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RESURSU CENTRS CILVĒKIEM AR GARĪGIEM TRAUCĒJUMIEM

Resource Centre for people with mental disability “ZELDA”

Thematic report for the UN Committee on the Rights of Persons with Disabilities on the implementation in Latvia of the UN Convention on the Rights of Persons with Disabilities.

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Introduction¹

Resource Centre for People with Mental Disability “ZELDA” (hereinafter – RC ZELDA) is a civil society organization based in Latvia promoting deinstitutionalisation and the development of community based mental health and social care services for people with mental disabilities (people with intellectual disabilities and people with psycho-social disabilities) through research, monitoring of observance of human rights, legal advocacy, strategic litigation and activities informing and educating the public.

Several persons with psychosocial disabilities are between individual members of our association; as well twenty persons with intellectual and/or psychosocial disabilities are members of RC ZELDA Consultative Council acting in the role of consultants of our association.

Primary area and overall target of our work is human rights’ protection of people with psychosocial disabilities, as well people with intellectual disabilities, who continue to be one of the most vulnerable groups in Latvia. RC ZELDA has ten years’ experience in researching and monitoring human rights, and co-operating with government to harmonize national laws and regulations with international human rights standards in the field of mental disability law and advocacy.

Additionally to research and training activities RC ZELDA is the only NGO in Latvia providing service of supported decision making – currently direct support on a regular basis is provided to 28 persons. We are also the only NGO in Latvia providing free legal aid to people with intellectual disability and/or psychosocial disability and their families. Our organization provides roughly 1200 legal consultations (in around 200 cases) to around 150 persons per year. Majority of persons who receive our assistance are persons with intellectual and /or psychosocial disabilities. Thus all our statements on human rights problems have been based on information we receive from persons with intellectual disabilities and /or persons with psychosocial disabilities. Mainly people have been asking for legal advice in areas related to: independent living and inclusion in society (including the right to leave the institution, the access to municipal community-based services and the quality of services); legal capacity; the right to private life and access to justice.

At the European level RC ZELDA is a member of the European Coalition for Community Living and a member of European Union’s Fundamental Rights Agency’s NGO platform. At the national level RC ZELDA is a member of the Welfare ministry’s National Board for Disability Affairs – consultative body whose task is the creation and implementation of integration policy concerning people with disability.

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Article 2. Definitions

Paragraph 17 of the State Report “Reasonable accommodation”

In Latvia, the obligation to make reasonable accommodation is often confused with the obligation to ensure accessibility (for example with the aid of universal design or supporting technologies) or at special events. The principle of reasonable accommodation should apply not only to employment as set out in the State Report but also to education, health care, access to courts, access to banking services and other areas.

Suggestions for List of Issues:

- What reasonable adjustments are stipulated in areas other than employment?

Article 4. General principals

Paragraph 35 of the State Report states that “*the state provides financial support to NGOs which provide qualitative expertise on sector policy planning for the protection of persons with disability, to strengthen communication and understanding within society about issues relating to welfare, as well as to ensure the sustainability of of those NGO activities in the social field, which have received state funding in previous years.*” Although the report indicates that the amount of funding granted in 2019 was 119 689 euros, it is not clear which organisations and for what specific objectives, measures or activities this funding was granted. The procedure by which NGOs can apply for funding intended for ensuring the sustainability of NGOs in the social sphere is also unclear.

Suggestions for List of Issues:

- What is the procedure to ensure that NGOs can apply for funding intended to ensure the sustainability of NGO activities in the social sphere?

Article 5. Equality and non-discrimination

Hate crimes

On 6 July 2021, amendments were made to Section 48 of the Criminal Law -Aggravating Circumstances - adding a new aggravating circumstance under Section 48.1.14 – the criminal offence was committed due to social hatred,² which *inter alia*, in accordance with the substance of Section 150 of the Criminal Law, also applies to persons with disability. Hitherto, this specific paragraph only mentioned racist, national, ethnic or religious motivation.

It is still necessary to assess the requirement regarding “*substantial harm*” set out in Section 150.1 of the Criminal Law, which stipulates that a person must prove that the criminal offence has resulted in substantial material losses or other legally protected rights have been

² Hate crimes committed due to social hatred also encompass hatred and intolerance on the basis of disability (Section 150 of the Criminal Law). The Criminal Law was adopted on 17.06.1998. Accessible at: <https://likumi.lv/ta/id/88966-kriminallikums>

substantially threatened³. Both experts and NGO representatives have repeatedly stated that it is essential to either clarify and explain the concept of “*substantial harm*” in relation to such criminal offences to avoid differing interpretations, or to strike out this qualifying element.⁴

To date, no comprehensive studies have been conducted in Latvia to provide in-depth analysis of hate crimes against persons with disability. The research report “Hate crimes against people with disability” was prepared in 2020 as part of the project “*Cooperation between police and NGOs for the prevention of hate crimes in Estonia, Latvia and Lithuania.*”⁵ However, taking into account that publicly available information is very limited, as well as the lack of comprehensive statistics regarding crime victims, it is difficult to make informed conclusions about the extent of intolerance and hate crimes against people with disability. The research report⁶ highlighted significant problems for persons with disability to report possible hate crimes and the investigation of such crimes:

- persons with disability do not recognise hate crimes or realise that a particular offence may be a hate crime (especially in relation to hate speech);
- in cases where verbal and physical abuse is inflicted by a family member or carer (incl. institutions), the victim chooses to remain silent, or they do not have the possibility of seeking help/ reporting what has occurred;
- people become accustomed to violence and verbal abuse and perceive it as a normal part of life;
- police officers lack the knowledge and awareness to identify a criminal offence as a possible hate crime (it is not clear what aspects should be focussed on or what screening questions should be asked in such cases);
- if the victim does not point to a possible link between the crime and their disability, the crime will usually not be investigated as a possible hate crime.

In February 2019, the State Police began the first and, to the knowledge of RC ZELDA, the only criminal investigation to date under Section 150.2 (for an online post which could possibly be regarded as a hate crime against persons with disability). According to information provided by the State Police, on 8 July 2021 the decision was made to end the criminal investigation because “the committed offence does not have the characteristics of a criminal offence.”

Suggestions for List of Issues:

- How many complaints about possible cases of discrimination or hate crimes based on disability have been received and investigated by state institutions (the Ombudsman, State Labour Inspectorate, the Consumer Rights Protection Centre, the police, courts, etc.)? What have been the results of such cases?

³ The Law “On the Procedures for the Coming into Force and Application of the Criminal Law” (Section 23), was adopted on 15.10.1998. Accessible at: <https://likumi.lv/ta/id/50539-par-kriminallikuma-speka-stanas-un-piemerosanas-kartibu>

⁴ Latvian Centre for Human Rights (2020), Hate crimes against persons with disability – Latvia’s recommendations. Accessible at: <https://cilvektiesibas.org.lv/lv/news/naida-noziegumi-pret-cilvekiem-ar-invaliditati-lat-507/> The recommendations were developed under the auspices of the project “*Cooperation between police and NGOs for the prevention of hate crimes in Estonia, Latvia and Lithuania*”, based on the research report and the results of roundtable discussions with NGOs and law enforcement bodies.

⁵ The project “Cooperation between police and NGOs for the prevention of hate crimes in Estonia, Latvia and Lithuania.” Accessible at: <https://cilvektiesibas.org.lv/lv/projects/policijas-un-nvo-sadarbiba-cina-ar-naida-noziegumi-469/>

⁶ Ibid.

- Is it planned to rescind the requirement set out in Section 150.1 of the Criminal Law on substantial harm, which significantly delays and hinders the application of this paragraph in practice (in cases of hate speech)?

Article 9. Accessibility

Accessibility under conditions of COVID-19 restrictions

During the period of restrictions enacted due to the COVID-19 pandemic several persons with mental disability contacted RC ZELDA seeking legal advice . During these consultations, it was found that persons had encountered problems with visiting and filing applications with various institutions (municipal social services, family courts, banks, medical specialists etc.) Although information regarding alternative options for submitting applications or documents was provided on institutional websites or at the front doors of institutions/ service providers (for example using e-platforms or dropping documents in writing into specified boxes), persons with mental disability, particularly persons with intellectual disability, often lacked digital skills for using e-services or completing application forms.

During the COVID-19 pandemic, a state of emergency was declared on two occasions in Latvia. Various restrictions, for example restrictions on freedom of movement, also affected persons with mental disability, both those living in long-term social care institutions and those using community-based group home services.

Example

In 2020, RC ZELDA received several calls from worried group home residents that they were being locked inside and only allowed out on rare occasions, mostly accompanied by a staff member. Residents of two different municipal group homes contacted RC ZELDA support persons and asked for assistance in communicating with the group home management.

In one of the cases, the support person found that even after the end of the first declared state of emergency period, the right to freedom of movement of the group home residents continued to be restricted. Three mandatory walks a day were permitted at specific times (each walk lasted 1.5 h with no possibility to return to the group home sooner). The group home residents were not permitted to leave the territory of the group home, and the receipt of packages from family members was restricted (these were only permitted two times per week, and the packages were given to a staff member, who then passed them on to the addressees). On numerous occasions, the group home residents had their phones taken away at 20:00 and returned the next day. None of the staff members had informed the residents that the state of emergency had ended on 10 June 2021, instead residents were told that they were still not allowed to leave the group home, and if they broke this rule, they would be placed in quarantine in their room for 14 days.

RC ZELDA approached the Ministry of Welfare requesting an assessment of whether the COVID-19 restrictions implemented in the group home are reasonable or whether the residents' human rights are being violated. The Ministry of Welfare responded to RC ZELDA's inquiry by stating that the restrictions imposed on the group home residents were "apparently not reasonable and should be re-evaluated"⁷. It was also promised that "after evaluating the received information, the Ministry will make recommendations for the organising of work, and in the course of preparing which the opinions of specialists from the Centre for Disease Prevention and Control and specialists working in the sector will

⁷ The Ministry of Welfare's letter of reply of 20.07.2020 to RC ZELDA's application of 19.06.2020. about the situation in group apartment X.

be acquired with the aim of determining and ensuring optimal measures for the limitation of the spread of Covid-19 infection in group homes, while simultaneously maximally retaining rights to personal freedom”.⁸ However, RC ZELDA does not have any information regarding if or how the situation in the group home has changed.

Accessibility of banking services

In providing legal advice to persons with mental disability, RC ZELDA has repeatedly encountered situations where a certain bank refuses to provide services to persons, who would like to receive those on the basis of a notarised power of attorney. This applies to both general powers of attorney, which are of an unlimited term as well as future powers of attorney when a specific power invocation event has occurred, in case if ten or more years have passed from the date of issue of the power of attorney. The refusal was justified on the basis of the bank’s General Transaction Regulations, which stipulate that “*the bank reserves the right not to accept a power of attorney or cease providing further service on the basis of a power of attorney, if it is found that the power of attorney is not drafted in accordance with applicable legal acts and the bank’s regulations, is insufficiently clear and unambiguous, or for any other reason deemed important by the bank [..]. The bank reserves the right to require the client to renew the power of attorney, if the bank has doubts about the validity of the power of attorney or its scope [..]*”. In these specific situations, renewal of the power of attorney was not possible, because in several cases the persons’ condition had deteriorated, denying them the possibility of clearly instructing the notary or bank employee of the need to issue a new power of attorney. In one case, with the entry into force of a future power of attorney issued more than ten years earlier, a person with physical incapacity was unable to sign it or express new wishes, as they were paralysed. As a result, such powers of attorney lose their purpose regarding bank transactions and compel to restrict legal capacity of the person, even though upon issuing the future power of attorney the issue has been resolved before the deterioration of their condition.

There have also been some cases where bank employees have refused to open a bank or internet bank account or issue a code calculator because they doubt that a person with mental disability has the ability to use one, as well as raising the risk of fraudulent activities if someone, such as a family member, support person or family assistant helps the person with disability. In all such cases, the bank has recommended that the support person goes to court to restrict the person’s legal capacity and appoint a parent or other family member as a guardian, who could then take responsibility for managing the person’s account and transactions.

To discuss the problems ascertained in receiving specific banking services, in early 2018, on the initiative of the bank, a tripartite meeting was held involving representatives of the Ministry of Welfare, the bank and RC ZELDA. At the meeting, the bank’s representatives affirmed that the bank’s employees are not informed on how to act in cases where a bank client is a person with mental disability if such a person is accompanied by, for example, an assistant or a support person, because the bank’s regulations do not permit a third party to be present when dealing with the banking-related matters of private persons. At the end of the discussion, all sides agreed that it is essential to continue examining this issue and thinking about training for bank employees.⁹ RC ZELDA has not been informed whether bank employees have received such

⁸ Ibid.

⁹ End report “Evaluation of the support person service trial project. Accessible at: <https://www.lm.gov.lv/lv/media/10781/download>, p. 106.

training, however, publicly available information indicates that the aforementioned practice is continuing in the bank.¹⁰

Suggestions for List of Issues:

- Taking into account the experience of the COVID-19 pandemic, how is it planned in similar future situations to ensure the uninterrupted provision of various services to persons with mental disability for whom unanticipated changes often pose additional mental health risks and even greater isolation?
- Are there any initiatives planned to raise the awareness of service providers regarding the principles of the UN Convention, incl. provision of reasonable accommodation, when providing services and information to persons with disability?

Article 12. Equal recognition before the law

Restriction of legal capacity

Despite the fact that the UN Committee's Concluding Observations for Latvia of August 2017 indicated that the amendments made in 2012 to the Civil Law pertaining to legal capacity still have some discriminatory provisions¹¹, neither the legislature nor drafters of justice policy have taken any action to evaluate existing regulations and practice and the possibilities of implementing the requirements of Article 12 of the UN Convention. The Ombudsman and NGOs have repeatedly highlighted the problems with the existing legal capacity framework, calling for the introduction of alternatives to restricting legal capacity.

In 2022, RC ZELDA conducted a study of court practice on legal capacity issues from 4 January to 19 August 2021, based on publicly available information in the court rulings section of the website of the official newspaper "Latvijas Vēstnesis" pertaining to the legal capacity of persons with mental disability or other medical conditions, analysing 210 publications and 20 anonymised, complete court rulings received from courts. Out of 210 court rulings published in "Latvijas Vēstnesis," 65% were for initial legal capacity restriction and 35% were reviews of restrictions. Both for initial evaluations of whether legal capacity should be restricted as well as reviewing legal capacity restrictions, the most common restrictions are for making and receiving payments and concluding transactions. In reviewing legal capacity restrictions, there was a tendency to retain restrictions at their previous extent, while in one case additional restrictions were added.

Court ruling publications indicate that in 93% of cases separate guardianship is enacted, while in only 7% of cases the decision is for joint guardianship. Analysis of court ruling publications and court rulings reveals that legal capacity has not been restored for even a single person. In initial rulings restricting legal capacity, separate guardianship has been enacted in 92% of cases compared with 8% for joint guardianship. Reviewing legal capacity restrictions, as with retaining legal capacity restrictions at the previous level, separate guardianship was ruled in 95% of cases and joint guardianship for 5%.

¹⁰ Linda Rozenbaha (24.05.2022.), Rūpes par drošību vai diskriminācija – ģimene sašutusi par apkalpošanu bankā. Pieejams: <https://www.delfi.lv/calis/jaunumi/rupes-par-drosibu-vai-diskriminacija-gimene-sasutusi-par-apkalposanu-banka.d?id=54369998>

¹¹ UN Committee on the Rights of Persons with Disabilities Concluding Observations on the initial report by the Republic of Latvia, paragraph 20-21. Accessible at: https://www.lm.gov.lv/sites/lm/files/data_content/rekomendacijas_lv_fin_0602181.pdf

Analysing court decisions, it can be observed that there are still several problems regarding legal capacity issues:

- 1) a very broad scope of restrictions is stipulated without detailed explanation;
- 2) courts are unclear about the substance of the term “non-material personal rights”;
- 3) restrictions are also often applied to rights which cannot be restricted in accordance with international law;
- 4) in most cases the guardianship form of separate legal capacity is applied, wherein the guardian can act independently;
- 5) adopted decisions are justified inadequately or not at all;
- 6) legal capacity is restricted in spheres where hypothetically negative consequences could arise due to the person’s actions.

In RC ZELDA’s experience, restricting persons’ legal capacity can lead to situations where a person with mental disability may be left for a long time without a guardian, resulting in the person being unable to exercise their interests and rights, therefore restricting their legal capacity has done more harm to the person than helped protect their rights and interests.

Supported decision making and support persons for decision making service

Despite the fact that in 2012, when amendments were made to the legal capacity framework regulations, there was discussion of the need to reform the Civil Law to make supported decision making an alternative to restricting legal capacity, and the first supported decision making pilot project was launched in 2015, 12 years after the UN Convention has entered into force. supported decision making has still not been confirmed in laws and regulations as an alternative to restricting legal capacity. Additionally, due to a lack of funding, it is only available to a very small number of people.

RC ZELDA has developed a new, alternative mechanism to restricting legal capacity – supported decision making, that has been based on innovative methods of providing support, hitherto not used in Latvia i.e., person-centred thinking and planning. Over the period from 1 December 2017 to 30 November 2019, with the aid of a commission from the Ministry of Welfare a trial project for a support person in decision making service (hereinafter SPDM) was carried out. Over the course of two years, support was provided to 332 persons throughout Latvia (in 7 major cities and 63 regional areas), assisting persons with mental disability to plan and make decisions about their own lives, exercising their rights and legal capacity, expanding their natural support network, improving their ability to represent themselves and protect their interests, as well as expanding the supported persons’ knowledge and awareness of their rights.¹² RC ZELDA also developed proposals for the introduction of the service, drafting a description of the service, its organisation and funding, incl. calculating the costs of implementing the service and drafting proposals for amendments to laws and regulations for the implementation of the service.¹³ The developed model was approved on 5 February 2021 by the Ministry of Welfare’s Social Services Development Council. In April 2022, the Ministry of Welfare drafted the Conceptual Report “On the introduction of the support person in

¹² Summary and evaluation of qualitative and quantitative result indicators for the trial project Accessible at: <https://www.lm.gov.lv/lv/izmeginajumprojekta-kvalitativo-un-kvantitativo-rezultativo-raditaju-apkopojums-un-izvertejums>

¹³End report “Evaluation of results of the support person service trial project” Accessible at: <https://www.lm.gov.lv/lv/gala-zinojums-atbalsta-personas-pakalpojuma-izmeginajumprojekta-rezultatu-izvertejums>

decision making service”¹⁴, including measures for the implementation in Latvia of the SPDM service. According to the project, the gradual implementation of the SPDM service and its funding from allocated funds from the annual state budget for conducting state-delegated functions in accordance with the law is planned from 1 July 2023.¹⁵ However, as the report has still not been approved by the Cabinet of Ministers, there are concerns that in planning and adopting the 2023 state budget funds will not be earmarked for introducing and financing this new community-based support service.

Suggestions for List of Issues:

- Please provide information if the government has evaluated the implementation of the legal capacity laws’ reform of 2012? If yes – Were there implementation problems or legislative gaps established? Are there plans for improvement of the law and/or implementation?
- The regulation of 2012 still is not compliant with Article 12 of the CRPD. Are there any plans to include in law more alternatives to restricting legal capacity, such as supported decision making; power of attorney issued by the court; advance directives in the field of mental health care, etc.?

Article 13. Access to justice

The question, concerning the rights of a person to go to court in cases pertaining to the ordering, amendment or revocation of forced medical procedures, i.e., the person’s participation in the court hearing and the impact of this on the ordering of forced medical procedures, is still relevant. Both the experience of RC ZELDA and a study conducted by the Ombudsman indicate that persons only very rarely take part in court hearings deciding on the justification for the restriction of their freedom, because they are not invited to these hearings. Moreover, “the Ombudsman has found on numerous occasions that the representatives assigned to the person (for example, an Orphan's Court Court representative and public defender) perform their duties in the court hearing as a mere formality, having not talked with (met with) the specific person before the court hearing to ascertain their opinion, and having also not familiarised themselves with the materials in the specific case”¹⁶. Such representation cannot be regarded as adequate. Judges and prosecutors also indicate that they mostly rely on doctors’ (experts’) reports, in which it is not infrequently indicated that participation in the court hearing could lead to additional stress and worsen the person’s medical condition, therefore it is not advisable or acceptable for the sake of the person’s health.¹⁷

Suggestions for List of Issues:

- What appropriate accommodations or support in pretrial and trial proceedings are planned to ensure that in cases pertaining to the ordering, amendment or revocation of forced medical procedures a person’s right to a fair trial is protected?

¹⁴ Accessible at: https://tapportals.mk.gov.lv/legal_acts/db118936-85c0-4d30-a08e-14ef7acde733

¹⁵ Draft order “On the conceptual report “On the introduction of the decision-making support person service””. Accessible at: [Rikojuma projekts \(mk.gov.lv\)](https://mk.gov.lv/Rikojuma_projekts)

¹⁶ Republic of Latvia Ombudsman (15 January 2020 No.1-12/3), Report on an inspection visit to State JSC “Riga Psychiatric and Narcology Centre” Forensic Psychiatric Assessment and Forced Treatment Centre, with security, A block. Accessible at: https://www.tiesibsargs.lv/wp-content/uploads/migrate_2022/content/1_12_3_1582122632.pdf

¹⁷ Interview with Riga Court District prosecutors (30.08.2022.). Interview with Riga City Court judges (26.09.2022.).

Article 19. Living independently and being included in the community

In 2015, 115 Latvian municipalities began a deinstitutionalisation (hereinafter – DI) project, which is planned to be completed by 2023¹⁸. This provides for the inclusion in society of persons with mental disability (incl. a transition from long-term institutions to living in the community), developing and providing various community-based services, thereby encouraging the independence and self-reliance of these persons. However, the definition of deinstitutionalisation included in the plan does not encompass the second most important aspect of DI, i.e., the scaling back of institutionalised care to its complete closure. On the contrary, the investing of state budget funds in the institutional infrastructure and development, which is contrary to the essence of DI, strengthens the institutionalised care.

Under the auspices of the DI project, over the period from 2016 to July 2020, a total of 213 persons with mental disability left institutions and began living in the community. Prior to 2020, state social care centre clients did not have many opportunities to move to living in the community, because municipalities had not established the necessary network of community-based social services and also lacked available housing. At the beginning of the DI process, it was planned that by the end of 2023, 700 adults with mental disability would have moved from institutions to community living. Currently, the target has been reduced to 525 persons.

Availability of support for independent living for persons residing in institutions

Evaluating the transitioning of persons with mental disability from long-term social care institutions to living in the community (group homes, social apartments) under the DI project, representatives from planning regions, municipal social services and service providers have highlighted several significant problems¹⁹:

- *Inadequate communication between the parties involved (social care centres, municipal social services, service providers and persons with mental disability) both before the persons move to live in the community and later.* Not infrequently, the person has not had a chance to visit their new home before moving there, so it feels strange and frightening. Therefore, to ensure that the services offered meet the person's needs, some service providers have made it mandatory for the client to come and see their potential home and the possibilities it offers before filing an application. This practice makes subsequent work with the person significantly easier.
- *Insufficient readiness to live in the community,* especially for persons who moved to social care institutions from orphanages. Despite the fact, that under DI project the persons, who are preparing to move from social care institutions to living in the community, must be provided with a social mentor service, in reality this service only became available in some places at the end of 2021. As a result, persons moving to living in the community lack essential skills for self-care and everyday life (cooking meals, housecleaning, laundry,

¹⁸ The action plan for implementing deinstitutionalisation for 2015 – 2020 was approved on 15 July 2015. Accessible at: https://www.lm.gov.lv/sites/lm/files/data_content/ricplans_groz_201710171.pdf

¹⁹ The summation of problems is based on three focus groups organised by RC ZELDA with social workers, planning region representatives and service providers in Tukums District (18.01.2022), Jelgava District (25.01.2022) and Valmiera Districts (28.01.2022).

shopping, visiting specialists, etc.); they lack knowledge and experience in budgeting and financial management; have little understanding about documents; have very poor communication and cooperation skills (incl., being unable to ask questions and deal with everyday issues); and they are inflexible and unable to accept changes.

- *Difficulties registering with a general practitioner and psychiatrist.* In one case, a support person approached ten GPs, one of whom replied, “I don’t want crazy people in my practice”. There are also problems moving to another psychiatrist. As a result, service providers are forced to seek specialists far away from the person’s home so they can access services or get help in crisis situations.
- *Very poor health condition and inability to independently take medications.* As stated by group home representatives: “Many of those coming out of social care centres have chronic medical problems”; “Medical issues in social care centres are shocking – people have never had a vision test. Their teeth – they have rarely if ever been to a dentist. Apparent gastrointestinal conditions.”. Since persons residing in social care institutions and halfway houses have their medications given to them, when they move to the community they need to learn how to take their medications on their own.
- *Difficulties accessing banking services,* as the banks consider that they will not be able to use internet banking and code calculators on their own. At the same time, they believe that if someone helps the person this encourages fraudulent activities.
- *The assessments, that do not match reality, and the desire of social care institutions to get rid of clients who create problems and complain to various institutions.* Not infrequently, information about clients included in the assessments, carried out within DI project, and provided to the municipality and group homes does not align with reality: “Assesments and plans were prepared in the institutions in 2016, and of course, a lot has changed over 5-6 years and no longer reflects the real situation. It is important that assessments would be carried out now, right before the person is leaving the institution.” Several service providers also stated that the DI project is a good way for social care institutions to get rid of undesirable clients. These people are often regarded as troublemakers because they have behavioural problems. As a result, they are often the first to be released. The institution gets rid of them. People leave completely unprepared and often end up in adverse situations.

Suggestions for List of Issues:

- According to current deinstitutionalization plan only 3 institutions will be closed down and around 500 persons with intellectual and/or psychosocial disability will return to community by the end of 2023. If, when and how it is planned to continue the process of deinstitutionalization?

Article 23. Respect for home and the family

There are no statistics regarding Latvian families in which parents with mental disability are sole parents. Such data would be especially useful in cases where one of the parents is admitted to a psychiatric hospital and the child/children require immediate support. Also, considering that children growing up in such families are often more vulnerable and not infrequently have

developmental problems of their own, more accurate statistics would help to reach these children and provide age-appropriate assistance.

RC ZELDA's experience shows that the practice of withdrawing child custody from parents with mental disability continues, often based on the assumption that such parents are incapable of caring for their children. The lack of support and appropriate social services, in general, as well as the lack of inter-disciplinary cooperation and a refusal to accept responsibility results in a system where children are removed from their families as soon as possible rather than providing all possible support already at the pregnancy period. There are also situations where mothers feel insecure or lack confidence or are simply exhausted, but instead of seeking solutions and providing support, the responsible institutions indirectly encourage the parent to give up the child. For example, in one case a mother approached the Orphan's Court with the intention to give up her child (because at the time the mother was suffering from depression and exhaustion), but instead of trying to understand what had happened and how to help, a member of the court panel just told her to sign a form to give up her child. The situation would be different in cases where the person has a supportive family to provide assistance, because persons with mental disability are often highly dependent on their support network to be able to take full care of their children.

Not infrequently, Orphan's Court collegial rulings revoking parents' custodial rights are made without properly examining the specific situation and all of the circumstances. Also, genuine assessment of the situation and searching for solutions often does not take place within the one-year period stipulated by law²⁰, after which the decision is to be made regarding revoking child custody or returning the child to the family. There have been situations, where institutions waited until the end of the term without starting any work with the family, later concluding that the parent shows no interest in their child. Therefore, the question remains – has the parent with mental disability been informed about what they can and should do during this period? Additionally, not infrequently there are breaches of the law provisions which stipulate that, *“The foster family, guardian and child welfare institution must inform the parents about the child's development and facilitate the restoration of family relations”*²¹, which happens, for example, by means of imposing barriers to contact (claiming that meetings are not in the child's interests as these could threaten the child's emotional and physical wellbeing and safety) or deliberately creating conflict situations with the mother.

Article 24. Education

At present, more and more people in Latvia are moving from long-term social care institutions to living in the community, who have not previously received qualitative educational opportunities (some have not even completed primary education) and have very limited reading, writing or mathematics skills, as well as serious problems with communication (for example, a very limited vocabulary and poor comprehension skills). This can create problems when the person needs to communicate with various institutions (for example, dealing with documents, social assistance or the police), as well as in everyday situations (for example, dealing with domestic matters or shopping). Persons who do not have mental disability and who have not completed primary education are able to complete their primary education by remote learning or full time or part time at a secondary school. However, persons with mental

²⁰ Civil Law Section 203.4. Accessible at: <https://likumi.lv/ta/id/225418-civillikums>

²¹ Law on the Protection of Children's Rights Section 44. Work with the Parents during Out-of-family Care. Accessible at: <https://likumi.lv/ta/id/49096-bernu-tiesibu-aizsardzibas-likums>

disability, and especially persons with intellectual disability, are unable to take advantage of these opportunities, because neither secondary nor special schools offer programmes for adults with mental disability. To resolve this situation, consideration must be given to making continuing education available for persons with mental disability. Such programmes would be valuable to persons leaving social care institutions as well as persons living with their families who for various reasons have not completed primary education or have no skills necessary for work.

To facilitate the integration of persons with mental disability into the workforce, under the auspices of a project implemented by the Social Integration State Agency (hereinafter – SISA)²², a skills certification system was created, with 35 skills training programmes suitable for persons with mental disability developed and implemented. After completing the programme, the person receives a certificate affirming their newly acquired skills. Before a person begins a course in one of the SISA programmes, an assessment is made of their professional suitability. Unlike professional secondary and professional continuing education programmes, informal skills programmes are open to persons who had not completed primary education. This approach is positive and progressive.

However, an evaluation²³ conducted in 2019 by RC ZELDA revealed several problems with the programmes, relating to the process for assessing persons (before the courses), the suitability of the skills programmes for the labour market and the realistic possibility of getting a job after learning these skills. Only a few of the persons supported by RC ZELDA managed to find jobs that were related to the acquired skills after completing one of these skills programmes. Moreover, the persons supported by RC ZELDA did not receive the job with the assistance from SISA, that was intended as part of the programme. Several other NGOs providing support to persons with mental disability and disorders also highlighted problems with the training provided by SISA, indicating that SISA only provides it for persons with mild forms of mental disability. There are no existing training programmes for persons with severe or very severe mental disorders, and none are planned in the future.²⁴

Article 27. Work and employment

²² ESF project “Integration of persons with disability or mental disorder into employment and the community” (No.9.1.4.1/15/I/001).

²³ The opinion of RC ZELDA on the rights of persons with mental disability to education (the possibility of participating in courses offered by the Social Integration State Agency) and employment. Sent to the Ministry of Welfare Social Services Department and the Social Integration State Agency on 24 January 2019. In the course of the DMSP service implementation period (01.12.2017 – 30.11.2019), 26 supported persons underwent professional suitability evaluation, of whom 13 persons began and completed one of the skills programmes. Three supported persons stopped attending the courses (“I got tired from being around people and the coursework was too much”), while four chose not to begin the courses because, “the offered professions don’t interest me”, “the recommended skills programme was not the one I wanted”, “my wishes have changed”, etc. One supported person stopped participating during the evaluation period because: “I couldn’t stand being in such a depressing place with so many sick people, knowing I’m one of them. I don’t want to be around all that despair. I want a job.” Of all the supported persons who underwent professional evaluation, five were denied permission to start the courses, for example, “due to their health condition”, “disordered cognitive processes and difficulties paying attention”, “insufficient knowledge level”, “inadequate motivation”, etc.

²⁴ Latvijas Republikas Saeima, Personu ar garīga rakstura traucējumiem nodarbinātība Latvijā. Pētījuma galaziņojums (2022. gada marts), 30.-35. lpp. Pieejams: https://saeima.lv/petijumi/Personu_ar_gariga_rakstura_traucējumiem_nodarbinatiba_petijuma_galazinojums.pdf

In providing the SPDM service, RC ZELDA has summarised the most significant barriers and problems persons with mental disability face in the sphere of employment²⁵:

- **Informal work:** because of fear of losing their disability benefits, pensions or underprivileged or poor person's status or other benefits, persons with disability, incl. persons with mental disability, often choose to work informally, i.e., without employment contracts and are paid under the table. Also, as many persons with mental disability have outstanding payday loans, they are afraid that if they receive an official salary their bank accounts will be blocked by debt collection companies or sworn bailiffs. Sometimes employers (especially in the agricultural sector) who employ people without contracts force persons with mental disability to lie by telling state inspectors that they are relatives of the employer. In some cases, persons are asked to sign employment contracts in which important information about the amount of the salary and payment procedure is omitted, or the contract is written in such a way that a person with mental disability cannot understand it (especially in cases where the person has intellectual disability and is unable to read or write or they can read but find the presented text hard to comprehend). Therefore, by working unofficially, persons with mental disability are highly vulnerable to fraud, abuse and exploitation risks (for example, being forced to work unreasonably long hours, not getting paid or getting paid less than other employees, withholding unjustified amounts of money for meals or accommodation etc.).
- **Part-time work, as well as flexible working time:** due to their health conditions and the related limitations, persons with mental disability often want to work part-time and to have jobs near to where they live. Also, knowing the side-effects of their medications, having flexible working hours is important to them, so they can start and finish work a little later than traditional working hours. These conditions made it significantly harder to find a job, because despite the fact that job advertisements (mainly for retail chains) promise flexible hours (part-time work, weekend work, shift work with the option of choosing shifts etc.), such options hardly exist in reality. As a result, being unable to work full-time, persons with mental disability sometimes quit shortly after being hired. For those living in small towns, it is very hard to find a job near their homes, as there are few jobs available and those on offer do not align with their wishes or abilities.
- **Possible abuse or discrimination by employers or colleagues:** occasionally, persons with mental disability encounter attitudes based on prejudice or stereotypes from colleagues or employers. For example, in one case, a woman with mild intellectual disability was hired and then fired before commencing work because her colleagues did not want to work with someone like her. Another person was regularly mocked by her colleagues both due to her disability and her religion. To avoid possible discrimination, persons with mental disability (especially psychosocial disability) sometimes decide not to indicate their disability in the State Revenue Service's Electronic Declaration System (though they know that they could have returned their overpaid taxes back after submitting their tax declaration the next year).
- **Providing support to persons with mental disability regarding employment:** persons with mental disability require support at all stages of the employment process, including job

²⁵ Ieva Leimane-Veldmeijere, Aleksandra Pavlovska, Sigita Zankovska-Odiņa, Sandra Pūce, Sanita Vanaga (January 2021), volume 12 "End report "Evaluation of results of the support person service trial project"", p.39.-40, p.60.-64.

searching, preparing their CV and applications, support before and during job interviews, as well as practical and psychological support during employment (mainly by encouraging them not to quit after encountering some problems, assisting them in communicating with their colleagues and employer, explaining the terms of their employment contract and the possibility of taking time off for illness etc.). In some cases, they also require support while learning skills for their job (if the employer agrees to this and cannot provide the necessary support themselves).

- Persons with mental disability who have not learned the Latvian language have limited opportunities to find paid employment due to their not knowing the state language and not having certificates of proficiency in the state language. Several of the supported persons were native Russian speakers whose Latvian language skills were poor to non-existent. This made it much more difficult for them to find legitimate jobs, which was one of the main objectives for the supported persons (pursuant to laws and regulations, most professions require at least minimal Latvian language proficiency), as well as everyday communication with people speaking Latvian (for example, neighbours or day centre visitors). Although the *Regulations on the level of knowledge of the state language and procedures for examining state language skills*²⁶ provide exemptions from examinations or eased examination procedures for persons with health-related functional limitations or medical diagnoses, they must present the employer with a report from a physical and rehabilitation doctor or psychiatrist. RC ZELDA's experience shows that obtaining such a report is: (1) very complicated, as there are almost no physical and rehabilitation doctors in Latvia who issue such reports. There are long waiting times to see the few such specialists that exist, and such consultations must be paid for by the patient themselves. Psychiatrists also refuse to issue these reports, on the grounds that there are 2-3 rehabilitation specialists in the country who can do it; (2) time consuming – the process can take more than six months, because after visiting a rehabilitation specialist and getting a report, the person must then get a psychiatrist's assessment and undergo a psychological examination; (3) expensive – the initial visit to the specialist and preparation of the report cost over 200 euros, since discounts for disabled persons do not apply to getting these reports. In cases where a person requires a psychological evaluation but does not have a psychiatrist's referral for a free of charge evaluation, the person must pay for it themselves. The support provider of the person with mental disability has a crucial role in obtaining the report, because without their assistance the person would find it very difficult to obtain all the necessary information and arrange to receive the report. There is no comprehensive published list of all the documents and tests which must be submitted. Therefore, it is impossible to properly prepare before the consultation in order to speed up the process of getting the report. Additionally, persons with mental disability are concerned about possible stigmatisation, prejudice or discrimination by employers after receiving such a report.
- *Employment in social enterprises* is one of the ways by which persons with disability, incl. mental disability, can be integrated into the workforce. RC ZELDA have to date supported two persons who have worked in social enterprises for shorter or longer periods. In one case, the person was formally employed by the enterprise and received the contractually stipulated salary. But she was only required to show up for work infrequently, and had to

²⁶ Cabinet of Ministers Regulation No 157 "Regulations on the level of knowledge of the state language and procedures for examining state language skills", adopted 08.03.2022. Accessible at: <https://likumi.lv/ta/id/330669-noteikumi-par-valsts-valodas-zinasanu-apjomu-un-valsts-valodas-prasmes-parbaudes-kartibu>

give most of her salary (received by bank transfer) back to the employer in cash. As a result, the person simultaneously held another job, and although they realised the employer was acting dishonestly and illegally, they regarded it as a small amount of additional income. In the second case, before starting work at a social enterprise, the person was instructed to work for a five-day trial period before the employment contract was signed. They were not paid for working these days. After being officially hired, the employees had to listen to the employer's constant complaining about the company's high labour and other operating costs (the enterprise ran at a loss). After five months, the person was dismissed from their job because, as the employer informed her verbally: "You cost us too much money– your salary, all the taxes. If we could print money, we would keep you on." Although the Labour Law stipulates that the final payments for work must be made on the final day of employment, in this case the person's salary and holiday benefits were only paid after the person made repeated calls to their now-former employer.