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**Committee on the Rights of Persons with Disabilities****Decision adopted by the Committee under article 2 of the  
Optional Protocol, concerning communication No.  
103/2022\*,\*\***

<i>Communication submitted by:</i>	Mental Disability Rights Initiative Serbia and Disability Rights International
<i>Alleged victims:</i>	J.A. and M.M.
<i>State Party:</i>	Serbia
<i>Date of communication:</i>	7 June 2022 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rules 64 and 68 of the Committee's rules of procedure, transmitted to the State Party on 20 December 2022 (not issued in document form)
<i>Date of adoption of views:</i>	26 March 2026
<i>Subject matter:</i>	Institutionalisation of two persons with disabilities
<i>Procedural issues:</i>	Standing; substantiation of claims
<i>Substantive issues:</i>	General obligations under the Convention; discrimination on the ground of disability; equal recognition before the law; liberty of person; freedom from torture and cruel, inhuman or degrading treatment and punishment; living independently and being included in the community; family rights; education; health
<i>Articles of the Convention:</i>	4(1)-(2), 5, 7(1), 12, 13, 14, 15, 16, 17, 19, 23, 24, 25 and 28
<i>Articles of the Optional Protocol:</i>	1 and 2 (e)

\* Adopted by the Committee at its thirty-fourth session (9–27 March 2026).

\*\* The following members of the Committee participated in the consideration of the communication: Muhannad Salah Al-Azzeh, Magino Corporán Lorenzo, Gerel Dondovdorj, Amalia Eva Gamio Ríos, Natalia Guala Beathyate, Miyeon Kim, Alfred Kouadio Kouassi, Abdelmajid Makni, Floyd Morris, Christopher Nwanoro, Gertrude Oforiwa Fefoame, Inmaculada Placencia Porrero, Markus Schefer and Hiroshi Tamon.

1.1 The authors of the communication are the non-governmental organisations Mental Disability Rights Initiative Serbia and Disability Rights International. They submit the communication on behalf of two persons with disabilities residing at the Duško Radović Home in Niš, Serbia, at the time of submission: J.A., born on 11 October 2002, and M.M., whose date of birth is unknown and who passed away on 15 November 2021, both nationals of Serbia. The authors claim that the State Party has violated J.A.'s and M.M.'s rights under articles 4(1)-(2), 5, 7(1), 12, 13, 14, 15, 16, 17, 19, 23, 24, 25 and 28 of the Convention. The Optional Protocol entered into force for the State Party on 30 August 2009.

1.2 On 10 June 2021, the Committee, acting through its Special Rapporteur on new communications and interim measures, requested the State Party under article 4 of the Optional Protocol to ensure immediate access to the National Human Rights Institution, accredited by GANHRI with A-status, and any other competent independent monitoring mechanism in order to examine the conditions and treatment of children at the Duško Radović Home, and to take the measures necessary to adhere to the Convention, while the case is under consideration by the Committee.

## **A. Summary of the information and arguments submitted by the parties**

### **Factual background**

2.1 On 1 November 2019, Disability Rights International conducted a one-hour visit to the Duško Radović Home for persons with disabilities in Niš, Serbia, which housed twelve children and adults with disabilities at the time and which the authors claim functions like an institution. During its visit, Disability Rights International found instances of “severe neglect” of residents, including J.A. and M.M.

2.2 Prior to J.A.'s placement in the Duško Radović Home, his mother cared for him until his health deteriorated on an unspecified date. The family also moved frequently. For these reasons and given his mother's agreement that workers of the Aleksinac Centre for Social Work would care for J.A., the Centre assessed that his family could not adequately care for him, and that his requirements would be best met in the Duško Radović Home. On 10 March 2015,<sup>1</sup> he was placed in this Home. Since neither his mother nor any other relative agreed to be his guardian, the Centre appointed one of its employees as his guardian, to protect his rights and interests and considering his health condition and limited verbal communication.

2.3 The authors note that J.A. spends most of his days curled up in a cage-like crib. Staff indicated that J.A. had a spine injury and that they did not move him. An expert in monitoring conditions in institutions who participated in the visit observed that J.A.'s muscles appeared to be severely contracted. Even though the expert tried to engage him, he would not respond. The authors note that according to a picture taken on his arrival at the Duško Radović Home, J.A. was sitting straight up in a supported wheelchair, he had thick hair and a lean but healthy complexion. However, it was hard to recognise him during the visit, as he was in a foetal position, he had lost most of his hair and looked emaciated. According to the expert, J.A. will continue to deteriorate if he stays at the Duško Radović Home. J.A. has been diagnosed with unspecified epilepsy, “severe mental retardation” and spastic quadriplegic cerebral palsy, he requires a communication device, does not move, eat independently, respond to calls or tactile stimulation, does not establish eye contact and does not control his sphincters.

2.4 As to M.M., he was placed in the Centre for the Protection of Infants, Children and Youth in Belgrade 20 days after his birth with his mother's consent. On an unspecified date, he was moved to the Kulina Home for People with Developmental Disabilities. On 12 April 2007, when his placement was reviewed, his mother indicated that she and the father were unable to care for him, but she wished to continue being his guardian. M.M. was transferred to the Duško Radović Home on 1 October 2012, when he was 16 years old. On 3 June 2015, the Second Basic Court in Belgrade deprived him of full legal capacity. By decision of 4 March 2016, the Grocka Centre for Social Work appointed his mother as guardian.

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<sup>1</sup> The authors indicate that they were told that J.A. was placed in the Home in 2017.

2.5 Staff at the Duško Radović Home told the authors that M.M. cried and screamed continuously from the outset of his arrival. They eventually realised he was in pain due to a severe gum infection and took him to a dentist, who removed all his teeth. During the authors' visit in 2019, his muscles looked severely contracted and he appeared emaciated. M.M. remained in the same position during the visit. The authors argue that based on pictures taken on his transfer and during the visit, he looked much better after having left the Kulina Home, which the authors describe as "abusive". At the time of the visit, his arms and legs had lost all muscle mass, he had sunken facial features and seemed to have kyphosis (outward curvature of the spine). He spent his days completely bent over in a stroller, with his mouth stuck to the railing that had been padded for that purpose. Staff indicated that healthcare providers refused to treat his gum problem further. The expert who participated in the visit found that his state was irreversible. Staff told the authors that M.M. had no family members who visited him, and they had no contact details of them. According to the State Party, M.M. was diagnosed with "profound mental retardation", Down syndrome and epilepsy, required a communication device and did not respond to tactile stimulation, control his sphincters, walk, establish contact with other children or orient himself in time or space.

2.6 Staff at the Duško Radović Home told the authors during the visit that there were no plans to reintegrate J.A. and M.M. in the community or, in the case of J.A., to his family. They would therefore remain institutionalised indefinitely. The authors note that the Committee has expressed its concern regarding legislation authorising deprivation of liberty based on disability and about the number of children with disabilities living in institutions in the State Party.<sup>2</sup> They also note that the State Party has meanwhile adopted a policy that prescribes the construction of small group homes for children.

2.7 The authors argue that J.A. and M.M. were unable to exhaust domestic remedies or to consent to the submission of the present communication as they were deprived of their liberty and physically unable to file a complaint due to their disabilities and the neglect to which they had been exposed. Additionally, their guardianship prevented them *de jure* and *de facto* from providing consent. On an unspecified date, the authors requested the Aleksinac Centre for the contact details of J.A.'s parents or guardian. On 4 August 2020, the Centre responded that J.A. was under its guardianship and that his mother has "reduced intellectual capacities and limited parental capacities". According to the authors, the Centre refused to provide his mother's contact information, and they therefore have no means of contacting her. Staff at the Home claimed that the whereabouts of M.M.'s family are unknown.

2.8 As for exhaustion of domestic remedies, the Ministry of Labour, Employment, Veteran and Social Affairs, which oversees the Aleksinac Centre for Social Work and institutions, has stated that a person with disabilities in an institution may report abuse to a social worker or to the Centre's case worker assigned to his or her case. However, according to the authors, in practice, a child may never get to see his or her case manager. Staff at the Centre were unable to say what could be done if a child needed to report abuse. Institutions may assign a "key staff member" responsible for reporting abuse, but if staff is complicit, the child would be left unprotected. If the child is non-verbal, he or she would have a greater dependency on staff. According to the Serbian Ombudsperson, incidents of abuse in institutions are accordingly not reported. The authors argue that, for purposes of exhausting domestic remedies, access to and participation in proceedings must be guaranteed "personally and directly" to the victims.<sup>3</sup> According to the authors, the European Court of Human Rights has stated that a person under guardianship of the institution detaining him or her is "prevented from pursuing independently any legal remedy of judicial character to challenge his continued detention."<sup>4</sup> The authors argue that, in the present case, the Aleksinac Centre

<sup>2</sup> CRPD/C/SRB/CO/1 paras. 13 and 26.

<sup>3</sup> Inter-American Commission on Human Rights, Report N° 5/02 (Admissibility), Case 12.080, Sergio Schiavini and María Teresa Schnack de Schiavini, 27 February 2002, para. 52; Inter-American Commission on Human Rights, Report N° 72/03 (Admissibility), Case 12.159, Gabriel Egisto Santillan, 22 October 2003, para. 57.

<sup>4</sup> European Court of Human Rights, *Shtukaturov v. Russia*, judgment of 27 March 2008 (application No. 44009/05), para. 123.

for Social Work has a conflict of interest given its responsibility for the abuses against J.A. and M.M. and for reporting such abuses.

2.9 On 15 November 2021, M.M. passed away.

### **The complaint**

3.1 The authors submit that the institutionalisation and segregation of J.A. and M.M. at the Duško Radović Home violate their rights under articles 5, 12, 14, 19, 23 and 28 of the Convention. They affirm that the institutionalisation of children and adults with disabilities is discriminatory and in breach of article 5 of the Convention.<sup>5</sup> The Duško Radović Home functions as an institution: residents cannot decide who their caregiver is, they are isolated from community life, they do not make decisions over their day to day lives, they do not get to decide whom to live with, their routine is set by staff, they only languish in a wheelchair or bed cage, and all residents have a disability. J.A.'s and M.M.'s indefinite segregation in this setting is in breach of article 19 of the Convention. The lack of any support to allow the residents to make choices about their lives violates article 12 of the Convention. J.A., M.M. and all other residents at the Duško Radović Home arrived there as children and have remained there segregated indefinitely, in breach of article 14 of the Convention.

3.2 According to the authors, it was the State Party's obligation under articles 23(3) and (5), 19 and 28 of the Convention to provide the social support and services to J.A. and his mother to prevent their separation and J.A.'s segregation, in violation of his right to grow up in a family. The State Party's failure to provide these services and J.A.'s placement in a segregated setting constitute a breach of said provisions, read in conjunction with article 5 of the Convention.

3.3 The authors argue that, whereas M.M.'s family situation is unknown, if he was unable to remain with his biological or wider family, it was the State Party's obligation under article 23(5) of the Convention to ensure that he, as a child, remained in his community. The failure to do so when M.M. was a child also constitutes a breach of said provision.

3.4 The authors claim that the discrimination that M.M. has faced in accessing healthcare for his gums is in violation of articles 25 and 5 of the Convention. The lack of access to health services, treatment and rehabilitation that M.M. and J.A. have faced to treat their gum pain and contractures, respectively, also constitute a breach of their right to health.<sup>6</sup> Their placement in an institution is itself a form of violence in contravention of their rights under article 16(1) of the Convention. The institution has insufficient staff to care for them and they face social isolation and limited access to services. J.A.'s body was severely contracted and his lack of movement and repositioning was painful, whereas M.M. had continuous gum pain, in violation of their rights under article 15 of the Convention.

3.5 According to the authors, the residents of the Duško Radović Home do not have effective mechanisms to denounce abuse and access justice, and the guardianship over J.A. and M.M. prevents them from reporting abuse and access judicial remedies personally and directly in breach of their rights under articles 12 and 13 of the Convention. J.A. and M.M. have not attended school in an inclusive setting and have not received an education enabling them to participate effectively and freely in society, in breach of their rights under article 24 of the Convention. Finally, the authors assert a violation of J.A.'s and M.M.'s rights under articles 7 and 4(1)-(2) of the Convention.

3.6 The authors request the Committee to call on the State Party to reintegrate J.A. with his mother, if possible, and provide adequate support to them to live safely in the community; end the segregation and institutionalisation of J.A. and M.M. and ensure that they have the support and services required to live and group up with a family, and if their immediate family cannot care for them, the State Party should provide support for them to live in alternative care in a family setting consistent with their will and preferences; provide comprehensive healthcare, rehabilitation and education to J.A. and M.M., consistent with their will and preferences; provide support to J.A. and M.M. so they can exercise their legal

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<sup>5</sup> CRPD/C/GC/6, paras. 38, 56, 58.

<sup>6</sup> E/CN.4/2003/58, paras. 90-93.

capacity in making choices about their care and placement; provide support so they have access to age-appropriate complaint and redress mechanisms; and ensure monitoring of institutions. They argue that the State Party should create a system of family-based support to allow children with disabilities to live and grow up with families; ensure community-based support for all adults with disabilities to avoid segregation; and facilitate age- and gender-appropriate, independent human rights monitoring of all institutions.

### **State Party's observations on admissibility and the merits**

4.1 In its observations dated 10 March 2023 and 19 June 2023, the State Party observes that the Ombudsperson has not requested implementation of the Committee's request for interim measures. If it were to file such a request, the Ministry of Labour, Employment, Veterans and Social Affairs would consider it, and the Ombudsperson would be provided access to the Duško Radović Home. On 23 December 2022, Mental Disability Rights Initiative Serbia requested the Duško Radović Home to authorise it to conduct a visit. However, the Niš Institute of Public Health advised against any such visits at the time due to the risk of respiratory infections related to the COVID-19 pandemic. The State Party disputes that the authors were unable to obtain information about J.A. and M.M. beyond the visit of 1 November 2019, as they never sent another request to be allowed to visit the Home or to receive more information on the alleged victims.

4.2 The State Party argues that the authors have not provided any proof or substantiation of their claim of neglect of persons with disabilities in group homes. The State Party observes that the Home is a so-called small home community, which, with a maximum capacity of 12 beneficiaries, is fully adapted to the requirements of its residents. The Home has a warm family atmosphere, conditions are humane and residents have access to education, healthcare and cultural institutions, among others. Every beneficiary has a personalised space.

4.3 The State Party describes the various forms of daily care and support provided to J.A. to meet his basic requirements, preserve his existing capacities and stimulate his psychomotor capacities. The State Party notes that protection plans are drawn up annually and individually based on the beneficiary's requirements, are monitored monthly and may be changed.

4.4 The State Party emphasises notes that on 17 March 2021, a delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited the Duško Radović Home and had no negative observations regarding the treatment of beneficiaries. The State Party asserts that the aforementioned information demonstrates that the authors' allegations are false. It therefore requests the Committee to dismiss the communication as unfounded.

### **Author's comments on the State Party's submission**

5.1 In their comments dated 13 September 2023 and 10 July 2025, the authors reiterate that the guardianship of J.A. and M.M. hinders their ability to report abuse and access judicial remedies, which must be directly accessible to them. Children's right to access justice should be enforced through independent monitoring and systemic access to justice. Thus, persons with disabilities detained at the Duško Radović Home should have the ability to challenge their detention on their own and to fulfilment of their right to an effective remedy.

5.2 The authors emphasise that in the present case, the authority responsible for the violations exercises guardianship over J.A. and M.M. They note that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment found that "the safeguards surrounding the placement of residents and the operation of the guardianship system remain deficient" in the State Party.<sup>7</sup> They assert that there is no requirement in international law for civil society organisations to complain on behalf of detainees; instead, it recognises the right of victims to access justice personally and

<sup>7</sup> European Committee for the Prevention of Torture and inhuman or degrading treatment or punishment, Report to the Serbian Government on the periodic visit to Serbia from 9 to 19 March 2021.

directly. Therefore, the role of civil society organisations is not to exhaust remedies on behalf of the alleged victims when there are no effective mechanisms for them to do so.

5.3 The authors tried to gain access to the Duško Radović Home in December 2022 and August 2023, but it refused to grant them access on the ground of health risks related to the COVID-19 pandemic. However, access to independent monitoring cannot be suspended during health emergencies,<sup>8</sup> and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has requested the State Party to ease restrictions imposed in places of deprivation of liberty and to allow visits to persons deprived of their liberty<sup>9</sup>.

### **State Party's additional observations**

6.1 In its additional observations dated 3 September 2025, the State Party argues that J.A.'s diagnoses indicate his inability to express himself or understand and that the Aleksinac Centre for Social Work's guardianship over him therefore ensures the protection of his rights and interests. However, the guardianship is not final, and if his mother or another relative expressed interest in taking on this role, this would be accommodated if it was in his best interests. Family members and third parties retain the possibility of claiming a violation of his rights.

6.2 The State Party argues that the authors' claim that guardianship prevents affected persons from enforcing their rights or accessing courts is unfounded. The assessment of how beneficiaries should be protected is conducted on an individual level, considering the person's requirements, health and the modalities of protection. Living in a family or foster family is not always possible, as the family may be dysfunctional or it may be unable to respond to the person's requirements. A person is only removed from the family if the latter cannot care for the person or if it is in the latter's interest. A relocation is temporary and aims to strengthen the family so that it can take care of the person later. If the Centre for Social Work cannot provide adequate protection, the person is assessed and placed in a social welfare institution temporarily, and an attempt is made to find a less restrictive environment.

6.3 The State Party disputes the authors' arguments regarding restrictions on access to institutions. The Ombudsperson, in his or her capacity as National Mechanism for the Prevention of Torture, conducts regular visits, while the Ministry of Labour, Employment, Veterans and Social Affairs carefully reviews relevant reports and monitors institutions' conduct. In June 2025, the Sub-Committee on the Prevention of Torture visited the State Party and discussed deinstitutionalisation processes with the authorities.

6.4 The State Party submits that J.A.'s mother is unable to care for him and has not shown any interest in doing so during his stay in the Duško Radović Home. The Aleksinac Centre for Social Work and staff at the Home have made every effort to maintain their relationship, but their contact has become increasingly rare. The State Party argues that all available healthcare is provided to J.A. and that it is adapted to preserve the vitality of his muscles and joints without overstimulating him. Staff work with J.A. to teach him basic life skills, prevent regression and monitor his health.

## **B. Committee's consideration of admissibility and the merits**

### **Consideration of admissibility**

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with article 2 of the Optional Protocol and rule 65 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 The Committee notes that M.M. passed away on 15 November 2021. In the absence of any information in the case file to the contrary, the Committee considers that M.M.'s death

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<sup>8</sup> Guidelines on Deinstitutionalization, including in emergencies (September 2022) para. 136.

<sup>9</sup> European Committee for the Prevention of Torture and inhuman or degrading treatment or punishment, Report to the Serbian Government on the periodic visit to Serbia from 9 to 19 March 2021.

has rendered the present communication devoid of purpose insofar as it was submitted on his behalf.<sup>10</sup>

7.3 Insofar as the communication was submitted on behalf of J.A., the Committee notes that the authors have done so without his consent. Under article 1 of the Optional Protocol, communications can be brought by or on behalf of individuals or groups of individuals claiming to be victims of a violation of the Convention provisions. Furthermore, pursuant to rule 67 of the Committee's rules of procedure, a communication submitted on behalf of an individual or group of individuals must be submitted with the express written consent of the individual or group, unless the author can justify acting on their behalf without such consent. At issue therefore is whether the authors have adequately justified submission of the communication without J.A.'s consent. In this regard and pursuant to rule 70(2) of the Committee's rules of procedure and article 12 of the Convention, the Committee must take into account whether the submission was in accordance with J.A.'s wishes and preferences.<sup>11</sup>

7.4 In examining the authors' explanation, the Committee notes that the authors visited the Duško Radović Home on 1 November 2019 and documented J.A.'s situation, including his living circumstances, his health and his family background. The Committee further notes that the authors filed two further requests to be allowed to visit the Duško Radović Home, which the latter refused, and requested the contact details of his mother, which the Aleksinac Centre for Social Work did not provide. The Committee therefore considers that the authors undertook significant efforts to establish further contact with J.A., who remains under State guardianship. The Committee further considers that J.A.'s placement in the Home, the latter's refusal to allow for subsequent visits by the authors, and the refusal by the Aleksinac Centre for Social Work to provide them with the contact details of his mother, have isolated him and have obstructed any possibilities for him to communicate his consent, or absence thereof, to the submission of the communication. The Committee also takes into consideration that the authors advance the rights of J.A., as a person with disabilities, including by promoting his deinstitutionalisation. In view of the foregoing, as well as the absence of any indications that the submission of the communication is not in accordance with J.A.'s will and preferences, the Committee considers that the authors have adequately justified that they have a legitimate interest in acting on behalf of J.A. and that they could not reasonably obtain access to him.<sup>12</sup> The Committee therefore concludes that the authors have justified, for the purposes of article 1 of the Optional Protocol and rule 67 of the Rules of Procedure, that they are acting on behalf of J.A. without his consent.

7.5 The Committee must next determine whether the authors have exhausted all available remedies under article 2(d) of the Optional Protocol. The Committee takes note that the authors have not made any attempts to engage domestic remedies. In this regard, the Committee notes their arguments that access to remedies must be guaranteed personally and directly to victims; that, in the present case, J.A.'s guardianship precludes this; and that it is not for civil society organisations to exhaust remedies on behalf of alleged victims.

7.6 The Committee notes, however, that article 2(d) of the Optional Protocol requires that the authors, as representatives of J.A. before the Committee, demonstrate that they have exhausted domestic remedies by raising the issues brought to the Committee before the national courts. The Committee notes that said provision does not provide for a separate exception on the sole ground that the author represents a person who may, *de jure* or *de facto*, require representation domestically. Likewise, the Committee recalls that in communications *Al-Hawali v. Saudi Arabia* and *Al-Awdah v. Saudi Arabia*,<sup>13</sup> the Committee considered whether the authors, who were the representatives of the victims, had justified the non-use of domestic remedies with reference to the factual circumstances of those cases, including the ineffectiveness of domestic remedies and the danger of availing themselves thereof. In the present case, the Committee must likewise determine whether the factual circumstances

<sup>10</sup> *Ferrer Manils v. Spain* (CRPD/C/26/D/79/2020), para. 9.

<sup>11</sup> *P.L., I.L., D.P. and A.T. v. France* (CRPD/C/28/D/59/2019), para. 11.2.

<sup>12</sup> *M.L., L.Ko., V.K., L.Ku., Z.J., M.B., G.L., G.Ko. and 49 other children residing at the Ninotsminda Saint Nino orphanage v. Georgia* (CRC/C/96/D/144/2021), para. 10.5.

<sup>13</sup> *Al-Hawali v. Saudi Arabia* (CRPD/C/30/D/84/2020), para. 12.4; *Al-Awdah v. Saudi Arabia* (CRPD/C/32/D/87/2021), para. 8.6.

justify applying one of the exceptions provided for by article 2(d) of the Optional Protocol; in particular, whether the authors could not have engaged domestic remedies on J.A.'s behalf. In this regard, the Committee notes that the authors have not contested the State Party's observation according to which family members and third parties may file a claim of a violation of J.A.'s rights domestically. The Committee therefore cannot accept the authors' argument that J.A.'s guardianship precluded engagement of domestic remedies. The Committee thus considers that the authors have not justified the non-exhaustion of domestic remedies. The Committee therefore declares the communication inadmissible under article 2(d) of the Optional Protocol.

### **C. Conclusion**

8. The Committee therefore decides:
    - (a) That the communication submitted on behalf of J.A. should be discontinued;
    - (b) That the communication submitted on behalf of M.M. is inadmissible under article 2(d) of the Optional Protocol;
    - (c) That the present decision shall be transmitted to the State Party and to the authors.
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