in family context is *Domestic Violence in Later Life*.[63]

Although in the last several years the phenomenon of domestic abuse in Serbia became a subject of comprehensive research from both phenomenological and etiological aspects,[64] those looking into economic abuse of older people in family context are small in number. Also, after the system for protection from domestic abuse was established, several research studies were done looking into and evaluating the effectiveness of functioning and the degree of success of the institutional protection from domestic abuse.[65] These research studies however were not

61 See: Tatara, T., Kuzmeskus, L. Types of Elder Abuse in Domestic Settings, National Center on Elder Abuse, http://www.ncea.aoa.gov/Resources/Publication/docs/fact1.pdf

62 The WHO report from 2002 based on five studies from USA, Netherlands, Canada, Finland and UK reports that 4-6% of older people have been exposed to abuse perpetrated by their family members. Here it needs to be kept in mind that the „dark number" of domestic elder abuse is exceptionally high. It is estimated that out of 13 or 14 cases of elder abuse only one ends up being reported. Collins, K.A., Elder maltreatment. A review. Archives of Pathology and Laboratory Medicine, 2006, 130:1290 – 1296, quoted via: Ajduković, M., Risac, S., Ogresta, J., op. cit., page 4. Researches done by the National Center on Elder Abuse in the USA show that in 1990 most victims of elder abuse were women (approximately 68.3%), with perpetrators being predominantly men (approximately 55.7%). However, the trend of increasing numbers of female perpetrators and decreasing numbers of women among victims can be observed. Analysing the relationships between older people exposed to abuse and those perpetrating the abuse shows that abusers are commonly and increasingly grown up children of the victim, followed by other family members with spouses being the least common perpetrators. Tatara, T., Kuzmeskus, L., ibidem.

63 Domestic Violence in Later Life: A Guide to the Aging Network for Domestic Violence and Victim Service Programs, National Association of State Units on Aging, http://www.ncea.aoa.gov/Resources/Publication/docs/nceaissuebrief.agingnetworkguideDV.pdf. Mandatory Reporting of Elder Abuse: Implications for Domestic Violence Advocates National Clearinghouse on Abuse in Later Life (NCALL), A Project of the Wisconsin Coalition Against Domestic Violence, http://www.ncall.us/sites/ncall.us/files/resources/MR%20Paper%20REV%202011.pdf .

64 See: „Porodično nasilje u Srbiji", V. Nikolić Ristanović, (ur.) VDS, „Prometej", Belgrade, 2002; Lukić, M., Jovanović, S., Drugo je porodica, Nasilje u porodici – nasilje u prisustvu vlasti, Institute for Criminolotgical and Sociaological Research, Belgrade, 2001.

65 Konstantinović Vilić S., Petrušić, N., Krivično delo nasilja u porodici – pravna praksa u Republici Srbiji, Ženski istraživački centar, Niš, 2004; Belgrade, 2007 Konstantinović Vilić S., Petrušić, N., Krivično delo nasilja u porodici – aktuelna pravosudna praksa u Beogradu i Nišu, AŽC, ŽIC; Belgrade, 2007; Petrušić, N., Konstantinović Vilić S., Porodičnopravna zaštita od

aimed at discovering potential specific types of institutional behaviour in cases of economic abuse of older family members.

Researches done in different countries show that older people, regardless of their gender, living alone and unable to take care of themselves and thus reliant on assistance of others, persons with disabilities and chronic illnesses, unable to protect themselves are at a highest risk of domestic abuse. However, women are still more prevalent in this category.[66]

Domestic abuse, including economic abuse of older people in their families is a phenomenon that was side-lined and ignored by our society for decades, minimising the awareness of its consequences.[67]

3.2.2. Normative framework of protection from domestic abuse

Thanks to, above all, years of efforts by women's civil society organisations to make domestic abuse visible in the society and to their systematic public advocacy and lobbying for adoption of adequate legal solutions, as well as to the political will demonstrated by the authorities to follow the international standards and build mechanisms for suppression of and protection from domestic abuse, the process of establishing legal instruments for these purposes was finalised in Serbia in 2005. The first step was identifying domestic abuse as a separate criminal act,[68] and the adoption of the Family Law[69] rounded off the legal system for protection from domestic abuse through stipulating legal measures of protection within the family. Concept of domestic abuse as criminal act was later refined by changes of the Criminal Law in 2005[70] and the Law on changes and amendments to the Criminal law of the Republic of Serbia from 2009.[71]

Protection from domestic abuse stipulated by Family Law is based on explicit legal ban of abuse in the family, on recognising the right to be protected from abuse in family context to family members (Article 10 FL), on stipulating the measures of family law protection and the conditions under which they are ordered (Articles 197-200 FL) and on defining specific process

nasilja u porodici u pravosudnoj praksi Srbije, AŽC, ŽIC; Belgrade, 2010.

66 Project **„**Prevencия na domašnoto nasilie sred vъzrastni hora", http://icss-bg.org/bg/wp-content/uploads/2014/03/Analiz_anketno_prouchvane_website.pdf

67 In more detail: „Porodično nasilje u Srbiji", V. Nikolić Ristanović, (ur.) VDS, „Prometej", Belgrade, 2002; Lukić, M., Jovanović, S., Drugo je porodica, Nasilje u porodici – nasilje u prisustvu vlasti, Institut za kriminološka i sociološka istraživanja, Belgrade, 2001.

68 Article 118a of the Law on changes and amendments to the Criminal law of the Republic of Serbia („Official Gazette of RS", no. 85/2005).

69 Family Law, „Official Gazette of RS", no. 18/2005 (hereinafter FL).

70 „Official Gazette of RS no. 85/2005. (Hereinafter: CL).

71 „Official Gazette of RS no. 72/09.

rules for court cases started in order to ensure protection from domestic abuse (Articles 283-289 FL).[72]

According to the Article 197, paragraph 1 of the Family Law, domestic abuse is "conduct through which one family member threatens physical integrity, mental health or emotional balance of another family member". Paragraph 2 of this Article lists the individual acts of domestic abuse: causing bodily harm, attempt to cause bodily harm, forced sexual intercourse, inveiglement to sexual intercourse of or sexual intercourse with a person below the age of 14 or a helpless person, restricting one's freedom of movement or communicating with third parties, insulting (named forms of abuse) and any other impertinent, disrespectful and malicious behaviour (unnamed forms of abuse). The named forms of abuse do not list economic abuse among them although it is included in the general definition of abuse considering that it threatens mental health and emotional balance of another family member.

The subjects granted protection from domestic abuse through Family Law include: marital spouses or former marital spouses, children, parents and other blood relatives as well as in-laws or adopted family members, as well as persons in foster care, persons who live or have lived in the same family household, extramarital partners or former extramarital partners, persons who used to be or still are in emotional or sexual relationship or persons who have a child or a child is about to be born even though they have never lived in a family household together. (Article 197 paragraph 3 FL).[73]

Article 198, paragraph 2 of the Family Law defines five distinct measures of protection: order to leave the family apartment or house regardless of the property or lease rights; order to allow move into the family apartment or house regardless of the property or lease rights, restraining order – prohibiting approaching family member at a certain distance; prohibiting access to the space around the family member's place of residence or work place and prohibiting further harassment of the family member. The measures are regulated following the enumeration system so court is not allowed to order any other measures but may order more than one of the listed measures and combine them freely to ensure they present adequate response to the circumstances of a particular case.

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72 More detail on family law protection from domestic abuse: Petrušić, N., Konstantinović Vilić, S., Vodič kroz sistem porodičnopravne zaštite od nasilja u porodici, Autonomous Women's Centre, Women's Research Centre, Belgrade, 2006.

73 While defining the persons who are granted protection by Family Law, the authors of the law attempted to ensure that not only persons related through a „classical" family relationship are included, but also persons in quasi-familial relations that are known to be potential basis for abusive behaviour. See also: Draškić, M., Porodično pravo i prava deteta, Author, Čigoja štampa, Belgrade, 2005, page 57.

According to the article 198, paragraph 3 of the FL, court decides on the duration of each of the ordered measures whereas the maximum for each measure is one year and time spent in detention and any other time spent with limited freedom of movement in relation to the criminal act or misdemeanour will be included in the period of validity of the measure for protection against domestic abuse (Article 198, paragraphs 4 FL). It is also possible to extend the duration of the ordered measure until the reasons for its ordering are gone (Article 199, FL), and in cases where the reasons are gone before the duration of the ordered measure has expired there is option for the perpetrator of abuse to request its termination (Article 200, FL).

The court process in order to get the measures for protection from domestic abuse ordered or extended can be initiated by: family member who has been the target of abuse in the family, the family member's legal representative, public prosecutor and guardianship authority (Article 284, paragraph 2 FL). The process to terminate the ordered measure before its period of validity prescribed by court has expired can only be initiated by the family member who is the target of this measure (perpetrator).

As for the protection from domestic violence provide4d by Criminal Law, domestic abuse os defined as a separate criminal act by the Criminal Law of the Republic of Serbia.[74] According to the article 194, paragraph 1 of the CL, the criminal act of domestic abuse is defined by threatening emotional stability, physical integrity or mental status of a family member through application of violence, threat against life or body and impertinent or disrespectful behaviour. The latest amendments to the CL from 2009 stipulate the option for the court to order one or more measures of protection for the person who was the target of abuse, during the criminal proceedings.

According to Article 194 of the CL, there are five forms of criminal domestic abuse,[75] and they will be punished by a fine and imprisonment in the duration spanning from three months to 15 years. CL operates with a broader definition of the act and the word "threatening" here includes both application of violence and creating concrete danger of physical abuse or threats to physical integrity or mental status of a family member. Therefore, inflicting minor injuries or mental disorder to the victim does not represent elements of this type of criminal offense. It is the same in relation to the other from of this criminal offense mentioned in Article 194, paragraph 2 of the CL; in order for this criminal offense to be recognised, the perpetrator needs to use a weapon, a dangerous tool or other appliance that would enable infliction of grievous bodily harm and thus create a concrete risk of inflicting such injuries. Continuity is

74 Criminal Law („Official Gazette of RS", no. 85/2005, 88/2005 - amended, 107/2005 - amended, 72/2009, 111/2009, 121/2012 and 104/2013).

75 More details: Konstantinović Vilić S., Petrušić, N., Krivično delo nasilja u porodici – aktuelna pravosudna praksa u Beogradu i Nišu, AŽC, ŽIC; Belgrade, 2007, pages 12-16.

irrelevant in order for domestic abuse to be recognised as criminal offense – one instance of this act is sufficient.

A passive subject in the criminal offense of domestic abuse is a member of the family of the person perpetrating abuse whereas the members are defined by Article 112 paragraph 28 of the CL: marital spouses, their children, their ascendants in the direct blood line, extramarital spouses and their children, adopted children and their adopters, foster children and foster parents, brothers and sisters, their spouses and children, former spouses and their children and parents if they live in the same household as well as persons who have a child together or a child together on the way even though they have never lived in the same household.

Misdemeanour law does not recognise domestic abuse as a separate legally defined from of misdemeanour but leaves a possibility for an act of abuse to be qualified as misdemeanour breaching public order and peace as stipulated by the Law on Public Order and Peace.[76] Misdemeanour law prescribes eight measures for protection through the Article 46 of the Misdemeanour Law[77], and one measure than can be ordered in cases of misdemeanour identified as domestic abuse – restraining order that protects the victim, the objects or the place where offense took place. According to the ML, during the misdemeanour proceedings the offender may be detained by court order if the offender was witnessed perpetrating the deed whereas detention is meant to prevent further perpetration of misdemeanour (Article 166 ML). Detention may be ordered also if the person witnessed perpetrating the deed was under the influence of alcohol or some other intoxicating agent (Article 168, ML).

1.3. Legislation related to livelihood and inheritance

1.3.1. (Prevention of) exercise of the right to contractually agreed life care

One of the types of economic domestic elder abuse is failure to meet legal obligations related to provision of livelihood. Also, in practice there are fairly frequent cases of failure to meet contractual obligations related to life care contract, which is one of the instruments that older persons use relatively often in order to secure livelihood. There are also records of cases of illicit influence on older people in relation to their rights to inheritance including their right to inheriting property acquired through marriage as well as the right to increase of the hereditary share.

As for livelihood, defined as regular provision of means to meet basic life needs and other needs of the supported person, there are two forms of livelihood depending on the legal

76 „Official Gazette of RS“, no.51/1992, 53/1993, 67/1993,48/94,101/2005, 85/2005.
77 „Official Gazette of RS“, no. 101/05. (hereinafter: ML).

basis for it: legally obligatory livelihood – livelihood between persons who have familial or congenial relations (marriage, extramarital union or kinship) and is automatically enforced by law – and livelihood based on a contract – a life care contract.

The regulations on legally obligatory livelihood are contained in the Family Law. The Article 8 of this law stipulates that livelihood is the right and duty of family members. Articles 151-159 define which family members have the right to livelihood and which have the obligation to provide it as well as the order of priority in enjoying this right or providing this duty (Article 166). The order of priority was established by Family Law stipulating that a spouse has the right to livelihood primarily provided by the other spouse, that blood relatives are entitled to livelihood in the order of inheritance prescribed by law, and that in-law relatives are entitled to livelihood after blood relatives (Article 166). If more than one person are obliged to provide livelihood at the same time, their obligation is shared which is explicitly stated in the Article 166 of the FL.

The right to livelihood is recognised for marital partners (Article 151 of the FL) as well as extramarital partners[78] (Article 152 of the FL). The Article 128 explicitly states that marital partners are obliged to provide livelihood mutually under the conditions contained therein. The FL stipulates that the obligation of mutual livelihood of marital partners, that is fulfilled by providing a certain amount of funds or some goods to the other marital partner becomes legally binding only after they stop living together and their marriage legally still exists. Only then can a requested be made to have this right protected in court. Even though FL does not explicitly answer whether this right can be won in court if the marital partners factually still live together, or only when they have stopped factually living in union, the practical stance is that it is not possible to get the right to livelihood while the community of life between the marital partners still exists. This means that the partner who should be provided with livelihood needs to enter the divorce process or terminate marital union in order to be entitled to livelihood. There are no reasons that dictate that a marital partner should be deprived of judicial protection of her or his right to livelihood if she or he live in a factual communion with their marital partner. Therefore, it is needed to provide an explicit legal stipulation clarifying this situation in order to avoid confusion and the risk of uneven application of the law.

As for extramarital spouses, they are entitled to livelihood for the duration of the extramarital union as well as after its termination. While the extramarital union lasts the obligation of mutual livelihood is fulfilled spontaneously and is an integral part of the community of life. In this regard, the situation is identical to marriage and courts share the stance that court protection of the entitlement to livelihood cannot be obtained while the extramarital union still lasts. The

78 Extramarital union is a longer lasting union of a woman and a man for whom there are no legal barriers to marriage (Article 4, FL). More details: Draškić, M., op. cit. pages 157-166.

literature states that it may be justified to provide judicial protection of this entitlement when the marital partners are formally marries but their community of life does not factually exist anymore, but that it is not justified to recognise the right to judicial protection of the entitlement to livelihood to the extramarital partner "during the duration of extramarital union because where there is no community of life, there is no extramarital union". There are also opinions that spontaneous failure to fulfil the obligation of livelihood entitles the extramarital partner who is entitled to livelihood to seek judicial protection but this is listed only as a theoretical possibility, since the lack of spontaneity indicates that community of life does not exist anymore.

According to the stipulations of the Family Law, the marital partner who does not have sufficient means to support oneself and is unable to work or is unemployed is entitled to livelihood. Court practice is of a stance that a marital partner can be considered unemployed if she or he can not find employment through no fault of their own. This is considered in the context of opportunities for employment and the marital partner looking for employment is expected to invest maximum effort in finding employment which includes formal retraining of the partner can not find employment adequate for her or his current profession.[79]

According to the Article 151, paragraph 3 of the Family Law, the marital partner whose request for livelihood would result in "manifest injustice" for the other marital partner is not entitled to livelihood. Therefore extramarital partners are also deprived of this entitlement in accordance with the Article 152, paragraph 2 of the Family Law.

As for the duration of livelihood, the rule in force is that provision of livelihood to marital and extramarital spouses can not exceed five years in duration. Only in exceptional cases provision of livelihood to the marital partner after the termination of marriage can be extended beyond five year limit if there are particularly strong reasons that prevent the partner from working (Article 163, paragraphs 2 and 3 FL)[80] – such as older age, illness etc. Particularly strong reasons that prevent the partner from working must be true in the moment when the decision on the request to extend the period of provision of livelihood is being made. Extending the period of providing livelihood beyond the five year limit may be requested before the time limit is up since livelihood provision stops after five years and can not be extended any more.

79 See: Judgement of the District Court in Valjevo, Gž2. 13/2008 of 13/2/2008.

80 We believe that the suggested time limit was an expression of the realistic expectation of the authors of the law that the state would be capable of providing livelihood to those persons whose survival may be jeopardised upon the expiration of the five year period. However the practice shows that once the five year period expires, many former marital partners, mostly former wives, remain without any means for livelihood and they at the same time do not legally qualify for financial assistance provided via centres for social welfare as stipulated by Law on Social Protection.

Providing livelihood to marital and extramarital partners stops automatically as stipulated by law with death of either receiver or provider of livelihood or expiration of the period prescribed by law. Also, it is explicitly stipulated that provision of livelihood stops when the receiver of livelihood enters a new marital or extramarital union. The same goes for the extramarital partner as a receiver of livelihood (Article 167, Paragraph 3, Family Law).[81] Provision of livelihood stops when the receiver gains sufficient quantity of funds to make a living, when the provider of livelihood loses the capacity to provide it or provision of livelihood becomes manifestly unjust. If the entitlement to livelihood of the marital or extramarital partner has expired it can not be reacquired from the same provider – the law is explicit on that. (Article 167, paragraph 4 FL).

If the court order has been made on provision of livelihood, the obligation will exist until the court decides on the termination of the obligation. However, the provision of livelihood can factually stop by failing to provide livelihood. Namely, if the provider of livelihood stops providing livelihood because in the meantime legal reasons to do it have stopped and the receiver of livelihood has no objections to it, the livelihood provision then stops without the court decision. If a controversy arises from this between the parties, it is to be solved by litigation.

Family Law stipulates that the parent who is unable to work and does not have enough funds for livelihood is entitled to livelihood from her or his adult children or other adult younger blood relative in the straight line, as well from her or his child who is a minor but has earnings or income from property, in proportion with the child's capacities. (Article 165, paragraph 1). However the parent is not entitled to this if granting her or his request for livelihood would result in "manifest injustice" for the child or the other blood relative (Article 165, paragraph 2, Family Law).

The entitlement to livelihood is granted through extrajudicial and judicial means through litigation for livelihood,[82] by initiating alimony claim as stipulated by articles 277-282 of the FL and regulated by common process rules that are in force for all family related processes (articles 203-208 of the FL). Also, when needed the rules for general civil proceedings are used (article 202 of the FL), as stipulated by the Law on Civil Procedure.[83]

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81 Provision of livelihood does not, however, stop if the provider of livelihood enters a new marital or extramarital union. The fact that the plaintiff has, after divorcing the respondent, entered a new marital union with unemployed wife does not pose a relevant reason to terminate his obligation to provide livelihood established through divorce verdict, if the financial situation of the respondent have not improved since the verdict was made, nor the financial situation of the plaintiff has changed since the plaintiff was during the process of establishing the obligation of providing livelihood was already in union with his current wife and they were expecting a child. (See: Verdict of the Supreme Court of Serbia, Rev. 1979/2003 of 11/6/2003).

82 See in detail: Mandić, Lj., Postupak u alimentacionim parnicama, Master thesis, Niš, 1991, pages 37-39.

83 „Official Gazette of RS", no. 72/2011.

Older persons as a rule do not request court enforcement of their entitlement to livelihood as they are ashamed of the idea of suing their own children and they usually do not have sufficient information or means to go through a potentially complicated and long litigation process. On the other hand, they also can not exercise their right to receive social welfare financial assistance as the Law on Social Protection[84] in its Article 84 stipulates that the person is entitled to this right if evidence is shown that she or he sued those who are legally obliged to provide livelihood. For older people as parents it is not acceptable to sue their children so they are deprived of both the livelihood support and the social welfare provided by the society.

1.3.2. (Prevention of) exercise of the right to contractually agreed life care

One of the ways in which older persons ensure their own livelihood is by signing contracts on life care. This type of contract is regulated by Law on Inheritance,[85] as an agreement through which the receiver of livelihood agrees for some of her or his property – precisely defined by the contract – or some other rights to be transferred to the provider of livelihood upon the receiver's death, whereas the provider of livelihood agrees to – as compensation – provides livelihood and care to the receiver until the end of receiver's life, including burial. If not otherwise stipulated by the contract the life care obligation includes providing housing, food, clothes and footwear, adequate care in illness and the old age, costs of medical treatment and expenses of everyday, usual needs (Article 194, paragraph 3 of the LI). The obligation of the provider of livelihood is not restricted to material provisions, there is also a moral obligation that the provider is contractually bound to fulfil. In the court practice it is considered that there is obligation of providing personal care to the receiver of livelihood, as well as a multitude of personal services that were part of the social and cultural needs and life style of the receiver before the contract was signed such as visits by relatives and friends, visits to the institutions of culture, providing reading material etc. This obligation must be fulfilled exclusively through personal interaction of the provider and receiver of livelihood and the contract therefore has social and familial dimension.

Contract on life care can be signed so that it stipulates provision of livelihood to multiple receivers whereas every one of them is individually entitled to specific provisions and services (Article 197). The law also provides a possibility to sign this contract on behalf of the third party. In order to prevent abuse, the law does not allow a person whose professional duty is to provide care to the receiver of livelihood to become a contract party as a provider – therefore nurses and

84 „Official Gazette of RS", no. 24/2011.

85 Articles 194- 205 Of the Law on Inheritance, hereinafter LI („Official gazette of RS ", no. 46/95 and 101/2003 – decision of the Constitutional Court of the Republic of Serbia).

other persons employed in hospitals or institutions for residential care, private organisations that provide accommodation and care etc. are ineligible unless previous consent by the guardianship authority is obtained (Article 196 of the LI).

The life care contract is strictly formal legal matter, is valid only if it is signed in written form and notarised by a public notary,[86] whereas the notary is obliged to read the contract to both parties before certifying it, and make it clear especially to the receiver of livelihood that the property stipulated in the contract does not constitute receiver's heritage and can not be used to settle the obligation to privileged inheritors, whereas otherwise it is null and void.[87]

Although during the contract write up phase as well as the certification phase the notary (or judge according to the previously applicable legislation) is obliged to ascertain that the will of contracting parties is free and their intentions serious and, if this can not be ascertained to reject drawing up the document,[88] in practice this is considered a formality, the existence of free will is verified in the presence of the future providers of livelihood, so the procedure does not practically allow for serious examination of potential lapses in free will and undue influence on the receiver of livelihood. On the other hand, since it is impossible to analyse the conditions under which the contract was signed, there are cases where the life contract was a result of exploitation of the distress in which the receiver is to provide the provider of livelihood with disproportional material gain, and sometimes it is a result of fraud, that is the intention to lead the receiver of livelihood to false belief about the legal arrangement and keep her or him there so that she or he signs the contract. This contract may be voided only upon the receiver of livelihood filing a legal claim and the litigation process that may demand a lot of time and funds which are two things older people do not have as a rule so such unlawful contracts commonly remain in force.

During contract write up it is common that less than sufficient effort is made to explain and clarify the contents and the substance of the contract as well as the rights and obligations that come from it, in manner that befits the education level of contracting parties,[89] so the contracting parties frequently do not get all the relevant information which can in turn lead to misunderstandings. Older persons happen to sign these contracts without sufficient information on its contents, rights and obligations, despite the law stipulating that it is the judge's or notary's duty to read the contract

86 After the Law on Public Notaries was passed („Official Gazette of RS", no. 31/2011, 85/2012, 19/2013, 55/2014 – state law – state law, 93/2014 – state law, 121/2014) certification of life care of contracts became a duty of public notaries. The process of contract creation and certifying its contents id regulated by the Law on non-contentious proceedings („Official Gazette of RS", no. 25/82 and 48/88 and „Official Gazette of RS", no. 46/95 – state law, 18/2005 – state law, 85/2012, 45/2013 – state law and 55/2014).

87 Article 195, LI.

88 Article 172 and Article 185 of the Law on non-contentious proceedings

89 Law on non-contentious proceedings provides more detail.

in front of the contracting parties and make it clear especially to the receiver of livelihood that the property stipulated in the contract does not constitute receiver's heritage and can not be used to settle the obligation to privileged inheritors.

Newer legislation provides detailed stipulations for how to proceed in situations where one of the contracting parties has weakened sight or hearing and/ or has difficulties speaking, or is, due to weakened eyesight or to being illiterate or any other reason, unable to read or write, or does not speak the official language,[90] and this is a significant positive step. It however remains to be seen how these stipulations fare in practical implementation by public notaries.

In practice, signing contracts on life care sometimes leads to negative reactions of potential legal heirs which may even lead to termination of all contact with the receiver of livelihood etc. because these contracts indirectly affects legal heirs as the property stipulated in the contract does not constitute the inheritance. These reactions happen even when the contract is signed with a person who is also one of the legal heirs but are especially intense and negative when the life care contract is signed with a third party – this is viewed as "betrayal" of the family.

After signing the contract, it happens that the relationship between the contracting parties becomes so damaged that it is no longer tolerable – most frequently due to provider of livelihood failing to perform his or her duty. Article 201 of the LI explicitly entitles contracting parties to demand termination of the contract if the relationship between the contracting parties for any reason becomes so damaged that it is no longer tolerable. What discourages older persons, as receivers of livelihood, from requesting termination of the contract is the rule stating that it is the obligation of the receiver to compensate the provider of livelihood for all the provided benefits and service before the contract can be considered terminated. (Article 201, paragraph 2 LI).

It is to be considered that in practice it is frequent to encounter so called quasi life care contracts that are not written up in the form prescribed by Law on Inheritance, but as deeds of gift, contracts on real estate transfer etc. but also have the clause on obligation to provide livelihood. Litigation that arises from breaches of such contracts is even more complicated and more difficult to satisfyingly complete.

1.3.3. (Prevention of) exercise of the right to inheritance

In terms of inheritance, older people are not well informed about their legally granted rights and there are recorded cases of fraud where they were falsely lead to believe certain things about their rights. Firstly, when it comes to inheriting the marital spouse's property,[91] it is worth bearing

90 Articles 174-179.

91 Considering that the average life expectancy in Serbia for women is five years more than

in mind that in practice it is quite common that all of the property acquired through marriage tends to be registered under husband's name even though legally it should be considered marital property. Therefore, the widow should be entitled to requesting that marital property is not subject to the probate proceedings and for the rest of the property (inheritance) she should be an equal inheritor with the rest of the legal heirs.[92] During probate proceedings many older women do not request marital property to be excluded from the inheritance because they are not aware of this entitlement. Sometimes they get wrong information from their descendants and are lead to a false belief. Even if they make this request, sometimes other heirs challenge the entitlement to marital property and then the probate court terminates probate proceedings and directs the parties to a litigation procedure.[93] As a rule older persons do not want to enter litigation against the other heirs – usually their own children – and they also lack financial means to hire a lawyer and pay court fees so they commonly drop their claim. Those who do enter litigation are faced with the process that may take many years to complete and with an uncertain outcome.

On the other hand, there are common cases in practice where descendants of the decedent suggest to the surviving marital partner to renounce the inheritance and there are also recorded cases where the surviving partner renounced the inheritance under duress, under threat, through fraud or under misapprehension,[94] and there are cases of violation of the right to the forced share of the inheritance where commonly no judicial protection is sought. The surviving marital partner who is entitled to a share of the decedent's inheritance alongside with the decedent's parents and their children and who is without the necessary means of livelihood can – within one year upon the decedent's death – request to be granted use of the parts of or the whole of the inheritance inherited by other heirs for life, or even request to inherit the whole inheritance as property. (Article 23 LI). However, as a rule older persons do not know of this opportunity so they do not use it even when living in great poverty.

In practice it is also fairly common that older persons assign and distribute their property to their descendants during their lifetime and are left without any property. This contract belongs to the category of formal contracts with the same rules applicable as for the life care contracts (Article 184 LI). The contract is valid only if all the descendants of the assignor who

for men (75 for women, 70 for men) – there are many more women who are supposed to inherit the property of their husbands than vice versa.

92 The marital partner is considered a heir of the first category and is entitled to equal parts of inheritance as the descendants of the decedent whereas if the decedent did not have any children then the marital partner goes into the second category and inherits one half of the inheritance whereas the parents of the decedent and their descendants inherit the other half (Articles 11 and 12 LI).

93 Article 119 of the Law on non-contentious proceedings

94 In these cases a request can be made to void the waiver of inheritance (Article 214, paragraph 4 LI).

are legally entitled to the inheritance agree with the assignation and distribution of the property (Article 183 of LI). Assignor may include the marital partner in the contract if the partner agrees and then the partner is in the same legal position as the assignor's descendants (Article 189 LI). Assignor may, through stipulations of this contract for him/ herself or for his/ her marital partner retain the rights of use on some or all assigned property and may also stipulate annuities in goods or money, provision of livelihood or some other compensation. In practice, however, older persons sometimes do not exercise the entitlement to use assigned property – sometimes due to ignorance and sometimes because they are pressed by their descendants. Considering that property is usually registered under the husband's name – even though it was acquired during marriage through joint effort of both partners – it happens that the husband (father) creates the contract and assigns property to the descendants and that this includes the property that should be considered marital property. On the other hand, even though the law stipulates that the assignor may request that her or his descendant returns all the accepted property if they demonstrate gross ingratitude (Article 192. LI), older persons will not do it even when their children neglect them entirely. In practice it is not uncommon for older people to be exposed to different forms of pressure – motivated by material gain – to leave the family apartment or house and move into institutional care facility.

3.4. Legislation related to deprivation of legal capacity and guardianship

Even though Serbia ratified all relevant international treaties on human rights, the institutes of depriving one of legal capacity and ordering custody that are of vital importance for many human rights have not yet been harmonised with the international standards. The legislation regulating this area of the law is conceptually out dated and discriminatory. Despite the constitutional guarantee of legal capacity to everyone, deprivation of legal capacity, common in practice, also deprives one of civil and political rights and this leads to the serious violations of human rights with far reaching consequences and effects on all aspects of life of the persons subjected to this procedure.

In national legislation, the regulations pertaining to legal capacity are contained in the Constitution and Family Law[95]. Legal capacity is the capacity to independently decide on rights and obligations and to make personal expressions of will that gain one the entitlements and obligations as well as include the person into legal relationships, that is acquired upon entering adulthood. However the law still allows for deprivation of legal capacity, in two different forms: complete or partial deprivation. Persons deprived of legal capacity are put under guardianship. The process of depriving a person of legal capacity is regulated Law on non-contentious

95 „Official gazette of RS", no. 18/2005 and 72/2011- state law.

proceedings,[96] whereas the process of appointing a legal guardian is regulated by the Law on general administrative procedure.[97]

Family law regulates the conditions for depriving a person of legal capacity[98] by stipulating that an *adult may be deprived of legal capacity if she or he is incapable of normal judgement due to illness or developmental problems and therefore is unable to take care of her or himself and protect her or his rights and interests*. Legal capacity of a person completely deprived of legal capacity is equal to that of younger minors – children below the age of 14. This means that persons completely deprived of legal capacity may carry out legal affairs through which he or she will only acquire rights, legal affairs through which she or he will acquire neither rights nor obligations as well as legal affairs of small importance. An adult may be partially deprived of legal capacity *if she or he directly jeopardises own rights and interests or rights and interests of others through own actions due to illness or developmental problems* and thus the legal capacity of such a person is equal to that of older minors – children between the ages of 14 and 18. It is also stipulated that the court order must define the legal affairs that person partially deprived of legal capacity may or may not undertake independently. As for the conditions under which a person may be deprived of legal capacity the problem with them is that they are directly linked to developmental problems which is one of the reasons that in Serbia has such frequent the practice of complete deprivation of legal capacity of persons assessed as unfit to take care of themselves (for older persons this is, for instance, based on dementia).

The procedure itself is regulated through stipulations of the Law on non-contentious proceedings (hereinafter LNCP).[99] Deprivation of legal capacity was conceptually created as a protective measure – to be ordered for the period of three years maximum ("the probation period").

The proposal to deprive someone of legal capacity must contain the fact it is based on as well as the evidence that supports these facts or make them believable, but in practice this is often highly problematic because the court, even when using opinions and reports of expert witnesses, must for every individual case decide whether the person is capable for "normal judgement", can the person protect her or his own rights and interests etc. For instance, a person who wants to sell their house and spend that money to travel around the world runs a risk of being subject to this procedure and deprived of legal capacity considering that such conduct can be described as jeopardising own rights and interests.

96 „Official Gazette of RS", no. 25/82 and 48/88, „Official Gazette of RS", no. 46/95-state law, 18/2005-state law, 85/2012, 45/2013-state law and 55/2014.

97 „Official Gazette of SRJ", no. 33/97 and 31/2001, „Official Gazette of RS", no. 30/2010.

98 Article 64, 85, 146 and 147 FL.

99 Articles 31-42b.

It is explicitly stipulated that when the procedure is started to deprived one of legal capacity, the court must immediately inform the land registry authority or some other public authority managing records on assets and property in order to record the beginning of the process, if the person subject to the process of deprivation of legal capacity has any assets.[100] The starting of the procedure must also be communicated to the registrar in charge of the person's birth register.[101]

The procedure is urgent and the court initiates it and conducts it in its official capacity or following the petition made by guardianship authority, marital partner, a child or a parent of a person for whom legal conditions have been met to be deprived of her or his legal capacity.

The court makes the decision based on the court hearing[102] where the judge must interview the person who is the subject of the procedure in person and if the person is currently residing in a health institution, this is where the hearing will be organised and the subject interviewed in person.[103] It is explicitly stipulated that the court must respect the opinions and stances of the person who is the subject of the procedure in line with the realistic possibilities to do so, considering the person's current mental health status,[104]and the court may decide to withdraw from the hearing if the hearing may be harmful for the subject's health or if the hearing is made impossible considering the subject's mental or physical status.[105] Although the option for the court to not perform the hearing and hear the person whose legal capacity is the subject of the procedure is regulated restrictively, in practice the most common occurrence is that the court does not even meet the person who is the subject of the procedure[106], which leads to the person whose legal capacity is the subject of the procedure not even having the option to participate in the proceedings because frequently, mere illness or disability is considered a sufficient reason for the hearing to be deemed "made impossible". A new addition to the legislation is the stipulation that the court must respect the opinions and stances of the person who is the subject of the procedure in line with the realistic possibilities to do so, considering the person's current mental health status and this is a step in the right direction but so far there are no reports on practical experiences of how the courts apply this stipulation. Furthermore, it is stipulated that the court's

100 Article 34, page 1, Law on non contentious proceedings.

101 Article 34, page 2, LNCP.

102 The parties invited to the court hearing include: Guardianship authority, the person who is the subject of the procedure, her or his assigned guardian or the temporary representative, as well as the person filing the proposal/ petitioner.

103 Article 36, LNCP.

104 Article 36, paragraph 2, LNCP.

105 Article 36, paragraph 3, LNCP.

106 Poslovna sposobnost kao ljudska pravo, a research by MDRI-S and the Belgrade centre for Human Rights http://www.bgcentar.org.rs/index.php?option=com_content&vienj=article&id=865:poslovna-sposobnost-kao-ljudsko-pravo&catid=165

duty is to hear the guardian or the temporary representative, the person filing the proposal and other persons who may provide necessary information about the life and conduct of the person who is the subject of the procedure as well as other important circumstances and, if needed, the court may obtain the information from legal and other entities who may have the needed information.[107]

The procedure for depriving one of legal capacity demands review by a court expert. At least two medical doctors of the appropriate specialist profile must examine the person who is the subject of the procedure. They will provide the reports and opinions on the mental status of the person and her or his capacity for judgement. The experts' review is performed in front of the judge except when it is done in a stationary medical facility.[108] So, depriving a person of legal capacity is completely based on medical review and it is allowed for this review to take place without the presence of a judge. What is also worrying is that the court can order for the person who is the subject of the procedure to be institutionalised in adequate medical facility – temporarily for the period not exceeding 30 days – if the opinion of the medical doctors is that this is necessary in order to determine the person's mental status, except if this may bring harm to the person's health. The one month period, although shortened,[109] is too long for a person to be held in a psychiatric institution for the court experts to provide opinion, all without providing clear reasons for the person to be held there. A complaint may be filed against the order for placement in the psychiatric institution. It needs to be filed within three days after the order is made and filing it delays the execution of the order, except if the court does not decide otherwise for good cause. The person who is the subject of the procedure may be the authorised complainant regardless of her or his mental health status.

The biggest flaw of the law is that it is very easy and simple to initiate the procedure for depriving one of her or his legal capacity and that the circle of authorised petitioners is very wide. Although it is stipulated that the petition to start the procedure must contain facts and evidence it is based on, it is not further explained what type and what quality of evidence is required so in practice it is sufficient to state that the person does not communicate in usual ways to have her or him deprived of legal capacity. At the same time, the court is not explicitly required to take care of the best interest of the person whose legal capacity is the subject of the procedure.

In the decision to partially deprive a person of her or his legal capacity, the court must refer to the medical experts' report and quote the types of affairs that the person may undertake independently alongside the affairs that the person is authorised to undertake by law.[110] This is

107 Article 37, LNCP.
108 Article 38, LNCP.
109 The amendments made in 2014 cut it down from three months to one.
110 Article 40, paragraph 3, LNCP.

an inadequate legal solution because the essence of the legal instrument of depriving one of their legal capacity is to limit the scope of legal affairs that the person can undertake independently, so the law should, logically, provide exhaustive list of the affairs that the person can not undertake independently, rather than have it done vice versa. Especially when considering that legal capacity is one of the fundamental human rights and that limitations of this right must satisfy the requirement of proportionality so they must be restrictively and precisely determined.

The law stipulates that the person deprived of the legal capacity may file a complaint against this decision within eight days regardless of their mental health status and the court is then required to decide on the complaint within eight days of receiving the complaint.[111] However, research shows that persons who have been deprived of their legal capacity often end up not even receiving a copy of the court decision and are therefore unable to act on it.

The final court decision on depriving a person of legal capacity as well as the decision on reinstating of the legal capacity to the person is delivered without delay to the guardianship authority, gets recorded in the birth register and if the person who was deprived of legal capacity has any real estate, the decision is also recorded in the register of real estate rights.[112]

An important and positive addition to the law is the stipulation that the final court decision needs to explicitly state the time period in which the court must verify whether the reasons for the decision are still valid and this period can not exceed three years. The previous legislation did not put any limits to the decision on depriving a person of legal capacity so the decision was open-ended and no further verification was required so the decision on depriving an older person of her or his legal capacity practically meant "erasing" them as citizens.

When the time period set for the verification by the court decision expires,[113] the court will, acting in its official capacity, examine whether the reasons for depriving the person of his or her legal capacity are still valid. If it is established that the reasons are still valid, the court will make a decision that there are no grounds for reinstating the legal capacity to the person and will set another time period for verification of the reasons for the decision that again can not exceed three years. If the court establishes that the reasons for depriving the person of her or his legal capacity are no longer valid it makes a decision on reinstating legal capacity. Also, if the court established that the mental health status of the person whose legal capacity was completely removed by court decision has in the meantime sufficiently improved that partial deprivation of legal capacity can be appropriate, it will make the decision on partial deprivation. It is also stipulated that a person whose legal capacity was partially removed through original court decision may upon review and

111 Article 40a LNCP.
112 Article 44 LNCP.
113 But also before the period expires, following the petition of an authorised petitioner.

confirmation that her or his mental health status has in the meantime deteriorated so that total deprivation of legal capacity is appropriate, be completely deprived of her or his legal capacity.[114]

The consequences of losing one's legal capacity are immeasurable – the person is deprived of almost all rights as soon as the procedure is initiated instead of getting the needed support in appropriate areas of life.[115] On the other hand, even though the option to petition the court to reinstate one's legal capacity is stipulated by law, in practice the number of such processes is very low.[116] Considering that the obligation for the courts to verify the validity of reasons for depriving the person of legal capacity was created in 2014 there are no examples from practice yet that would demonstrate how the courts assess the validity of the reasons.

A person deprived of legal capacity is assigned a guardian by guardianship authority.[117] The decision on assigning a guardian must be made by guardianship authority immediately and no later than 30 days upon receipt of the court decision on depriving an adult of her or his legal capacity. This decision has a guardianship plan, a decision on assigning a guardian and on accommodation of the person being placed under guardianship.[118] It is stipulated that a person who is above the age of ten and is mentally competent is entitled to suggesting a person to be her or his guardian. As a rule assigned guardians tend to be marital partners and close relatives unless this is against the interests of the person placed under guardianship. However, this stipulation does not provide sufficient guarantees that the person assigned to be the guardian will work in the best interest of the person deprived of legal capacity. On the other hand, in practice the older person's stance on the choice of the assigned guardian is sometimes ignored as irrelevant. To complicate the matters further, the law allows the possibility (and in practice this is frequently the case) that the assigned guardian is a person employed in the guardianship authority or that the guardianship is performed by the guardianship authority directly namely, guardianship authority may figure in the procedure in several conflicting and irreconcilable roles – the guardianship authority may be the petitioner initiating the procedure of depriving a person of legal capacity, it is requested to assign a temporary legal guardian, may be a representative in the procedure, after the decision of depriving

114 Articles 42, 42a and 42 b.

115 More detail on the consequences of losing one's legal capacity: Beker, Kosana (2010) Pravo da donesem odluku, http://www.velikimali.org/index.php/vesti/104-publikacija-pravo-da-donesem-odluku.html

116 The report „Legal Capacity as a Human Right" puts the ratio of such processes at 0,2%. MDRI-S and the Belgrade Center for Human Rights, http://www.bgcentar.org.rs/index.php?option=com_content&vienj=article&id=865:poslovna-sposobnost-kao-ljudsko-pravo&catid=165

117 Articles124- 145. FL.

118 Guardianship authority will initially try to accommodate the person being placed under guardianship with the person's relatives. If the person has any property, its inventory and assessment of value will be done by a standing committee of the guardianship authority.

a person of legal capacity is made the guardianship authority must assign a guardian and it is allowed for the guardian to be an employee of the guardianship authority, and also it is tasked with monitoring the work of the guardian. The list of prescribed duties of a guardian is also another valid argument for separating the roles of guardianship authority in the procedure of deprivation of a person of legal capacity. The guardian is tasked with providing guardianship to the guarded person with due diligence and this includes: care for the person, representing the person, providing livelihood, managing the property and disposition of the property of the person under guardianship. The guardian is responsible for the damage caused on purpose or through gross negligence and is also obliged to report and be accountable to the guardianship authority on the activities. The law stipulates the possibility of filing a complaint related to the work of the guardian[119], as well as to the work of guardianship authority.[120] Legal entitlement to filing a complaint is related to "the ability to reason" so there is a risk that the assessment of this ability is done in a cursory manner and that complaint is not analysed with due attention. These stipulations do not establish efficient mechanisms for monitoring the work of guardians especially knowing that guardianship authority is the one assigning the guardian and being the guardian's sole monitor.

The guardianship stops with the court decision of reinstating legal capacity or when the person under guardianship dies, whereas guardianship does not stop with the dismissal or death of the guardian.

Analysis of the applicable legislation shows that legal conditions for depriving a person of a legal capacity are fairly vague and imprecise so there is a lot of room for manipulation and abuse of this legal instrument. In practice there have been recorded cases where, following the initiative of descendants and potential heirs, older persons are partially deprived of legal capacity, their property management rights are taken away and one of the descendants is assigned as guardian. In situations when older people want to manage their own valuable real estate – so they can use the resulting money to afford better medical treatment, a visit to a spa or they want to travel – such decisions made by older people are interpreted as "irrational" and as a signal that older person in question is unable to independently manage her or his rights and interests and that through "threatening own and other people's rights and interests" this creates grounds for deprivation of legal capacity.

119 The complaint to guardian's work can be filed by the person under guardianship if the person is mentally competent and a person with a legal interest, and the guardianship authority is obliged to respond to the complaint within 15 days of receiving it.

120 The complaint to guardian authority's work can be filed by the guardian, the person under guardianship if the person is mentally competent and a person with a legal interest. It is filed with the Ministry in charge of protection and it is obliged to respond to the complaint within 30 days of receiving it.

Although the Family Law prohibits assigning a guardian whose interests are opposite to the interests of the ward (Article 128 of the FL), centres for social welfare often do not really analyse the relationship between the older person and the person assigned as guardian so it is not uncommon that the assigned guardian ends up being the descendant or other relative that the older person in question explicitly does not want for this role. On the other hand, the guardianship duties may also be handled by the guardianship authority directly (Centre for Social Welfare) and in this case their professional employee is assigned guardianship duties which results in the same organisation – the guardianship authority – performing the guardianship duties and being in charge of monitoring the performance of those duties – which are two obviously conflicting roles. Such arrangements do not provide for efficient mechanisms of monitoring the guardianship and leave a lot of room for abuse.

One of the key flaws of the legislation is the lack of any viable alternative to deprivation of legal capacity because there are no developed models – similar to those in comparable legal systems - to support older people in decision making. By losing legal capacity older person loses the option to have her or his will and priorities respected, whereas there are realistic chances for conflict of interest and undue influence including the risk of older people losing their property through actions of other people.

III RESEARCH RESULTS

1. Methodology and description of the research

Overall goal of the pilot research "Economic elder abuse as a form of violation of human rights" was to obtain initial and preliminary findings on the phenomenon of structural and individual economic abuse in family context as well as on the potential risks of this form of abuse, considering the overall economic status of older people, including their level of knowledge of the rights they are entitled to by law. Specific objectives of the research were formulated following these ideas. Hypothetical basis for the research was not developed considering that exploratory research – such as this – forms the hypothesis only after first results are obtained and these results feed into the further research of the phenomenon. Instead of a hypothesis several premises were formulated:

- Majority of older people are in a bad economic position.
- Quality of life of the majority of older people in not satisfactory.
- Majority of older people's health status is not satisfactory and they can not afford

medication.

- The model of self-sacrifice for children and other descendants among older people is evident.
- Older people allow their descendants and persons close to them to handle and manage their funds.
- When exercising and protecting their property rights older persons primarily have in mind their descendants' interests.
- Older persons do not recognise economic abuse and are not sufficiently informed about their rights.
- The legal instrument of depriving person of legal capacity is applied too frequently and the grounds for this measure are interpreted too loosely.
- Guardians assigned to older people are most frequently their children.
- Persons under guardianship are at a highest risk of economic abuse.

Location	Frequency	Percentage
Bačka Topola	10	7.1
Loznica	17	12.1
Negotin	16	11.4
Kragujevac	35	25.0
Niš	21	15.0
Savski venac	24	17.1
Pančevo	10	7.1
Vršac	4	2.9
Bela Crkva	3	2.1
Total	140	100.0

Table 1: Sample structure

The research was conceived as a pilot research, was done using adequate sample and was greatly affected by modest resources available. It reached 140 randomly chosen interviewees – persons above the age of 65 from ten municipalities/ cities in Serbia.

Having in mind the characteristics of the research sample, this research can not be used to perform generalisation of results of any kind. What it does however provide is a body of findings that will enable us to develop proper hypothetical basis for further, broader and deeper research.

The research used a tailor-made interview questionnaire with 40 different questions related to living circumstances and economic status of interviewees as well as personal relations with other family members including the questions related to legal capacity and property management.[121] Questions have a choice of multiple answers and for those questions that are related to self-assessment of living circumstances we used a Likert-type scale.[122] The data collection took place between 15 July and 1 August 2014. The interviewees filled the questionnaires themselves with additional clarification provided by interviewers on demand. In the second phase of the research the collected data was selected and statistically processed which was followed by analysis and interpretation of the data, with the results presented in this study.

2. Interpretation of results

2.1. Gender, age, residence, marital and family status of the interviewees, profession, household

69% of the interviewees were female and 31% were male. 69% live in urban areas, 12% in peri-urban and 19% in rural areas.

The majority of interviewees was between the ages of 65 and 70 and the ages 70-75 and 75-80 were in the minority.

121 Integral version of the questionnaire is in the appendix

122 Likert scale is a psychometric scale allowing to specify the level of agreement or disagreement of interviewees with a statement on a range from absolutely positive to absolutely negative. It is used in data collecting research where the methodology relies on questionnaires or structured interviews. The scale was devised by Rensis Likert as described in his paper: Likert, R. (1932) „A Technique for the Measurement of Attitudes," Archives of Psychology 140: pp. 1–55.

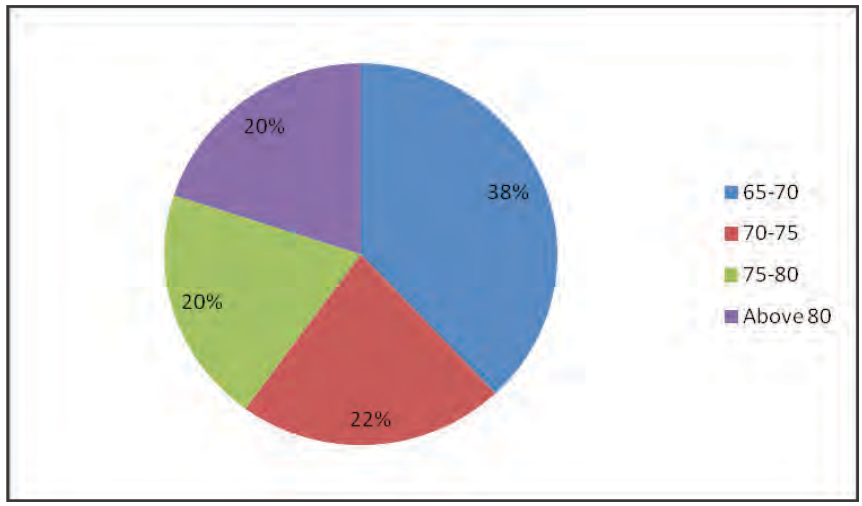

Table 2: Age

As for the occupation, the most frequent answer was pensioner – 60%. As for the profession, the answers were different: wall painters, administrators, tailors, dentists etc. with 10 economists , 19 homemakers, 10 teachers, nine civil servants and nine farmers.

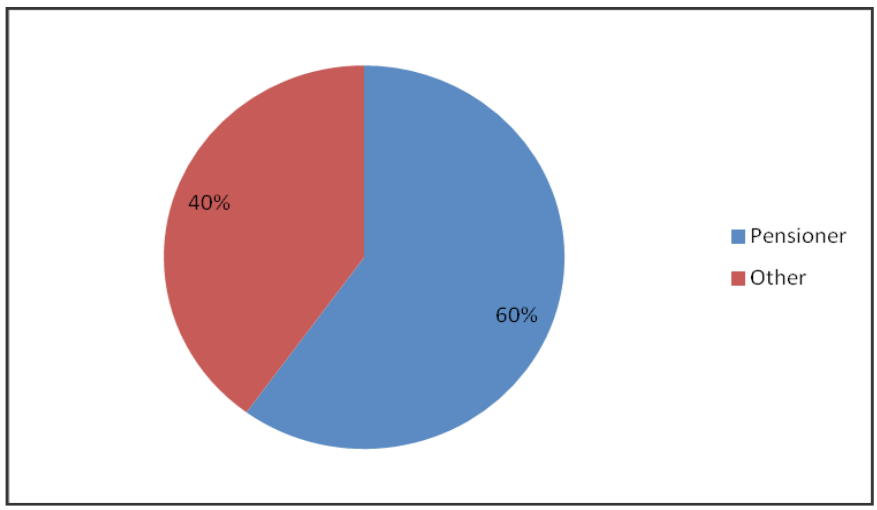

Table 3: Occupation

As for the education level, the majority has a high school degree and the minority has master degrees or PhDs.

Education level		Frequency	Percentage
	No education	6	4.3
	Unfinished primary school	16	11.4
	Finished primary school	30	21.4
	High school/ secondary school	54	38.6
	College or university degree	33	23.6
	Master Degree or PhD	1	.7
	Total	140	100.0

Table 4: Education level

As for the marital status, widows and widowers are in the majority and divorcees are in the minority.

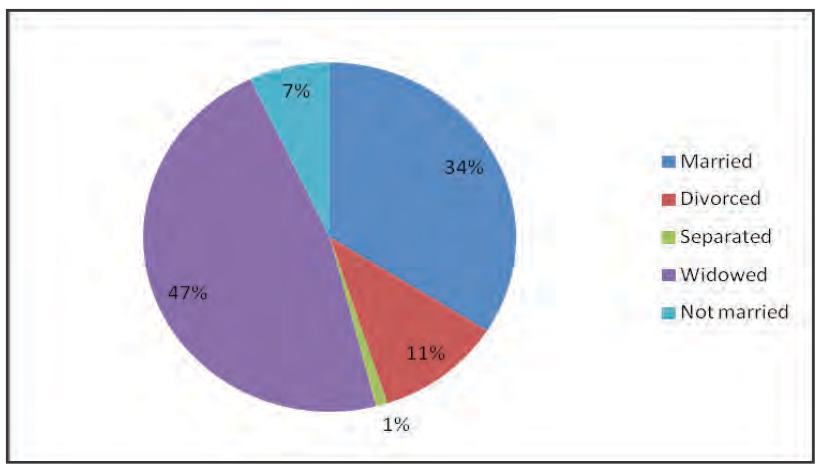

Table 5: Marital status

As for the number of children, the majority of the interviewees have two children and those with more than three are in the minority.

Number of children		Frequency	Percentage
	One child	39	27.9
	Two children	63	45.0
	Three children	15	10.7
	More than three children	5	3.6
	No children	6	4.3
	No reply	12	8.6
	Total	140	100.0

Table 6: The number of children

The majority of the interviewees live alone in their own apartment (33,6%), slightly fewer of them live with their marital spouse in their own apartment (20,7%), then with their son's family in own apartment (16,4%) and in residential care (12,1%).

2.2. Economic status

Economic status of the interviewees was described using several indicators: source of income necessary for livelihood, existence of savings, property rights (chattel or real estate) as well as self assessment of economic circumstances by interviewees themselves.

According to their replies, the most frequent source of livelihood income is age pension, followed by family pension and other income and agricultural pension are at the bottom of the list.

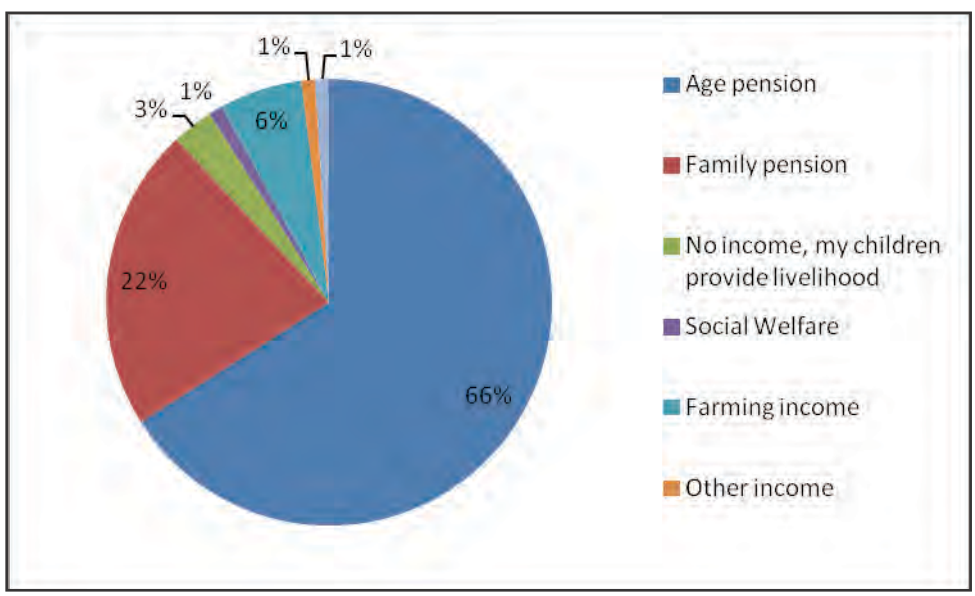

Table 7: Livelihood income sources

There are differences between men and women in terms of livelihood because the percentage of women using age pension is higher despite both groups have statistically the most interviewees explaining that age pension is their primary income.

It is obvious that older persons living in cities are more likely to have age pensions as the source of livelihood income with the likelihood declining for peri-urban and rural areas.

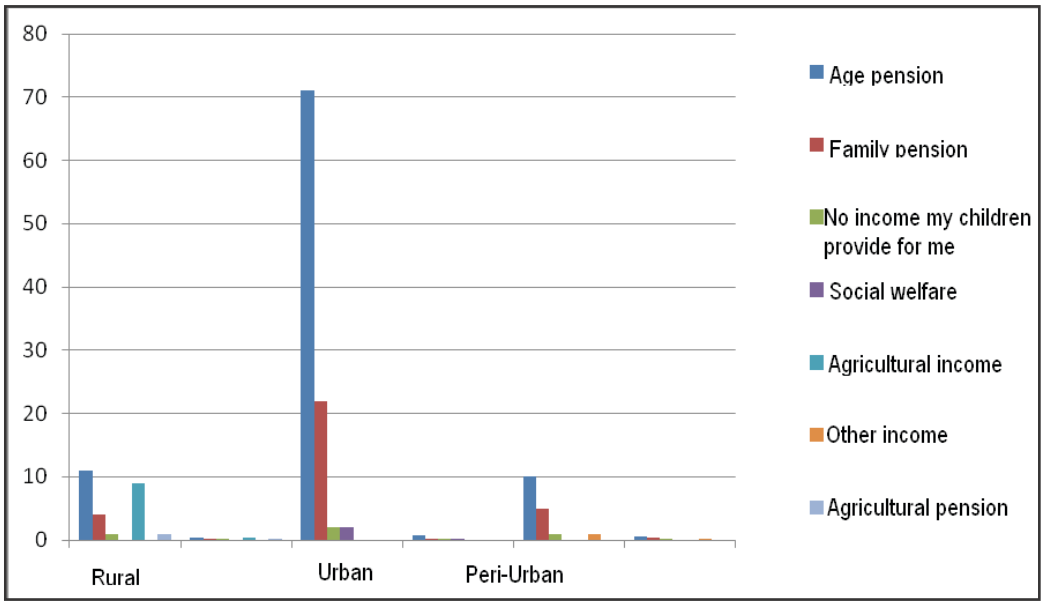

Table 8: Source of livelihood income disaggregated by type of residence (urban, peri-urban, rural)

Majority of interviewees reply that their monthly income does not meet their needs. Only 18% answered that their monthly income meets their needs in entirety and the number of those who need "a little more" and "a lot more" is equal – 38%.

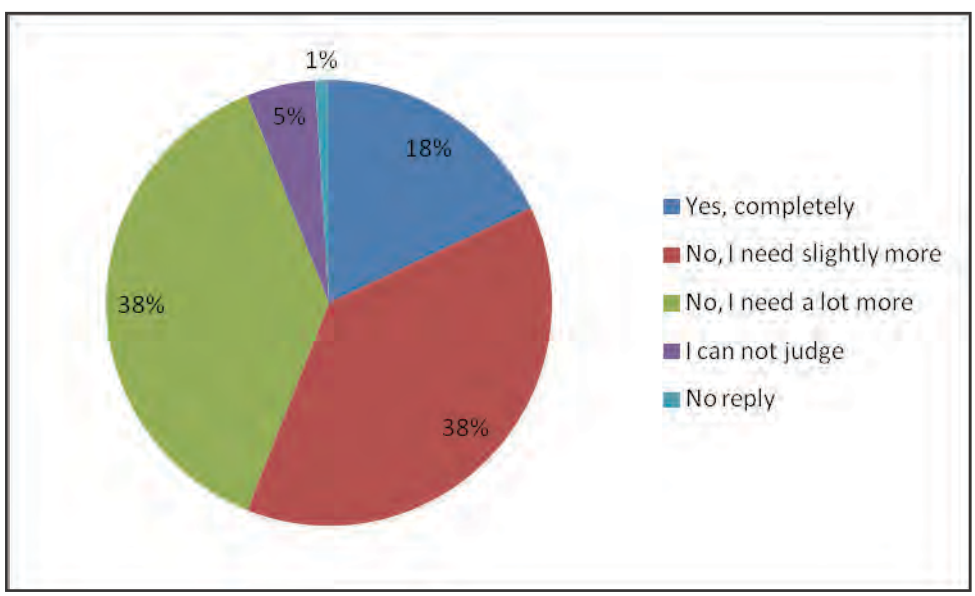

Table 9: Does your monthly income match your needs?

The story of unfavourable economic status of the interviewees is wrapped up with the finding that 80% of them have no savings whatsoever.

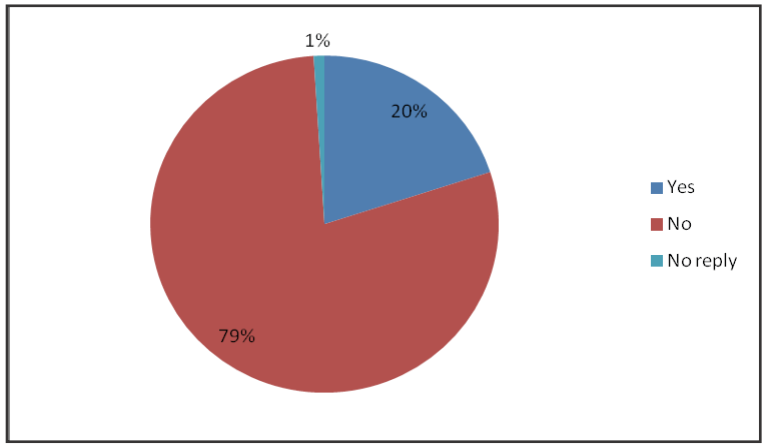

Table 10: Do you have any savings?

As for property, 55% have some property, whereas 45% have no property registered to their name. Majority of female interviewees do not have any registered property to their name whereas majority of male interviewees do.

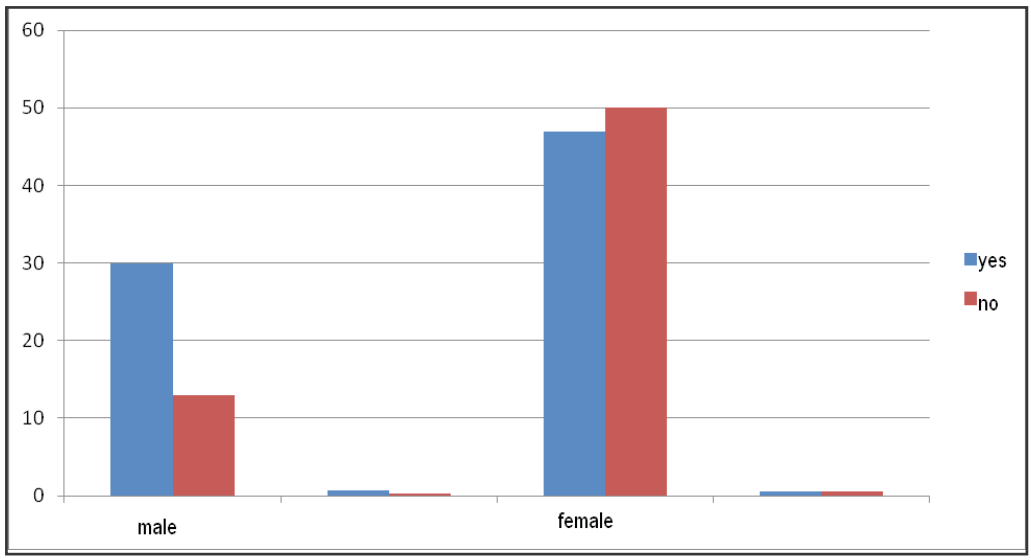

Table 11: Do you have property registered to your name?

However, the question "Would you sell your property if you could not afford to pay for your basic needs?" was answered negatively the majority of interviewees. Only 25.7% of the interviewees replied that they would sell their property.

Answers to the question who they would ask for help first if running out of their own funds show that the children would be the first address, followed by the Centre for Social Welfare, municipal government and distant relatives. It is worth noting that 4.3% would not ask anyone for help.

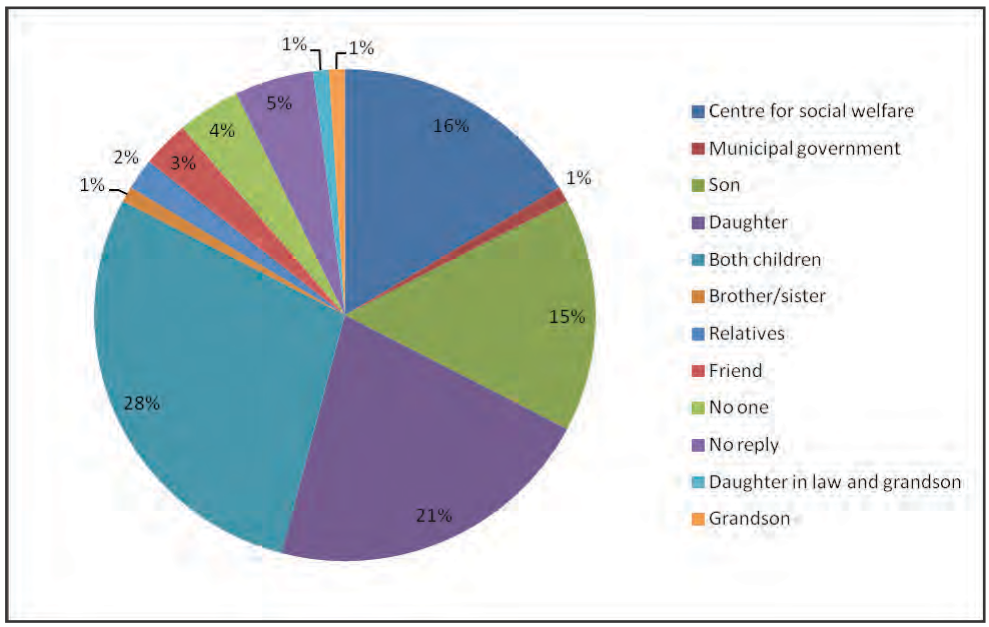

Table 12: If out of own funds who would you ask for help?

Among the interviewees who would contact Centre for Social Welfare the majority live alone in their owned apartment or in residential care.

The risk of economic elder abuse was assessed through questions related to opportunities for third parties to manage the funds belonging to older people.

The question "Is someone authorised to manage your bank account?" was answered positively by almost 40% of the interviewees, citing marital partners and children as authorised parties. Also, we should be aware that some of the interviewees do not have own bank accounts.

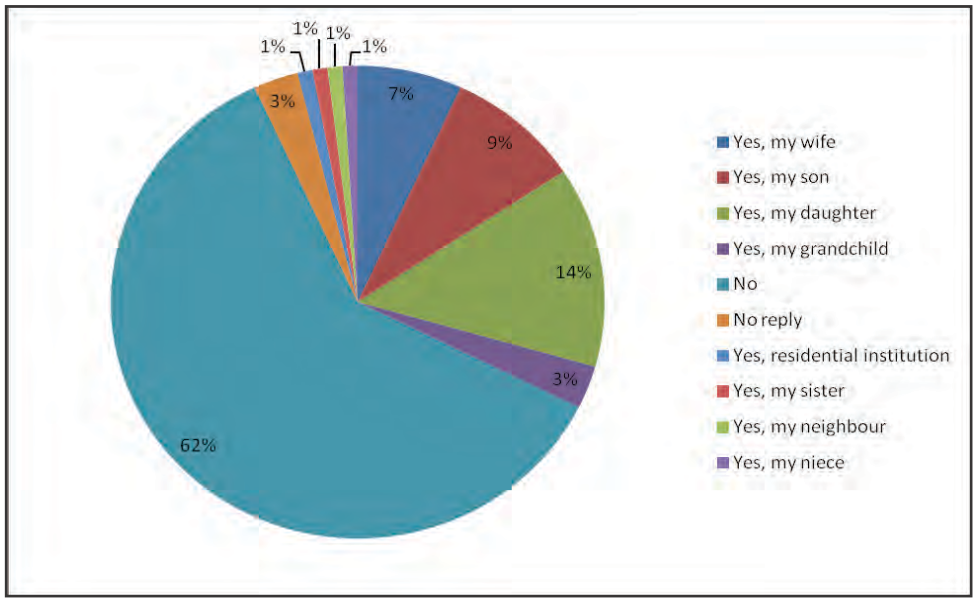

Table 13: Is someone authorised to manage your bank account?

A small number of interviewees – 8% - claimed that someone is taking their money without their knowledge. This is most common for older persons living in family household with their children and the money is most commonly used without authorisation by their sons and daughters.

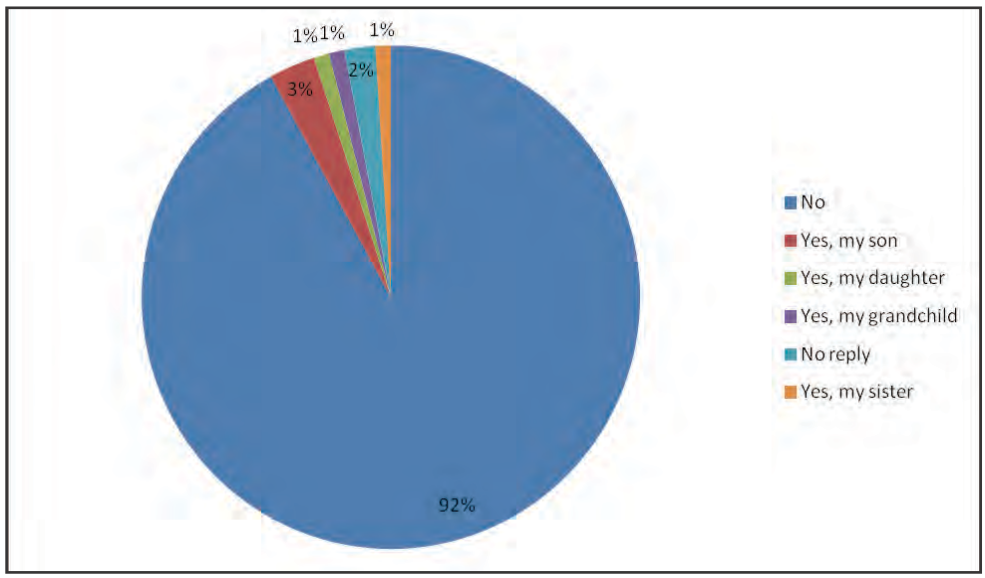

Table 14: Does someone use your pension/ salary/ other money without your knowledge and/ or authorisation and who?

Finally, the interviewees were presented with the opportunity to assess their own economic status. The most common answer was that they consider their current economic status unsatisfactory. Only approximately 17% described their economic status as satisfactory with 11.4% answering that they are unable to judge.

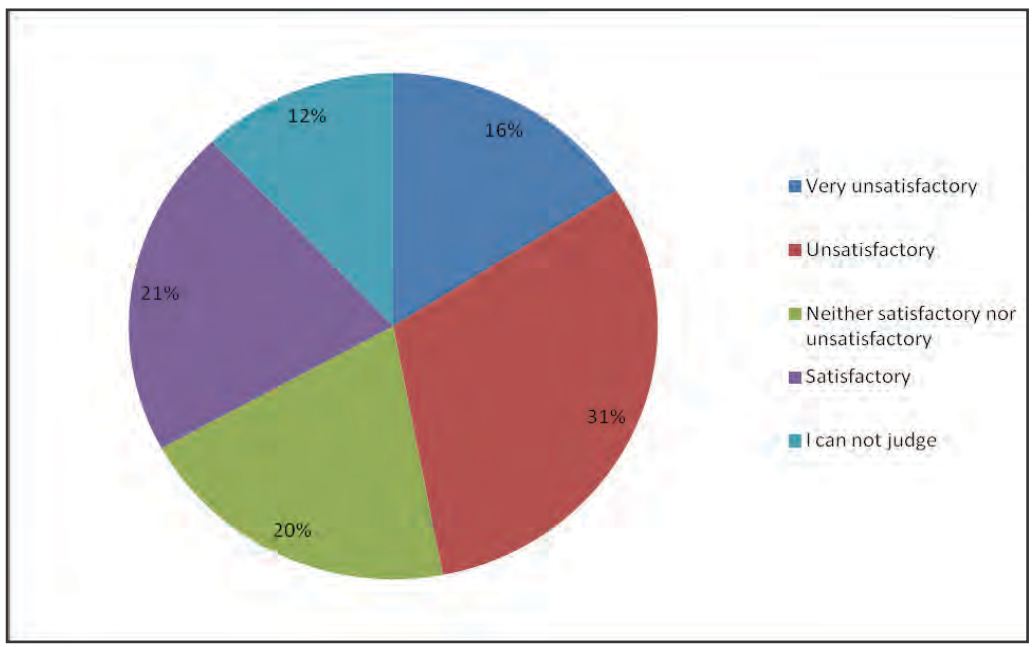

Table 15: How do you estimate your current economic status?

Capacity to satisfy one's needs and quality of life

The capacity to satisfy one's needs was assessed using several indicators related to possibility of procuring goods related to meeting basic life needs in life.

First we provided the interviewees the opportunity to estimate their own health status and then we asked about the possibility to procure medication. The most frequent answer was that their health status is "neither good nor bad" – 43.6%. However, the percentage of those who have estimated their own health status as bad is only slightly lower at 39%.

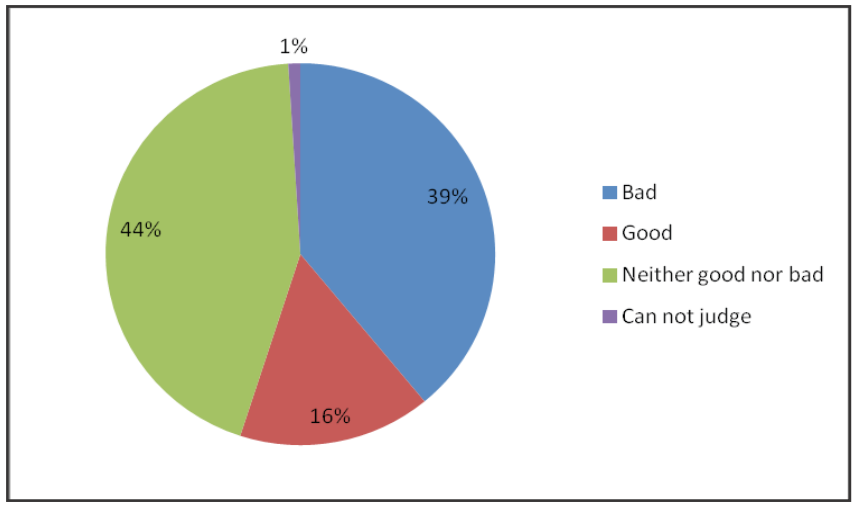

Table 16: Your own assessment of your health status

Only a quarter of the interviewees has enough funds to afford all the needed medication while the rest either do not have sufficient amounts (56%) or do not have any (13%).

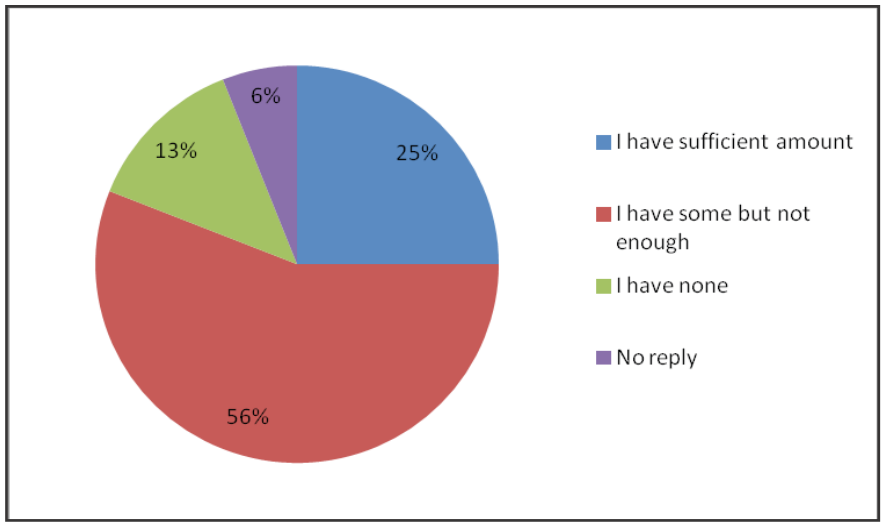

Table 17: Do you have enough money for medication?

It is especially notable that almost a third of interviewees cannot afford to buy food that they like and that they desire for.

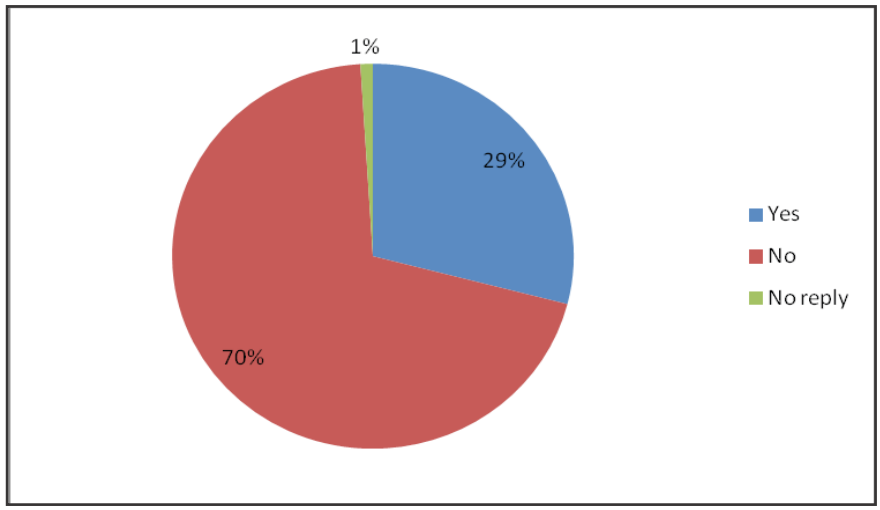

Table 18: Is there some food that you desire for but can not always afford?

As for the capacity to meet their needs – a strong indicator are the replies to the question of what was the last time they purchased clothes. The most frequent reply was that they can not remember when they purchased clothes the last time which indicates that it was a long time ago. Only 16.4% of the interviewees purchased clothes in the last six months and only additional 11.4% did it in the last year.

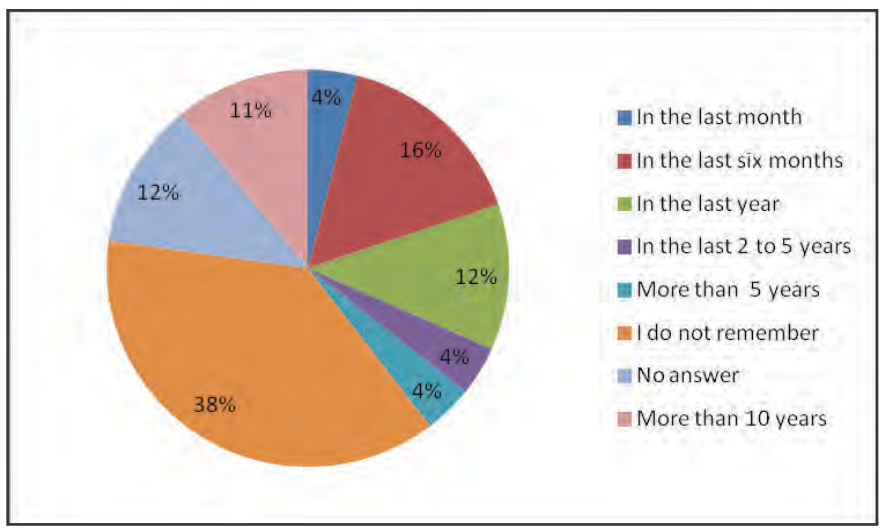

Table 19: When did you purchase clothes for yourself the last time?

Although most of the interviewees can not recall when was the last time they purchased their own clothes, the persons who are in the best position to do so are those who are married and those who are widowed are in the worst position.

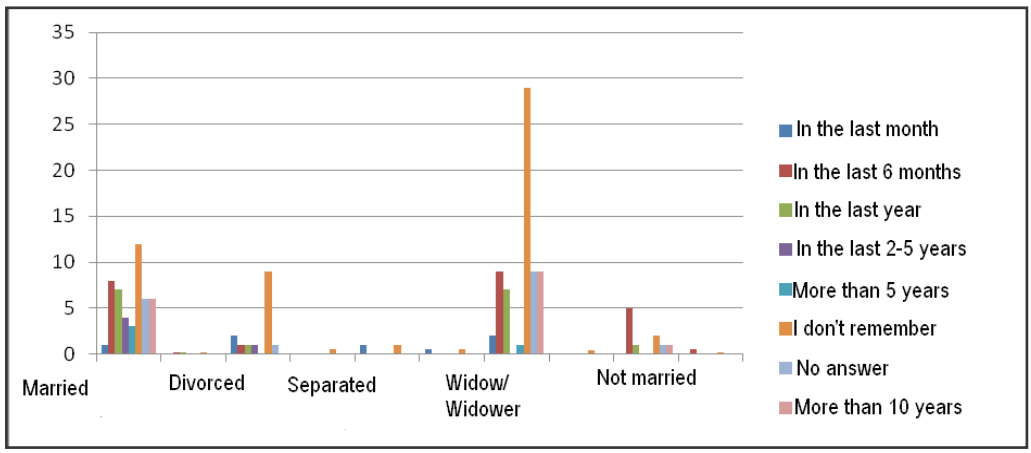

Table 20: When was the last time you bought yourself clothes?

The quality of life of our interviewees was also measured using indicators related to their social and cultural needs.

We first asked the interviewees when was the last time they went on a vacation – they were free to indicate the time period themselves. The grouped answers provide the following outline: the most frequent reply was that they do not recall their last vacation. Only 21.4% have had a vacation in the last year and 32.1% can not recall when the last time was.

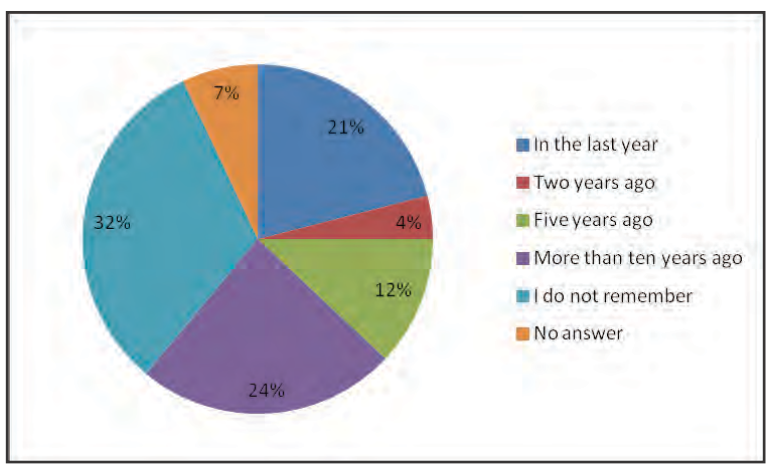

Table 21: When did you last go for a vacation?

The collected data shows that interviewees living in urban areas are in a better position than those in peri-urban and rural areas in relation to a possibility to go for a vacation. Only those living in cities could afford to go on vacation in the last year, whereas only a small number of those in the countryside could go on vacation five or ten years ago. However, in all the groups the number of those that do not recall their last vacation was the highest.

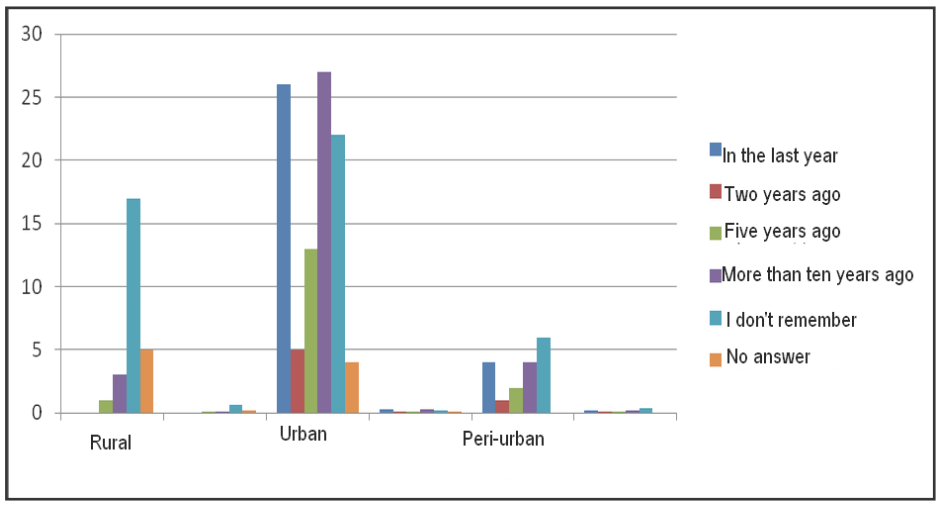

Table 22: When did you last go on vacation?

As for the social life of our interviewees – we asked them when was the last time they went to a social event. Their most frequent answer was that they cannot remember when was the last time they did. Approximately one third participated in a social event in the last six or twelve months but more than one quarter can not remember being in a social event at all. 23% have not replied.

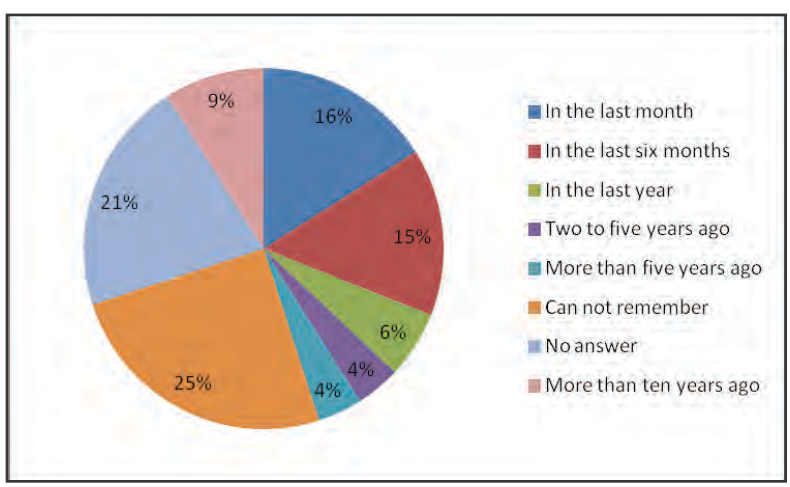

Table 23: When did you last participate in a social event?

The interviewees from urban areas have more members who have participated in a social event in the last year compared to those from countryside and peri-urban settlements.

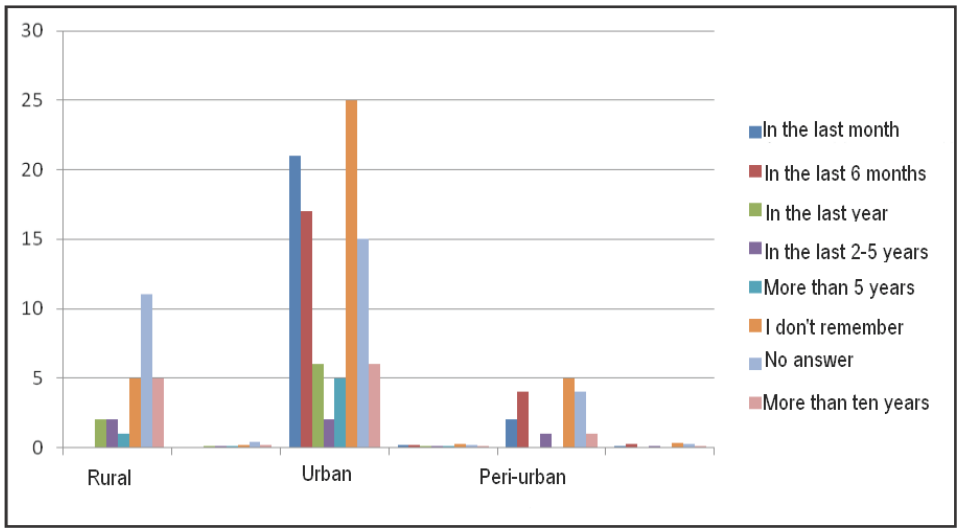

Table 24: When did you last participate in a social event?

Among the interviewees who have participated in a social event in the last month those who live in residential care are prevailing and those who cannot recall their last social event are mostly those who live alone.

The way of life is also described by the hobbies of our interviewees. According to the answers – the majority has some hobby.

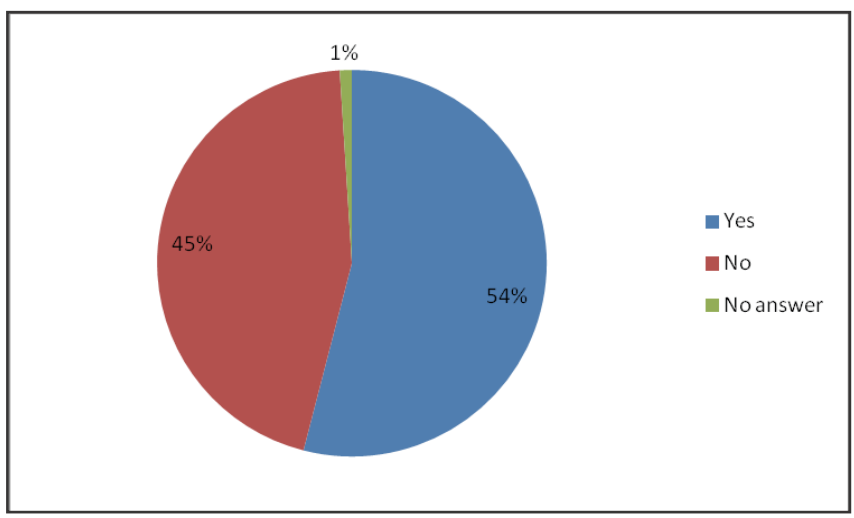

Table 25: Do you have a hobby?

We have also assessed the quality of life of our interviewees indirectly through asking about their fears. So to the question "What is your fear?" the most common answer was that they fear for their children's future and it was closely followed by fears of war, illness as well as the fear of being abandoned and left alone. For the majority of the interviewees who live in residential care or alone in their own apartment their greatest fear is of illness.

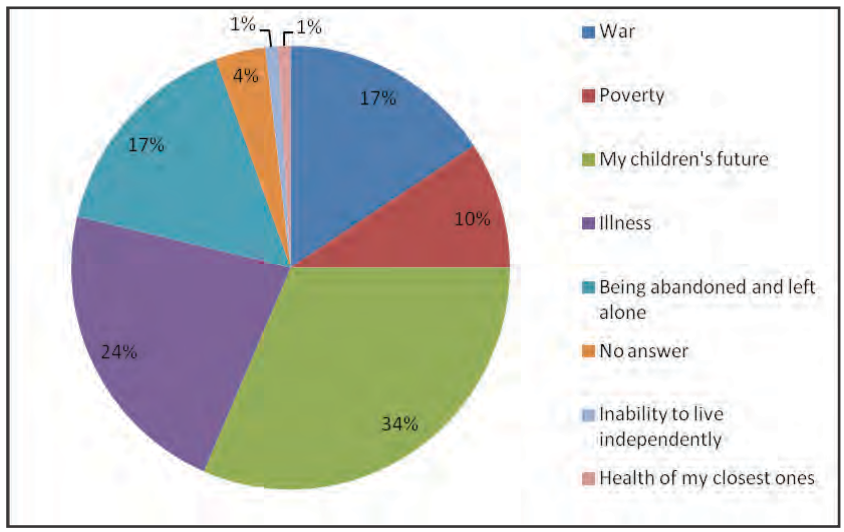

Table 26: What is your greatest fear?

Finally, the interviewees were asked to assess the quality of their living. Only a fifth is ofthe opinion that the quality of their lives is satisfactory whole others describe it as unsatisfactory (26.4%) or have ambivalent stance on it (30.7%).

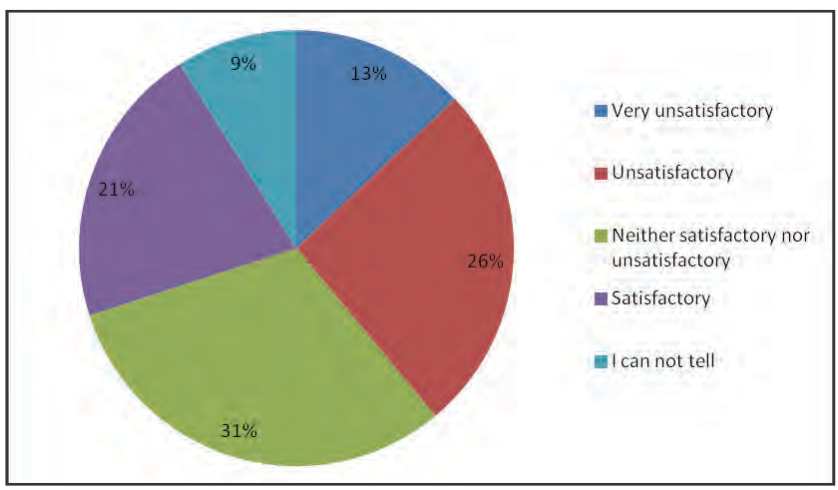

Table 27: How would you describe the overall quality of your life?

2.3. Self sacrifice model – assisting the family of one's descendants

Family relations in Serbia are marked with a strong patriarchal tone and are characterised by a model of parental (self)sacrifice for their children. This is especially true for mothers who are expected to devote their later years to their grandchildren and do house chores in their descendants' households as a sort of continuation of what they used to do in their own families. This free labour – sometimes labelled as "sacrificial micro matriarchy",[123] uses the strength and resources of women and leads to exhaustion of older women which sometimes leads to deterioration of their health.

According to the data collected, the majority of older women in our sample provides or has provided assistance to the families of their children – through providing care for grandchildren and financial assistance.

Among the interviewees we can see the high percentage of answers confirming that they provide or have provided assistance with care for their grandchildren – 68.6% – and merely a fraction above one fifth stated that they never do this or have never done it.

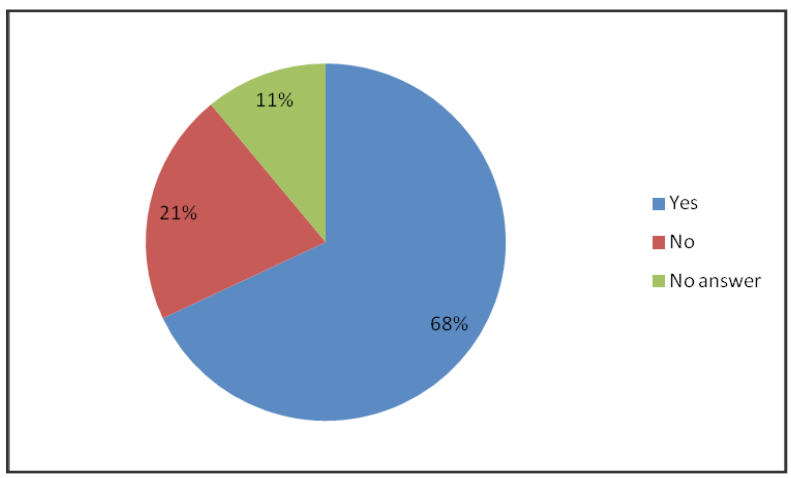

Table 28: Do you provide or have you provided assistance with care for your grandchildren?

123 Marina Blagojević introduced the term „self/sacrificial micro matriarchy" into gender theory and it denotes a high concentration of female power at family level, established through a high level of "sacrificing" oneself for the "closest ones" – a high level of exploitation of a woman's personal resources. The woman is therefore simultaneously a subject and object of personal "sacrifice", because she gains specific psychological profit from her "sacrifice" which compensates for her lack of power in the public sphere. More details: Blagojević, M. (1995): „Svakodnevica iz ženske perspektive: Samožrtvovanje i beg u privatnost", in: Bolčić S. (Editor), Društvene promene i svakodnevica: Srbija, early '90s, Belgrade, ISIFF.

There are significant differences between men and women when it comes to providing assistance related to taking care of grandchildren. It is obvious that many more female than male interviewees help or have helped with this activity – a result of the traditional attitude that this is a women's duty.

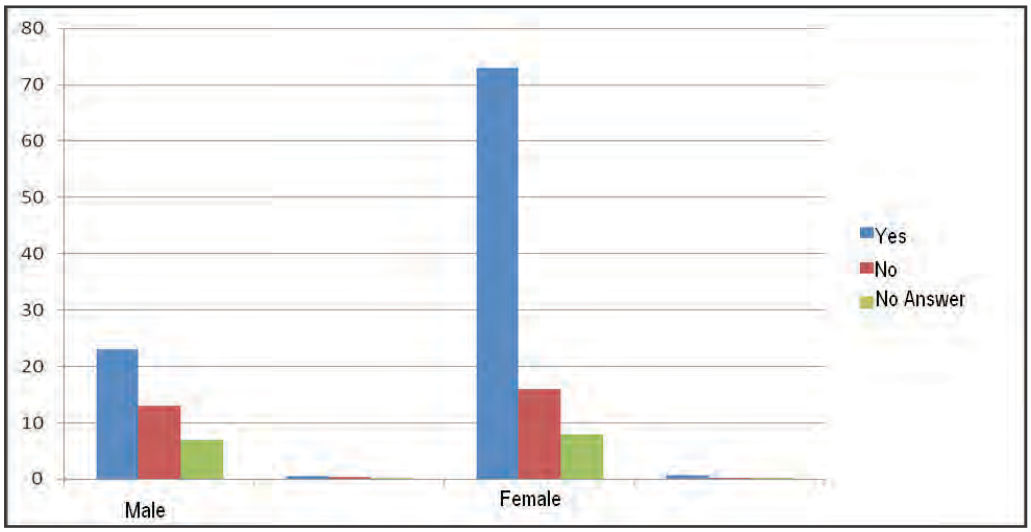

Table 29: Do you provide or have you provided assistance with care for your grandchildren?

In addition with helping take care of grandchildren, older people also provide financial assistance to their children's families. This is regularly done by 65.7% and only one quarter of the sample does not provide this type of assistance.

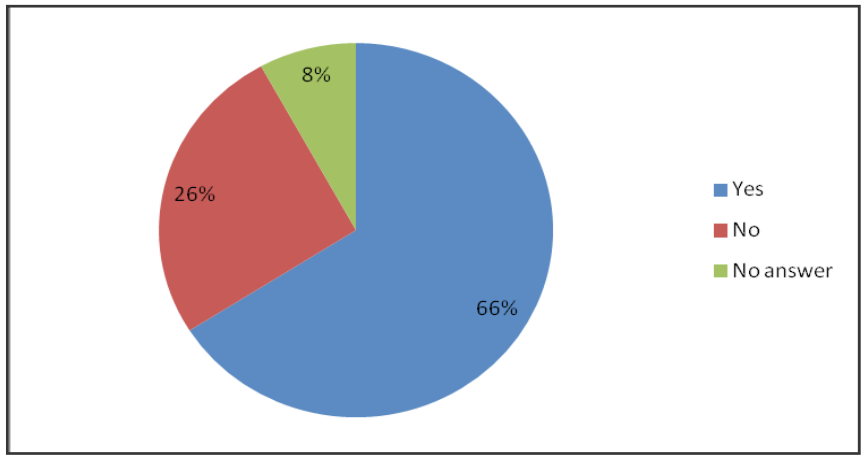

Table 30: Do you provide or have you provided financial assistance to your children's families?

Regarding provision of financial assistance to their children's families, there are certain differences between the interviewees in relation to their marital status. The majority of interviewees who provide such assistance are widowed.

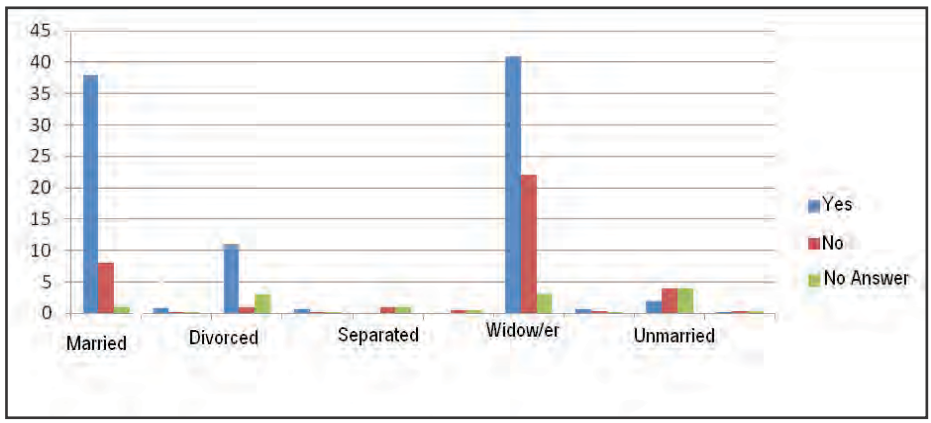

Table 31: Do you provide or have you provided financial assistance to your children's families?

According to the answers, those interviewees who live in a family household with other family members for the most part do not feel overburdened with chores; the majority feels that their duties are exactly right for them, but also the number of those who feel they have more duties than they are comfortable with is fairly high. The answers to the question "If you live with your family, what is the extent of your personal duties in everyday chores?" were distributed like this:

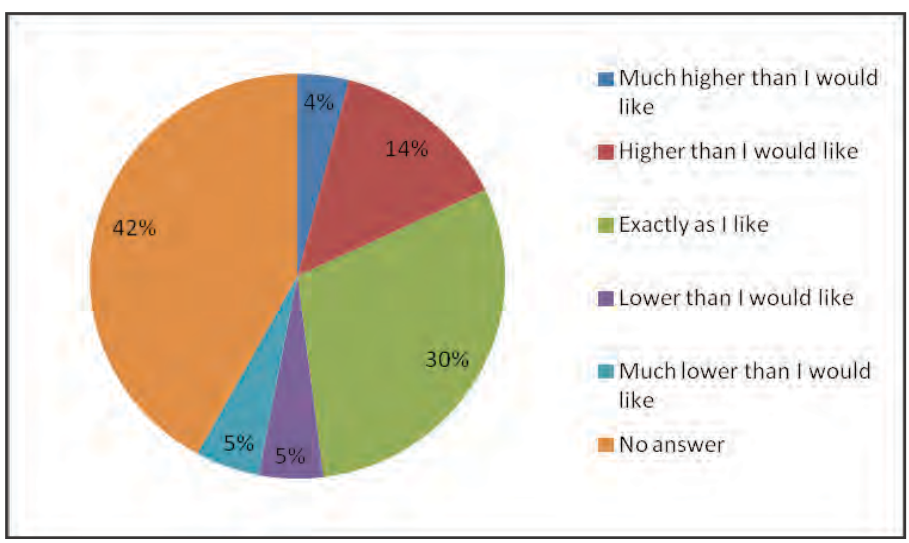

Table 32: If you live with your family, what is the extent of your personal duties in everyday chores?

As for the interviewees with more duties than they would like, their numbers are almost equal in rural and urban areas and slightly lower for peri-urban areas. The number of those satisfied with the extent of duties expected of them is highest in rural and peri-urban areas.

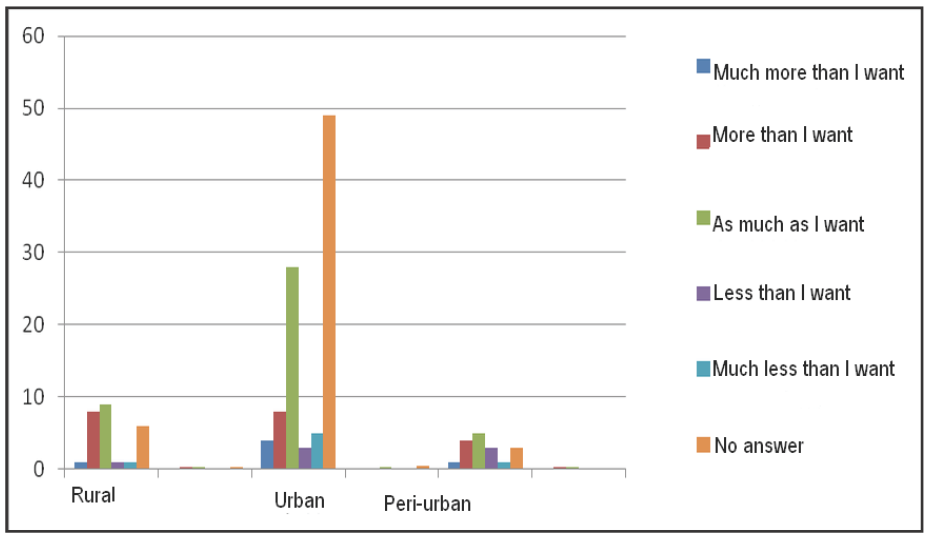

Table 33: If you live with your family, what is the extent of your personal duties in everyday chores?

The self-sacrifice model is further illustrated by answers to the following hypothetical question: "If you won a lottery, what would you spend the money on?" More than 50% of interviewees would give the money to their descendants (children or grandchildren), only 9% would use the money to travel and only 7.1% to go to a spa. Among those interviewees who would spend the money slowly, majority lives with their marital spouses in their own apartment.

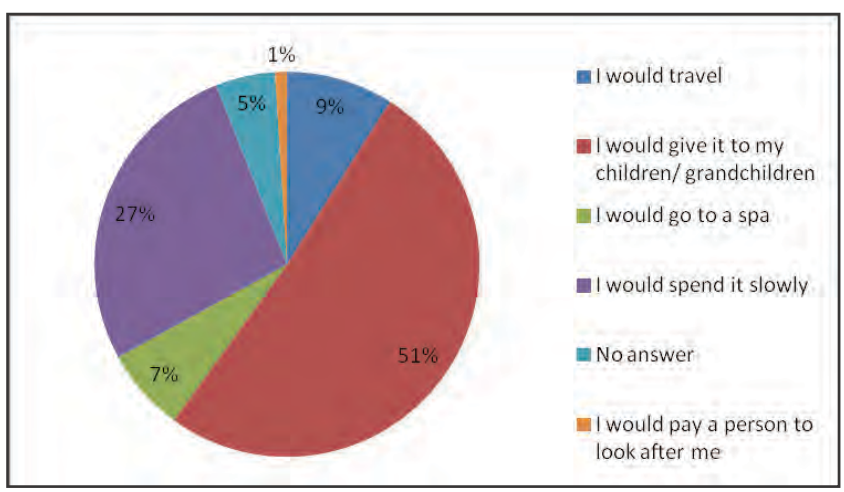

Table 34: If you won a lottery, what would you spend the money on?

These answers correspond with the findings related to the interviewees' fears – those are primarily focused on the wellbeing of their descendants, not their own (see table 26).

2.4. Property relations

Property relations were explored taking into consideration acquisition, management and disposal of property, legal affairs *inter vivos* and *mortis causa*.

Interviewees with deceased marital spouses – almost half of the entire sample – were asked whether they have accepted their legally mandated inheritance The number of those who have is only 6% higher than the number of those who have rejected it or have renounced it in favour of their children.

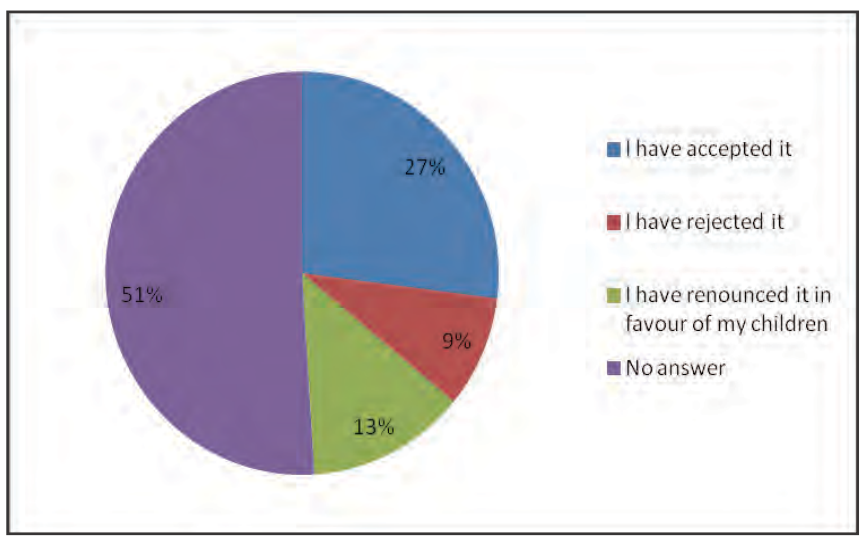

Table 35: If you are a widow or widower, have you accepted your legally mandated inheritance?

It is important to note that there are significant differences between interviewees in terms of exercising their rights to inheritance. Namely, older women are more likely to reject the inheritance and pass it on to the descendants than older men are which is partially influenced by patriarchal model of family relations. As they did not have property registered to their names while their husbands were alive – despite the fact that they participated in its acquisition – so they miss on it after their husband's passing.

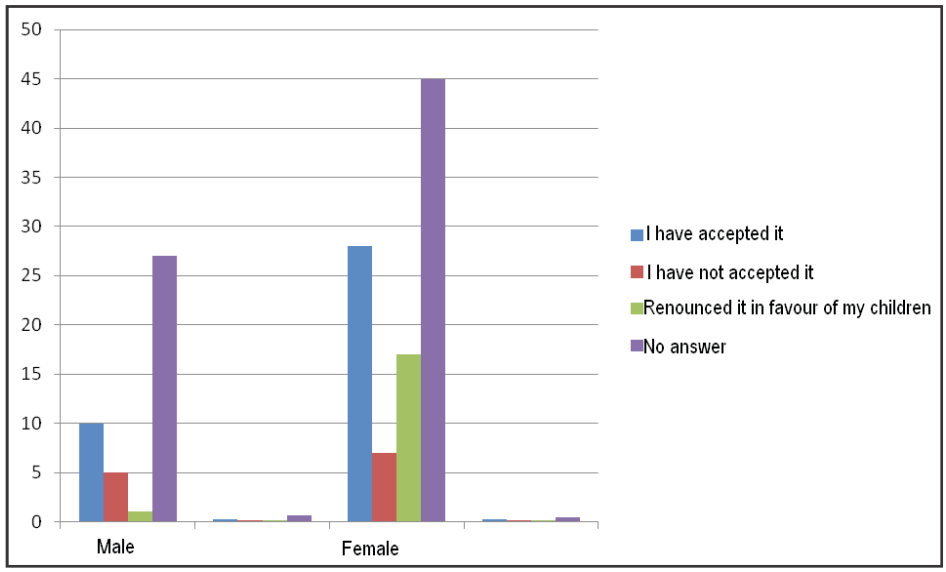

Table 36: If you are a widow or widower, have you accepted your legally mandated inheritance?

When it comes to signing off their property to their descendants, almost a third of the interviewees have done so. However, majority of them used unencumbered transactions to dispose of their property such as through their official will (9.3%) or a contract of distribution of property during lifetime (7.1%) whereas only 11.4% signed a life care agreement – an encumbered legal affair that ensured them livelihood. More than a fifth (22.1%) stated that they do not intend to distribute their property during their lifetime while 37.1% have not done it yet but they intend to.

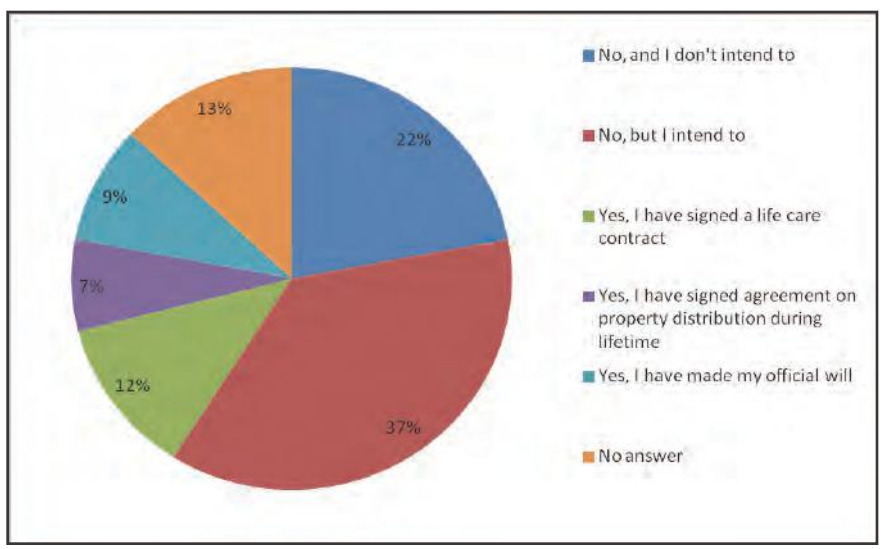

Table 37: Have you in any way regulated the way your property will be distributed?

Compared to interviewees from rural and peri-urban areas, among those from urban areas are more persons who have disposed of their property during lifetime either through life care contracts or through their will. The interviewees from rural areas are apparently more likely to distribute their property during lifetime rather than have a life care contract and they create their will only rarely.

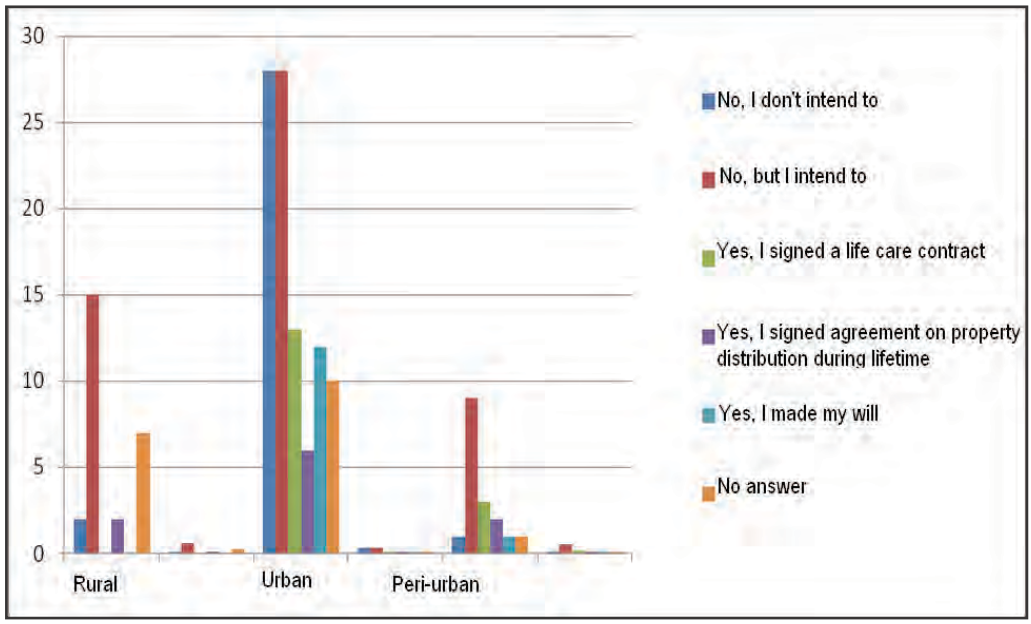

Table 38: Have you in any way regulated the way your property will be distributed?

Aiming to learn who the agreements were signed with, we asked who the provider of livelihood is. Out of the total of 37 persons with signed life care contracts, 21 have signed them with their own children and here sons slightly outnumber daughters. In six cases providers of livelihood are closer or more distant relatives whereas a third party (neighbour) is the provider of livelihood only in one case. Majority of those who have signed life care agreements live alone in owned apartments.

Answers to the question of who initiated signing of the life care agreement: in six cases, it came from another person, in six cases it was an idea reached jointly, whereas in eight cases the receiver of livelihood was the one who initiated it.

The majority are either completely or partially satisfied with the way the provider of livelihood fulfils the contractual duties (22). However, the number of those partially or completely dissatisfied is also high – 8.

Majority of the interviewees are aware that the receiver of livelihood can ask for termination of the life care contract in cases of unfulfilled contractual obligations. Then again,

10% are unaware of it and 41% have not answered this question which indicates that a large number of older persons is not informed about this matter.

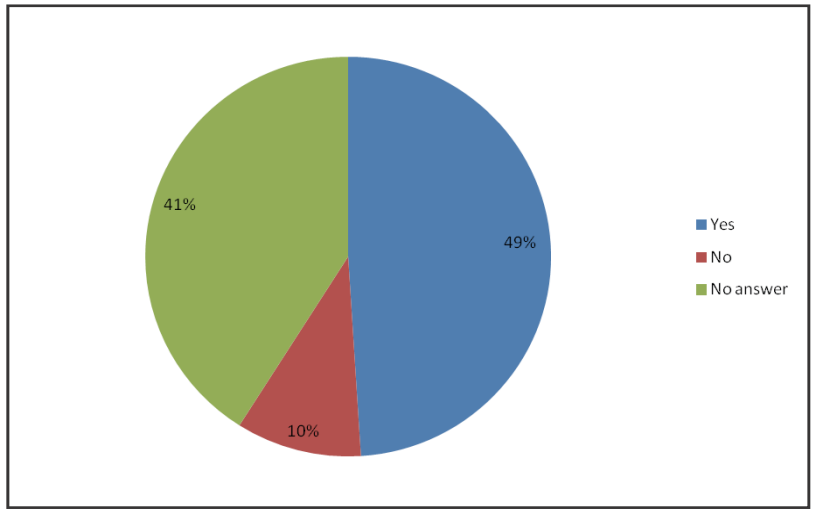

Table 39: Do you know that the receiver of livelihood can ask for termination of the life care contract in cases of unfulfilled contractual obligations?

As for the interviewees who have signed agreements on distribution of their property during their lifetime – 28 in total – 18 of them have personally initiated it while five of them initiated it jointly with their marital spouse or descendants. In other cases the initiative came from other people with no participation of interviewees.

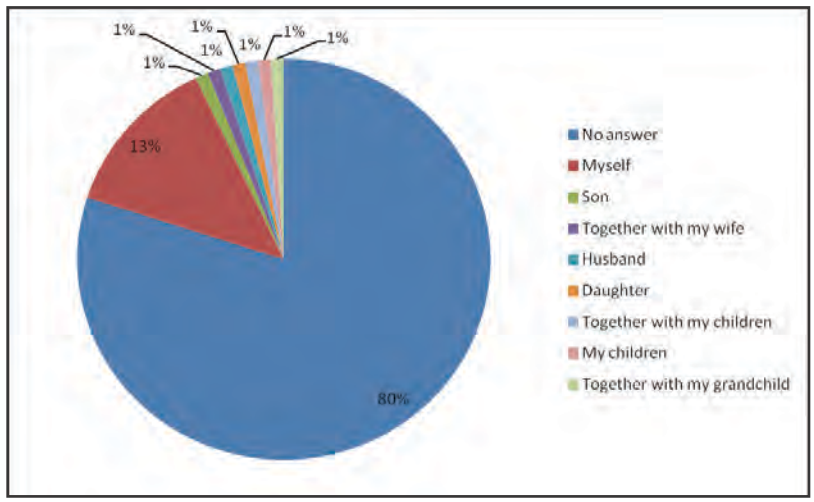

Table 40: If you have signed agreement on distribution of your property during your lifetime, who initiated it?

2.5. Deprivation of legal status and guardianship

In the sample, the majority of the interviewees have full legal capacity (71.4%) whereas 19.3% are partially deprived of it and 7.9% are completely deprived of legal capacity. It is worth noting that interviewees who had been deprived of their legal capacity were capable of understanding and answering the interview questions just as well as the interviewees with full legal capacity.

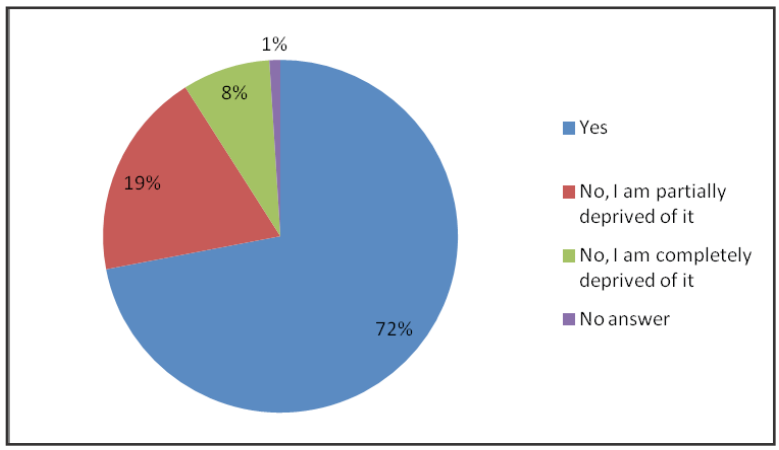

Table 41: Do you have full legal capacity?

Interviewees deprived of legal capacity had the following people assigned as guardians: son or daughter (28.6%), marital partner (3.6%), Centre for Social Welfare (2.1%), Head of the local nursing home and distant relatives for the rest of the interviewees. Only in one case the guardian is a "third party" – a neighbour.

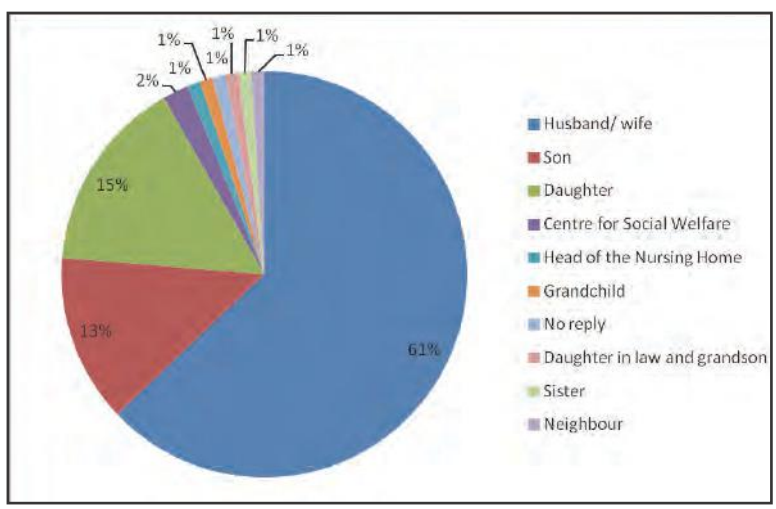

Table 42: If you have been deprived of legal capacity, who is your assigned guardian?

IV CASE STUDIES

1. Reasons for using the case study method and criteria for selecting the analysed cases

In order to get a more complete insight in the realities explored through the research we also used a case study method. We have analysed a case of depriving a person of legal capacity and a termination of a life care contract initiated by an older person. The consequences of taking away one's legal capacity are, as argued above, very significant for the person subjected to it with one of the direst being their inability to manage their finances and property which puts them at a high risk of economic abuse and jeopardises their livelihood. Therefore the first case study will describe a concrete procedure of deprivation of legal capacity – from the moment of petition to the final court decision that took away person's legal capacity. The other case study will describe a procedure of termination of a life care contract, initiated by an older person, as it is an indicator of the rights an older person is entitled to – the right to terminate the contract and retrieve the contracted property if the receiver of livelihood is not satisfied with the way the provider of livelihood delivers the contracted duties.

In order to identify typical cases to analyse we have sent requests to access information of public importance to ten courts: Belgrade, Novi Sad, Zrenjanin, Pančevo, Subotica, Niš, Valjevo, Kragujevac, Zaječar and Šabac. We have chosen courts in those administrative units that have the status of cities because they have more cases, paying attention to have representative geographic coverage. We have asked them to deliver us one case for a person above the age of 65 who was deprived of legal capacity and one case of a person above the age of 65 who terminated a life care contract. Six courts responded in time with the requested data, one court responded with the explanation that they did not have a case related to deprivation of legal capacity of a person above the age of 65 or a case of a person above the age of 65 who terminated a life care contract, whereas three courts did not respond at all.

2. Cases of depriving older persons of legal capacity – general observations

Six courts delivered one case each of a person above the age of 65 who was deprived of legal capacity. First we will discuss the basic features of five of these cases and then we will analyse one of the cases in more detail.

Initiation of the procedure

According to the Law on Non-Contentious Proceedings, the procedure for deprivation of legal capacity is initiated and handled by court acting in official capacity, or following the petition submitted by guardianship authority, marital spouse, extramarital spouse, child or

parent of the person for which legal conditions for deprivation of legal capacity have been met. In the five analysed cases the petition to deprive a person of legal capacity was filed by children: daughters in two and sons in three cases.

Reasons for initiation of the procedure

The law stipulates that the petition must contain facts on which it is based as well as evidence that establishes these facts as true or believable. In all analysed cases the stated reason for initiating the procedure was health status of the older person – mostly health problems related to older age (dementia, Alzheimer, Parkinson's disease, Chronic organic psycho-syndrome). The petitions list:

- *He became oblivious, he keeps living in the past, he is easy to manipulate, disoriented in time and partially in space;*
- *People around him use him, once he purchased old windows at the green market, paid for them in advance to a man he never met before and received them only later;*
- *He took his watch to be fixed and did not complain when they did not fix it properly;*
- *He frequently did things that were to his disadvantage, for instance, he initiated many court cases that he lost;*
- *His status drastically worsened after his daughter in law and grandson died in a traffic accident;*
- *He has delusions and hallucinations so he gets verbally and physically aggressive;*
- *She is not fit to take care of herself any more due to mental illness – dementia caused by stroke that was caused by vascular illness;*
- *Her condition has worsened because of Alzheimer's syndrome;*

In all the analysed cases health status was the reason for initiation of the deprivation procedure and provided evidence was nothing but medical records, some of it more than a decade old. Some of the quotes from the petition were completely illogical and do not show that the person can not be trusted to take care of her or himself (e.g. *once he purchased old windows at the green market, paid for them in advance to a man he never met before and received them only later; he initiated many court cases that he lost; he took his watch to be fixed and did not complain when they did not fix it properly*).

Representation, temporary guardian

In all cases the responsible Centre for Social Welfare assigned a temporary guardian to the person being the subject of the procedure. In three of the cases the assigned guardian was an employee of the Centre for Social welfare – social workers in all cases even though the circumstances would naturally dictate that guardians should be lawyers by trade. In one case, initiated by the older person's son, the assigned guardian was the other person's son, the brother of the petitioner. Only in one case the assigned guardian was a lawyer and this was also the only case where the assigned guardian contested the petition to deprive the client of legal capacity although "only as precaution". In all other cases the assigned guardians did not file any complaints against the petition to deprive their client of legal capacity.

Expert witnesses

As explained above, the procedure of taking away legal capacity demands involvement of court experts. It is stipulated that at least two medical doctors of appropriate specialisation must examine the person subjected to the procedure. The experts provide the report after the examination as well as their opinion of the person's mental health and mental competence and it is also stipulated that the examination must be done in presence of a judge unless it is performed in the stationary medical institution. In none of the cases analysed the judge did actually see the person who was the subject of the procedure of deprivation of legal capacity. The expert examinations were not performed in the presence of a judge while only one was done in a stationary health institution. The task of the experts is to provide reports and opinions on the person's mental health and mental competence. In analysed cases all the experts overstepped their authorisation established by court orders by providing suggestions to deprive examined persons of legal capacity. This is not a task for medical experts – the deprivation of legal capacity is exclusively legal matter to be decided by court. Hereby we quote relevant parts of experts' reports and opinions to confirm his statement:

– *M.N. is 85, notable from a neuropsychiatric point of view because she exerts symptoms of chronic mental illness (Alzheimer's). Due to the noted deterioration of cognitive, behavioural and affective capacities, inconsiderateness and reckless behaviour she is incapable of taking care of herself or protecting her rights and interests so it is necessary to deprive her of legal capacity COMPLETELY AND PERMANENTLY and assign her a guardian who will adequately provide necessary protection.*

– *This is a person in her older age with notable psychological changes with organic background. This state is called dementia with vascular genesis. (...) The facade of her personality is well preserved but the changes can be identified with chronological order of events in her telling, periodical problems in everyday functioning, losing previously learned skills (...) A person in this state is insufficiently mentally competent, has problems with memory and it is necessary to proclaim her as legally disabled and deprive her completely of legal capacity!*

– *There are signs of chronic organic psych syndrome, characterised by deterioration and degeneration off neural cells of different etiology and manifested by disorder of basic psychological functions, memory functions, disorganised intellectual functions and general deterioration of the complete personality. The illness is chronic and no treatment can restore the patient to the previous state but a prescribed medication therapy may slow down the development of the illness; we can ascertain that the person is not capable of reasoning, protecting her rights and interests and manage her property so it is necessary to completely deprive her of legal capacity and assign a guardian.*

– *K.S. is 73 years old, a person of primarily high intellectual capabilities, paranoid personality structure, currently suffering from mental illness – chronic brain psych syndrome with changes in cognitive and connotative functioning (...) Moral and social deprivation, impulsive behaviour, recklessness and failure to understand his own state and illness as well as paranoid interpretative syndrome as part of the chronic brain psych syndrome and periodical episodes of irritability, compromise his reasoning and judgement (...) Having in mind all of the above, the person is of compromised reasoning and judgement and is legally not capable of taking care of himself, his rights and interests, therefore is completely legally incapacitated.*

Interviewing the person being deprived of legal capacity

According to applicable legal stipulations, court must interview the person under the procedure in person and if the person resides in a health institution the court will hold a hearing there and the interview is performed there. The court may withdraw from the hearing only if the hearing may be harmful for the person's health or if the hearing can not be performed due to her or his mental or physical health status. The courts have not interviewed

persons under procedure in any of the cases we analysed. One person was residing in a stationary medical institution but the court did not organise the hearing there. In two cases the explanations of the court decisions did not contain an explanation of why the persons under procedure were not interviewed whereas in the other cases the court withdrew from the hearing because the court experts assessed that the interviews is not possible or it could harm the health of the person under procedure. Also, in one case the daughter, who was the petitioner for the procedure, stated that her mother can not be present at the hearing as she is "immobile, demented and can not be communicated with". The decisions of the courts to withdraw from interviewing the persons on whose legal capacities they were tasked with deciding were not essentially explained as only the following quotes were provided:

- *The court followed the experts' findings and withdrew from interviewing the opposing party*
- *The court did not interview M.G. neither in the courtroom nor in the health institution where he is residing as the court experts' findings and opinions stated that any attempt to have M.G. interviewed by the judge may lead to deterioration of his illness and his overall health status*

Court decision

In all of the analysed cases the person who was under procedure was completely deprived of legal capacity. Findings and opinions of court experts were fully accepted, the judge was not present during the examination and did not even see the person under procedure and the person under procedure was not interviewed – no contact was made between the judge who made the decision on deprivation of legal capacity and the person losing legal capacity.

3.1 Case study: deprivation of legal status: Marija B, born in 1938

Initiation of the procedure

The petition to deprive M.B. of legal capacity was filed by Ranko B., her husband. Therein he stated that they were married for 43 years, that they have two daughters living abroad and who are in agreement with his petition. Although agreement of children was not needed – Ranko B. being an authorised petitioner – it is worth noting that the petition does not contain the proof of the daughters' agreement with the initiation of the procedure. In his petition he also stated that M.B. and him live on the same address but that she left their shared apartment on 25 June 2012 and that since then they have not been in any contact and that her current address is known to the police. The petition was filed on the 20 September 2012.

Reasons for initiation of the procedure

The stated reasons for the petition were that M.B. is mentally ill, that she has periodical episodes of mental disorder that make her incapable of understanding the consequences of her actions and managing her activities, that she also loses contact with reality "which puts her marital and familial interests at risk, as well as her own safety, as long as she has the status of a normal person in legal process."

The explanation of the petition states that M.B. has repeatedly left her family's home during her childhood, that she was treated in hospital conditions several times with the diagnosis being *psychotic relapse* and later in life she was treated at a psychiatric clinic with the diagnosis being F25. It is also stated that she has been avoiding hospitalisation and that disorders strike one to three times per year, that they are not visible in her speech patterns, orientation and conduct. The petitioner Ranko B. Then describes the events that, in his opinion, should serve as grounds for depriving his wife of legal capacity:

- *Leaving the apartment, secretly, during night time, for one to one hundred days, hiding and wandering, masked in other person's clothes*
- *Leaving the apartment during night time and staying in a hotel for the night*
- *Selling the personal items from the apartment, acting as a street peddler, uncontrolled spending, disappearance of smaller and bigger sums of money from the apartment*
- *Irresistible buying urges and buying unneeded goods*
- *Renting business space in order to start own business*
- *Buying food and drinks for a larger number of people working at school*
- *Providing shelter for criminals, immoral persons and psychiatric cases*
- *Susceptibility to suggestions, fear, suicide attempts*
- *Connections and working with the police since 1978*
- *Police interventions in the apartment during night time because of "things happening in the apartment" and some ten times following the "neighbours' phone calls"*
- *False accusations of her husband and reports to the police for this and that and then admitting that they were false once the husband was sentenced to various penalties that remain in force even after the admittance of false accusations*
- *Connections to and cooperation with a safe house*

The only evidence supplied with the paper with the above statements were M.B.'s birth certificate issued in 1954 and a photocopy of her personal ID. The petitioner also stated that he contacted the police via telephone and that he was told that M.B.'s address will be provided

to him following the court order as well as that the police will bring M.B. to a psychiatric clinic for court experts' examination after the order is issued.

Representation, temporary guardian

The court ordered the Centre for Social Welfare to assign a temporary guardian to M.B. by order dated on 9 October 2012. The petitioner informed the court in writing on 23 October 2012 that M.B. has returned home and that the court summons can be delivered to their shared address and that she will respond to the summons without the police assistance. On 15 November 2015 the Centre for Social Welfare signed the decision on assigning a temporary guardian to M.B. – a social worker employed in the Centre. In the explanation of the decision on assigning the temporary guardian the Centre wrote, among other things, the following:

- *That M.B. is a pensioner with no property registered to her name, living with a husband, Ranko who is taking care of her*
- *That, according to the husband she has well enough communication with him when her psychological state is stable, that she was treated in a hospital multiple times, that in the last ten years she has had difficulties in everyday functioning manifested by leaving apartment, going to a hotel in the middle of the night, uncontrolled money spending, purchasing of unnecessary goods, renting business space etc.*
- *That, according to the psychologist, M.B. can communicate but she is passive. She will answer a question when asked but will not join the conversation on her own volition. It seems that her cognitive functions are not completely preserved, her thinking is not causal and realistic picture of the consequences of her negative behaviour is lacking (...) It is obvious that she is experiencing a sense of guilt but without capacity to interpret the concrete reason why she feels that way (...) She approaches strangers with total trust and visible susceptibility to suggestions (...) She is oriented in space and in relation to other people but she sometimes loses temporal orientation. In the emotive sphere, anxiety can be identified, depending on situation.*

The first hearing was held on 6 February 2013. Present parties were: petitioner Ranko B., his opponent in court, M.B. and the M.B.'s temporary guardian. The petitioner stood by the quotes from the petition to deprive his wife of legal capacity and suggested examination by two court experts – psychiatrists. M.B.'s temporary guardian stated that she supports the motion to deprive M.B. of legal capacity and to have court experts perform the examination. M.B. stated that she is familiar with the contents of the petition filed by her husband and that she understands that this is the reason she came to court. She also stated that she agrees with the motion to deprive her of legal capacity as she feels the need to be assisted in legal affairs. The court accepted the suggestion made by Ranko B., and decided to have two psychiatrists perform the examination.

In the decision made at this hearing it was stated that the court experts need to provide findings and opinion in relation to "legal capacity of the petitioner's opponent". The decision also noted that the expenses of the expert examination (20.000 RSD) were paid on the same day.

Expertise

The court experts have examined M.B. at the clinic where they are employed on 1 April 2013 and the findings and their expert opinion were provided to the court on 2 April 2013. The findings state that alongside the examination of Marija B. the experts have gained detailed insight into the court file related to the case. The written findings and the opinion are divided in three parts with titles: 1) From the court file; 2) psychiatric team exam and 3) from medical files. The *From the court file* part quotes the petition. The *Psychiatric team exam* part states that M.B. came to the examination accompanied by her husband. First it lists her personal data – age, growing up, education as well as that since she was 16 she has been treated for psychosis. Somatic and neurological findings are normal. Psychological status of M.B. was described as follows:

- *Relatively tidy on the outside, aware, properly oriented towards herself, other persons and in space whereas she has some difficulties orienting herself in time.*
- *Establishes verbal contact, communication follows question-answer pattern, during contact she is suspicious and distant.*
- *She denies perceptive illusions and we have not registered phenomena related to disintegration of consciousness (such as depersonalisation, derealisation or personality transformation).*
- *Obvious difficulties in remembering new content*
- *No spontaneous reproduction of delusional content but the complete behavioural aspect indicates the existence of psychotic separation from reality in the content of thinking.*
- *Affective levelling prevails in the emotion sphere accompanied with the defects in emotional resonance*
- *Intellectual capacities weakened in relation to the basic intellectual potential (decreased capacity for intellectual combinatorics)*
- *Changes in the will/ instinctive sphere are manifested through demonstrable susceptibility to suggestion, lack of spontaneity and initiative, impossibility to organise her time constructively in longer intervals*
- *No clear picture of her status and the need to get continuous psychiatric treatment*

The *From medical files* part of the paper states that the existing files contain a release form with epicrisis dated to November 2012 as well as the anamnesis that shows her as a long time

psychiatric patient treated several times in the hospital for psychosis related difficulties. M.B. shows the tendency to not respect protocols, which lead to her conducting in disorganised manner several times which in turn meant that her hospitalisation needed to be assisted by police and paramedics at some times. In some periods of her illness she is prone to abandoning her home, uncontrolled spending, doing pointless activities that all put her at risk of strangers that she establishes contact with especially due t her susceptibility to suggestions.

In the end the experts conclude that M.B. is unable "to make adequate decisions and freely express her will", that she cannot protect her rights and interests and they suggest to the court that her legal capacity should be removed and that a guardian should be assigned.

Interviewing the person being deprived of legal capacity

The second hearing was held a day after the expert examination, on 2 April 2013. The present parties were: Ranko B., the petitioner, his opponent M.B. and he temporary guardian. Copies of the experts' findings and opinions were provided to the petitioner and the guardian but not to M.B. who was also present at the hearing. It is unclear whether M.B. was interviewed at this hearing considering that the brief record of the main hearing states that the petitioner and the temporary guardian confirmed all their stances from the first hearing and that after that M.B. stated the following: "She knows the reason why she has come to court, she made the mistake by spending the largest part of her savings – she thinks approximately 7000 Euro – without talking to her husband first and she needs to have her legal capacity taken away due to this mistake". The record also states that all the present parties confirmed they are familiarised with the experts' findings and opinion so that they suggest that experts need not be summoned as there are no questions or comments to be made so the hearing can be closed. The court then made the decision to close the hearing as well as to deliver this decision to the petitioner and the M.B.'s temporary guardian.

Court decision

On 7 May 2013 the court made the decision to completely deprive M.B. of legal capacity. In the delivery order the court states: *Deliver to the petitioner and the temporary guardian of the petitioner's opponent and after finalisation also to the Centre for Social Welfare*. This means that, in a breach of the applicable legislation, M.B. was prevented from filing a complaint to the decision that deprived her of legal capacity.

3. Cases of termination of a life care contract – general observations

As already mentioned, the courts were requested to deliver one case each in which a person above the age of 65 requested a termination of a life care contract. However, out of six courts that

have delivered cases, five were cases of mutually agreed termination of a life care contract. We will first go through the basic characteristics of the five available cases and after that we will analyse the case of termination of a life care contract initiated by a petition of the receiver of livelihood.

Life care contract is agreement through which the receiver of livelihood pledges that upon her or his death property (chattel or real estate) in her or his possession or some other entitlements will be transferred to the provider of livelihood and the provider of livelihood pledges to provide livelihood and provide care to the receiver until the receiver's death as well as to organise a funeral upon the receiver's death. Also to be had in mind is that the obligation of the provider of livelihood is not limited to material duties but it also extends to moral duties that can only be delivered in direct interaction between the provider and receiver of livelihood.

Contractual parties – provider and receiver of life care and their relation

In four cases the provider and receiver of livelihood were relatives – son, daughter, sister and son in law of the receiver of livelihood whereas the records of one case do not state whether the receiver and provider are related.

Reasons for the contract

Reasons for creating the life care contract were stated in all the analysed cases. The most frequently cited reason is that the receiver of livelihood is an older person in poorer health, not able to take care of her or himself without assistance. In some cases it is stated that the person lives alone, has difficulties moving and that assistance and support of another person is essential whereas in two cases the reason for the contract was summarised as "the receiver of livelihood is of the older age"

Duration of the contract

Life care contracts were all terminated fairly soon: four of them lasted for less than two years and the shortest of them all was signed in March 2012 only to be terminated in May of the same year. Only one of them had a longer period – 11 years – from April 2003 to July 2014.

Duties of contractual parties

In all the analysed life care contracts the duties of contractual parties are stated as it is common for this type of agreement. Namely, the provider of livelihood pledges to regularly visit the receiver of livelihood, to provide food, medication and necessary medical assistance if needed, to take care of the receiver's basic living needs, maintaining the hygiene of the receiver's living space etc. In two cases the provider of livelihood pledged to also provide firewood during winter as well

as to do more demanding housework and in one case it was agreed for the receiver to move in with the provider where she will have her own room and adequate living conditions. In all cases the provider of livelihood pledged to provide the funeral for the receiver in line with the local customs. For their part the receivers of livelihood pledged to compensate the providers with their real estate by having it transferred to the providers upon the receivers' death. In all cases it was agreed to have the life care contract reference entered in the land registry.

Property of the receiver of livelihood

In four cases the receivers of livelihood pledged to compensate the providers with all their chattel and real estate upon their death. Only in one case it was agreed to exclude 1/6 of the ideal part of the receiver's property from the contract on life care. In all cases the real estate in question was the living space (house or apartment) and in three of the cases it also included some agricultural land, orchard etc.

Contract termination

Considering that analysed cases delivered by courts contained contracts terminated through mutual agreement, in three cases there were no stated reasons for termination. Instead it was only stated that both parties want the contract to be terminated and that they make this decision of their free will. In one case it is stated that interpersonal relations between the parties have deteriorated so the further implementation of the contract is impossible for both of them. In another case it was stated that after the life contract was signed, the receiver of livelihood moved in with the provider in his household, but that there were frequent disagreements between them so the receiver in the end left the provider's household. In all cases of termination of life care contracts the parties agreed that there are no debts on either side related to provided and received livelihood.

4. Termination of the contract on life care instigated via lawsuit by M. and P. J., receivers of livelihood

Contractual parties – provider and receiver of livelihood and their relation

Married couple M. and P. J. have, as receivers of livelihood signed the contract on life care with M.B., their nephew and his wife J.B. as providers of livelihood. The contract was signed and validated in court on 4 April 2012.

Reasons for the contract

Stated reasons for the life care contract are that M. and P.J. are of the older age and that they have decided to sign the contract with their nephew and his wife. Contractual parties are in

good relations and the providers of livelihood have frequently visited the receivers even before the contract was signed, among other things also because they were working in a garden owned by the receivers and that the receivers allowed them to use for their own needs.

Duration of the contract

The contract was valid for two years, signed on 4 April 2012 and terminated by the decision of the responsible court on 29 May 2014. Also to be had in mind was that the petition to terminate the contract was filed on 20 March 2013 which indicates that the contract actually lasted for less than a year.

Duties of contractual parties

The parties agreed that the providers of livelihood will look after and provide care if the receivers fall ill, that they will provide necessary medical assistance, that they will take care of their personal needs and requests as well as of the household, that they will provide assistance with house chores, that they will act in the spirit of good and correct family relations, as well as that they will provide funeral and appropriate rites in line with local tradition unless the receivers of livelihood have some other wish. The receivers pledged to compensate the providers by transferring all their real estate to them, as well as the entire chattel in their house at the moment of their deaths.

Property of the receivers of livelihood

The contract lists the property for each receiver of livelihood separately. The receivers have pledged to transfer all their property to providers upon their death. The property consists of two houses with infields (the land under and around the buildings) as well as the land classified as fourth class forest.

Contract termination

The petition to terminate the life care contract was filed on 20 March 2013. The petitioners were represented by an attorney. The petition stated that the respondents (providers of livelihood) have since the contract signing not taken care of the plaintiffs (receivers of livelihood) in any way, that they do not provide care, they do not visit them nor they ensure they receive necessary medical assistance, they do not take care of their living needs and household needs, that they do not provide assistance with house chores and do not act in the spirit of good and correct family relations. It was also stated that immediately after the petition was filed, M.J. had arm injury and needed first medical and then household assistance but that it was denied by the providers of livelihood. Therefore the receivers of livelihood had to hire and pay another person to provide care to M.J. and the household of the plaintiffs.

In their response to the petition, the respondents stated that they have in no way contributed to the impression on the part of the plaintiffs that the providers of livelihoods did not perform their duties and that they in fact have performed their duties regularly and with high quality during contract period. They have agreed to contract termination but they have stated that even before the contract was signed and during contract period they have had certain material expenses related to the receivers of livelihood, such as transporting them to the doctor for regular check-ups, purchasing medicaments and working on land. They have stated that as far back as 2009 they have worked for the receives of livelihood and helped them with the house chores and the garden duties, that they have provided rides for M.J. to therapy sessions when she had shoulder injury and that in that period they slept in the receivers' house in order to help with the house and household chores. They also stated that they lent their pump to the receivers when the receivers' water pump broke, that they have helped in removing the old roof tiles and replacing them with new ones etc. Thus, they have filed a counterclaim to seek compensation for invested work and material goods in the amount of 88,000 dinars.

The receivers of livelihood disputed the statements in the counterclaim stating that they let the providers of livelihood use their land without compensation that the providers used exclusively for their own needs in the period between 2009 and 2012. Furthermore, they stated that they live off their pensions and that this is how they pay for all their expenses and that the providers have not financially assisted them in any way. On the contrary, the receivers of livelihood have greeted the providers with food and drinks several times and before the contract was signed the receivers have loaned the providers money: 200 Euro and 20,000 dinars.

There were 11 hearings during the process where there were several witnesses testifying in addition to the litigants, following the suggestion of receivers of livelihood. The witnesses have confirmed the statements made in the petition filed by receivers of livelihood as well as the claim about M.J. falling and injuring her arm and then having been visited by a geronto-maid for a longer period of time and that the pair also had to hire another person for household chores. An expert's opinion was also sought so an agricultural engineer was tasked with assessing the value of work, services and material invested by the providers of livelihood in the needs of the receivers. The expert assessed the total value of work, material and services at 2.940 dinars.

The contract was terminated by court decision of 29 may 2014 obliging the receivers of livelihood to pay the providers the amount of 2,940 dinars as compensation for received livelihood during the contract period. The providers of livelihood were obliged to pay 141,750 dinars for the expenses of the litigation process.

V RECOMMENDATIONS

I Recommendations for improving the normative framework

1) Start working on the umbrella law that should focus on older people and provide a legal definition of an older person; the creation of this law needs to be implemented in a transparent way with participation of all relevant actors in the society and full inclusion of the civil society organisations working with older people and their rights.

2) Incriminate neglect and abuse of older persons as a separate criminal act in order to efficiently prevent and sanction all forms of elder neglect and elder abuse having in mind that older persons often tend to be targeted by these criminal acts. To support this idea it is worth noting that the Criminal Law of the Republic of Serbia incriminates only neglect and abuse of minors (article 193 of the Criminal Law) but not older people who are a special vulnerable group subject to different forms of abuse and neglect by their marital spouses, adult children, members of wider family, guardians, as well as employees of public health and social welfare institutions. On the other hand, the criminal act defined in the Article 196 of the CL, "Violating family duties" is only related to neglecting the family member who is in a difficult state and can not take care of her or himself. Therefore, this act does not include abuse because the essence of abuse is in every form of acting that creates damage, pain, distress and such in the older person and only talks about the acts performed by family members and not other persons, including professionals in medical and social welfare institutions.

3) Improve normative framework of legal protection for older people to protect them from economic abuse in their families by expanding the list of named forms of abuse quoted *exemli causa* in the Article 194, paragraph 2 of the Family Law where typical cases of economic abuse are listed: prohibiting one to use their income, taking away money and valuables. Despite the definition of domestic abuse being very broad as to include all possible forms of abuse, including economic abuse, as one of the more frequently encountered forms, in practice economic abuse is not recognised as domestic abuse and therefore court cases to provide protection against it are rare. The suggested change would contribute to better identification and reactions to elder economic abuse in family context – the cause of bad consequences for physical as well as psychological integrity of its victims.

4) Without delay start working on changing and amending the legislation regulating legal capacity and harmonise them with the international standards. During procedures for depriving persons of legal capacity as a measure of protection, it is necessary to start with the following postulates:

- The right of an older person to legal capacity, that is the right to make decisions on her or his life and exercise legal capacity equally to others is one of the essential human rights;

- Older persons, regardless of their disability or health status, capabilities or other personal traits are entitled to legal capacity in all areas;

- Legal capacity is different from mental capacity which is about making decisions and is different from person to person and can differ for the same person in relation to many factors, including circumstances and social factors;

- Complete removal of one's legal capacity is not acceptable from the human rights aspect;

- Older persons need support in exercising their legal capacity which includes support in making and announcing decisions when the older person requests it;

- Efficient mechanisms need to be established to prevent abuse, in line with international regulation on human rights;

- In procedures where older persons are being partially deprived of legal capacity, they need adequate representation;

- Older people are entitled to participate in choosing a person who will support them in exercising their legal capacity.

5) Establish efficient system to provide free legal assistance that will ensure that every socially vulnerable older person receives free legal assistance in exercising personal, proprietal and other rights in court and in front of other public institutions.

6) Improve regulation on procedures related to inheritance in order to enable older people to participate in the procedure with all necessary information and clarifications, following the principles of open justice.

II Recommendations on creation of public policies

1) Without delay start working on creation of the new National Strategy on Ageing for the coming period that needs to regulate comprehensive and coordinated measures and activities to improve social and economic position of older people. The Strategy needs to be accompanied with a detailed plan of action with precisely defined tasks, activity carriers, indicators and timelines of implementations of the planned measures

and activities that will also be covered with the necessary funds. The Strategy creation process must be participative to the maximum which means including relevant public organs and institutions, as well as representatives of the civil society involved with promotion and protection of human rights, having in mind their capacities, expertise and contributions made so far to improving older people's position in the society.

2) Prepare and implement national campaign to suppress stereotypes and prejudice on older age and older people, to teach the public on capacities, needs and rights of older people and build a positive image of older people as well as promote intergenerational solidarity.

3) School subject "Civil education" needs to be expanded with a course on intergenerational solidarity in order to overcome prejudice on older age and older people.

4) Prepare and implement a programme of informing older people on their rights including social and economic rights as well the legal mechanisms for their protection.

5) Encourage and support self-organisation of older people through establishing self-help groups, associations of older people etc.; support those activities of older people that improve their self-esteem and assertiveness and diminish self-neglect and the habits of ignoring own needs and interests; support activities that contribute to overcoming the prevalent model of self-sacrifice;

6) Ensure adequate economic support to families providing care for older dependant members

7) Take adequate measures to prevent economic abuse and neglect of older people, especially women as well as to mitigate and remove damage already done

8) Make widely available information on services, institutions and organs where economic abuse needs to be reported, as well as abuse and neglect of older persons, and the information on how to exercise the rights that older persons are entitled to when it comes to protection from certain forms of abuse, violence and neglect.

9) Initiate creation of shelters for older homeless persons, support wider application of foster care as adequate form of providing support to older people

10) Initiate forming of local level financial foundations to support civil society organisations' projects that focus on providing protection, care and support to vulnerable older people.

11) Create and implement programmes to educate professionals in public institutions and organs in order to improve their communication with older people, enable them to better recognise their needs and react in cases of economic abuse, neglect etc.

QUESTIONNAIRE

„ECONOMIC ELDER ABUSE – A FORM OF HUMAN RIGHTS VIOLATION"

This research is done in order to gather information on basic forms and features of economic elder abuse in family context, how it commonly occurs, who are the victims and perpetrators, do older people recognise it and do they know who to address and report it to, how the institutions of the system react etc.

We are kindly asking you to participate in this anonymous poll and contribute to reaching the goals of the research. It will take 15 minutes of your time and we are grateful in advance for your effort.

Research team

Date:_____

Data collection questionnaire

1) Gender: 1. male 2. female
2) Residence
   1. rural 2. urban 3. Peri-urban
3) Age:
   1. 65-70 2. 70-75 3. 75-80 4. Above 80
4) Occupation:_____
5) Education:
   1. no formal education
   2. incomplete primary school
   3. primary school
   4. secondary or high school
   5. college or university
   6. Master Degree or PhD
6) Marital status:
   1. married
   2. divorced
   4. separated
   5. widowed
   6. unmarried
   7. _____
7) Number of children: _____
8) Your profession_____
9) You reside:
   1. In a nursing home
   2. Alone in my own apartment
   3. With my married partner in our apartment
   4. With my son's family in my apartment
   5. With my daughter's family in my apartment
   6. With my son's family in their apartment

7. With my daughter's family in their apartment
8. _____

10) What is your living income source?
    1. Age pension
    2. Family pension
    3. Wage
    4. No income, my children provide for me
    5. I have a signed life care contract
    6. Social welfare
    7. Real estate income
    8. Agricultural income
    9. Other income

11) Does your monthly income satisfy your needs?
    1. Yes, completely
    2. No, I need slightly more
    3. No, I need much more
    4. I can not judge

12) Do you have savings?
    1. yes
    2. no

13) Do you have property registered under your own name?
    1. yes
    2. no

14) If you have property registered under your own name would you sell it to compensate for the lack of funds for your basic needs?
    1. yes
    2. no

15) When did you last go for a vacation? _____

16) When did you last buy your own clothes? _____

17) When did you last participate in a social event?_____

18) Do you have any hobbies?
    1. yes
    2. no

19) Do you assist or have you assisted with providing care to your grandchildren?
    1. yes
    2. no

20) Do you financially assist or have you financially assisted your children's family?
    1. yes
    2. no

21) Is anyone authorised to use your bank account and who?
    1. Yes, my _____ (spouse, son/ daughter/ grandchild...)
    2. No

22) Does someone take your pension/ salary/ income money without your knowledge and who?
    1. Yes, my _____ (spouse, son/ daughter/ grandchild...)

2. No

23) How do you assess your current economic status?
    1. Very unsatisfactory
    2. unsatisfactory
    3. neither satisfactory nor unsatisfactory
    4. satisfactory
    5. I can not judge

24) How do you asses your current health status?
    1. bad
    2. good
    3. neither good nor bad
    4. I can not judge

25) Do you have enough money to buy medicaments?
    1. I have enough
    2. I have but not enough
    3. Not at all

26) Is there some food that you desire for but can not always afford?
    1. yes
    2. no

27) How would you assess the overall quality of your life?
    1. Very unsatisfactory
    2. unsatisfactory
    3. neither satisfactory nor unsatisfactory
    4. satisfactory
    5. I can not judge

28) If you are a widow/er did you accept the inheritance after the death of your spouse?
    1. I did
    2. I did not
    3. I renounced it in favour of my children

29) Did you in some way regulate who gets to have your property?
    1. No and I don't intend to
    2. No, but I intend to
    3. Yes, I have signed a life care contract
    4. Yes, I made the contract on distribution of property during lifetime
    5. Yes, I made my will

30) If you signed a life care contract, who is the provider of livelihood?
    1. son
    2. daughter
    3. marital partner
    4. a relative
    5. _____

31) If you signed a life care contract, who initiated that contract?

    _____

32) If you signed a life care contract, are yu satisfied with the provider of livelihood and the way s/he fulfils the contractual obligations?
    1. yes, completely
    2. yes, mostly
    3. no, not at all

4. mostly not

33) Do you know that receiver of livelihood is entitled to requesting termination of life care contract if the provider does not fulfil the obligations?
    1. yes
    2. no

34) if the contract on life care is signed with your children, who was the one who suggested it? _____ _____

35) If you did not have enough of your own funds, who would you ask for help?
    1. Centre for social welfare
    2. Municipal government
    3. son
    4. daughter
    5. both my children
    6. brother/ sister
    7. relatives
    8. my friend
    9. _____

36) If you live with your family, what is the level of duties you have in the family's everyday work?
    1. Much more than I would want
    2. More than I would want
    3. As much as I want
    4. Less than I want
    5. Much less than I want

37) What is your greatest fear?
    1. war
    2. poverty
    3. my children's future
    4. falling ill
    5. being abandoned and left alone
    6. _____

38) Do you have full legal capacity?
    1. yes
    2. no, it was partially removed
    3. no, it was completely removed

39) If you do not have full legal capacity, who is your assigned guardian?
    1. Marital spouse
    2. son
    3. daughter
    4. relative
    5. Centre for Social Welfare
    6. Head of the nursing home
    7. _____

40) If you won a lottery, what would you spend the money on?
    1. I would go on a trip
    2. I would give it to my children/ grandchildren
    3. I would pay the surgery that I can not afford at the moment
    4. I would go to a spa
    5. I would spend it in stages

Non-discrimination and equality are the greatest heritage of human civilisation however accelerated population ageing has posed a number of questions and challenges related to human rights of older people and their protection in front of governments, academics, civil sector and older people themselves. How to ensure that rising numbers of older people have adequate income? How to provide them with adequate access to medical and social services? How to improve and ensure safety and security of older people? What options the society offers to older people in terms of education and employment when they wish to remain active? How to preserve and improve intergenerational solidarity? How to combat stigmatisation, prejudice, discrimination and abuse of older people? The authors tried to on one hand draw our attentions to these important questions, answers to which may lead to equal participation of older people in the society, and on the other hand they remind us of inclusiveness and adequate services for older people who are functionally dependant. Of special importance is to solve the problem of economic abuse – one of the most frequent but least explored forms of elder abuse.

This publication will be used as a foundation on which to build further work on sensitisation of the public and education of professionals.

Prof. dr sci. med. Aleksandra Milićević Kalašić

This book was mass produced with non-commercial goal in mind, that of expanding the knowledge and raising awareness of citizens of the Republic of Serbia on human rights of older people.

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