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COMMUNICATION

In accordance with Rule 9 of the Rules of the Committee of Ministers in the case of

HADZIMEJLIC v. Bosnia and Herzegovina

(Application no. 3427/13)

**under the procedure of supervision of the execution of the European Court of Human
Rights' judgments**

Submitted by:

Sumero – Union of organizations for support to the persons with intellectual disability of FB&H
Validity Foundation – Mental Disability Advocacy Centre
With support from the European Implementation Network

I.

Introduction

1. This Rule 9.2 submission addresses the measures required for the implementation of the *Hadzimejlic v. Bosnia and Herzegovina* judgment (no. 3427/13, 3 February 2016). The case concerned the violation of the applicants' right to liberty and security due to their involuntary placement in a social care institution.
2. The present communication particularly focuses on the Action Plan submitted by the Government of Bosnia and Herzegovina on 25 January 2022 in which the Government outlines both the individual measures and the general measures they plan to adopt to prevent similar violations in the future. We heartedly welcome the Government's commitment to ensure that Bosnian legislation, including the proposed Law on Social Services, the draft Law on Social Protection Institutions, as well as the Act on the Protection of Persons with Mental Disabilities, complies with international human rights law (§ 24 - 25 of the Action plan). We are happy for the opportunity to assist the Government in succeeding in this goal.
3. In the first part of this submission, we express our concern about effective implementation of the individual measures in this case. The second part of the communication focuses on the Government plan for the implementation of the general measures. We argue that to prevent unlawful detention in social care institutions, the state must ensure adequate support services in the community. There is a direct link between Article 5 of the Convention and the right to live independently and be included in the community enshrined in Article 19 of the United Nations Convention on the Rights of Persons with Disabilities ("UN CRPD"). Much of involuntary institutionalisation is a result of lack of any alternative solutions for people who have support needs related to their disability. The failure of the state to implement community-based support services directly leads to the massive scale of involuntary institutionalisation as we see in Bosnia.
4. The communication has been written by Sumero, a Bosnian non-governmental organisation, and Validity Foundation (former Mental Disability Advocacy Centre), an international non-governmental organisation. Both Sumero and Validity have extensive national and international experience with using human rights law to protect the rights of persons with intellectual and psychosocial disabilities.
5. Sumero "Union of organizations for support to the persons with intellectual disability of FB&H" is a non-governmental organisation based in Bosnia and Herzegovina that has been actively involved in promoting the rights of people with intellectual disabilities for over 10 years. Sumero brings together and works closely with many organizations representing people with disabilities in Bosnia and Herzegovina. Sumero's mission is to promote human rights, advocacy, and self-advocacy of people with intellectual disabilities, with the aim of their social inclusion through the development of quality support services in the local community. For more information, please visit www.sumero.ba.

6. Validity Foundation is an international non-governmental organisation that uses legal strategies to promote, protect and defend the human rights of people with intellectual and psychosocial disabilities worldwide. Validity's vision is a world of equality where emotional, mental, and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form. Validity has participatory status at the Council of Europe, and special consultative status at ECOSOC. For more information, please visit www.validity.ngo.

II.

Concerns about the individual measures

7. In the first part of this submission, Validity and Sumero would like to bring to the attention of the Committee of Ministers the concerns about the effective implementation of individual measures in the present case. The Government Action plan asserts that the violations of Mr Crepulja's and Ms Hadzimejlic's rights have been remedied. In 2016, they were both released from an institution. Ms Hadzimejlic was accommodated in her family house and surveilled by a guardian. Mr Crepulja was provided an apartment for temporary use and partially assisted by the guardian (§§ 8-10).
8. Nevertheless, the Government fail to mention that in 2017, both Mr Crepulja and Ms Hadzimejlic were institutionalised again.¹ Based on the information of Sumero, whose employees were in touch with the applicants, neither of them were provided with any forms of social care support, such as personal assistance or community-based supported living, which would enable them to meet their daily needs in the community. The Government finances certain support services but only for people with lower support needs. Ms Hadzimejlic and Mr Crepulja were not among those people and needed more supports than were available.
9. Mr Crepulja himself explained the situation in an interview he conducted when he lived alone in the state social housing.² He expressed his wish to go back to an institution because "loneliness is worse than illness."³ He explained that he cannot manage the daily tasks of self-care completely alone. In his own words, it was easier in the institution because he had available support there and his only obligation was to "wake up and be obedient".⁴ Sumero has heard similar statements from numerous people with disabilities who remain in institutions or return there because there is no one to assist them in case they lived independently. Institutions become their only option.

¹ This information has been made publicly available. Sumero also has internal data provided by the relevant Centers for Social Work.

² The video interview with Mr Crepulja before he went back to an institution is available online at: <https://balkans.aljazeera.net/videos/2016/12/4/marcel-crepulja-zeli-nazad-u-zavod-drin>

³ Ibid.

⁴ Ibid.

10. Therefore, although both applicants were released from the institution, they were practically not provided an opportunity stay outside safely and durably. The lack of rehabilitation, therapies to acquire and practice independent living skills, and assistance in everyday tasks, forced their re-institutionalisation. In Validity and Sumero's view, this challenges the Government claim that individual measures have been implemented in the present case. In fact, since 2017 both applicants found themselves in the same situation as prior to the adoption of the Court's judgment.

III.

Concerns about the general measures

11. In the second part of the communication, Validity and Sumero challenge the appropriateness of the general measures proposed in the Action plan. The principal aim of the general measures in the present case was to prevent unlawful detentions in social care institutions and ensure that all detentions therein strictly comply with the requirements of Article 5 § 1 (e) of the Convention. With this view, the Government proposed the following general measures:

- *Registration of individuals with mental disabilities placed in social homes without a court decision;*
- *Review of necessity of their confinement by competent courts;*
- *Release of the above individuals following a competent court's decision;*
- *Legislative measures ensuring that each confinement of individuals with mental disabilities is ordered and reviewed by a competent court;*
- *Trainings and awareness-raising measures for staff of social welfare centres to abide by the Court's judgment.*

12. We submit that the proposed measures are manifestly insufficient to secure non-repetition of the human rights violations condemned in the judgment. In the first part of this section, we argue that the implementation of the judgment must be compliant with Bosnia and Herzegovina's other international commitments, including those stemming from the UN CRPD. We then explain that to ensure that that persons with disabilities are not unlawfully detained in social care institutions,⁵ the state must adopt and implement a deinstitutionalisation strategy, including a range of adequate social services in the community. We demonstrate that release of unlawfully institutionalised persons without such supports in the community may amount to further serious human rights violations which the state is obliged to prevent. Secondly, we submit that all policy and legislative measures, including the trainings and awareness-raising measures, must be consulted with persons with disabilities and their representative organisations. Lastly, we explain why the measures currently adopted or planned by the Bosnian Government fail to fulfil the above requirements.

⁵ See, for instance, *Stanev v. Bulgaria* [GC], no. 36760/06, 17 January 2012, § 146.

a. The need for integrated human rights-based approach to execution of the judgment

13. The Action plan indicates the Government's readiness to ensure that the policy and legislative measures proposed to implement the *Hadzimejlic* judgment are compliant with international human rights law protecting the rights of persons with intellectual and psychosocial disabilities ("mental disabilities"). Namely, in § 24 and 25 of the Action plan the Government inform about a task force established to review and analyse the federation's legislation and propose measures to ensure harmonisation of the legislation and policies with international human rights law. The Government also indicate that a new task force will be established to facilitate the implementation of the necessary measures.
14. In this context, Sumero and Validity note that Bosnia and Herzegovina ratified the United Nations Convention on the Rights of Persons with Disabilities ("UN CRPD"), the leading global convention protecting the rights of persons, in 2010. The UN CRP, therefore, belongs among the international human rights laws the Bosnian Government refers to in the Action plan above. Measures taken within the scope of the implementation of the present judgment thus must conform to the UN CRPD's standards. In the below sections, we explain that this means that they cannot condone institutionalisation in any way. To the contrary, they must contribute to supporting persons with disabilities to live included in their community.
15. An integrated human rights approach to implementing this judgment is indispensable because the European Convention on Human Rights ("the Convention") and the UN CRPD's standards protecting the rights of persons with intellectual and psychosocial disabilities are profoundly interrelated.⁶ Recognizing this, the European Court of Human Rights ("the Court") case law regularly incorporates references to the UN CRPD as the "state of the art" when it comes to the rights of persons with disabilities. In many cases, the Court uses the UN CRPD standards to specify obligations under different Convention's articles.⁷
16. The UN CRPD, therefore, provides the Bosnian Government with an important guidance as to how to effectively protect the right to liberty and security of persons with disabilities enshrined in Article 5 of the Convention. We submit that the UN CRPD human rights norms are significant for this case at least in two aspects. First, they specify the states obligations when it comes to effective prevention of unlawful deprivation of liberty in social care or psychiatric institutions. Second, they establish an obligation to effectively include persons with disabilities and consult them on the development and implementation of legal and policy measures which concern them.

⁶ See the Preliminary Draft Report of the Council of Europe Committee on Social Affairs, Health and Sustainable Development "Deinstitutionalisation of persons with disabilities", AS/Soc (2021) 46, 30 November 2021, para 23.

⁷ See the present judgment *Hadzimejlic v. Bosnia and Herzegovina*, § 32; and others, for instance, *Cam v. Turkey*, no. 515800/08, 23 February 2016, § 53, *Enver Şahin v. Turkey*, no. 23065/12, 30/01/2018, § 53.

b. The requirement of deinstitutionalisation and development of community-based services

17. The measures proposed by the Government aim at reviewing the necessity of involuntary placement in social care homes. This is to be done by registering all individuals detained without a court order, court review of necessity of confinement and ensuring that future detention of persons with disabilities in a social care institution is ordered and reviewed by competent Courts.
18. We respectfully submit that the proposed measures miss the broader context in which these human rights violations take place, and which enables them. The massive scale of involuntary institutionalisation in social care institutions is not predominantly caused by insufficient court review of the placements; it is caused by a lack of alternative social services which would allow persons with disabilities receive the support or care they need in the context of their home, family, and the community.
19. In the below lines, we will demonstrate that how the lack of support services in the community violates both the UN CRPD and the European Convention on Human Rights. In our argumentation, we draw mainly from Article 19 of the UN CRPD, enshrining the right to live independently and be included in the community.⁸ In the context of the massive scale of involuntary institutionalisation in Bosnia, and the absolute lack of alternatives in the community, Article 19 of the UN CRPD is directly relevant for the protection of persons with disabilities' right to liberty and security, right to life and right to be protected against ill-treatment.
20. In his 2014 address to the PACE Committee on Equality and Non-Discrimination, Nils Muižnieks, then Council of Europe Commissioner for Human Rights, eloquently summarized the relationship between institutionalisation and deprivation of personal liberty: „(m)any who could otherwise function in the community without a great deal of support have become unable or afraid to leave these institutions, because they have known nothing else.” The Commissioner also narrated his personal experience exposing how institutions “cultivate a feeling of helplessness; (...) erodes one’s confidence in one’s ability to make choices; (...) deprive(s) people of life experiences and skills needed to build up autonomy and identity.”
21. The Commissioner’s words illustrate the inevitable dynamic of institutional culture. Institutions create and perpetuate the conditions which are then used as an argument for why

⁸ Article 19 stipulates that the states must ensure that: “persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement, that have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community; Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.”

institutionalisation of a person is necessary. They create a vicious circle of dependence, incapacity, and deprivation of individuality, personal freedom, autonomy, and dignity.

22. The above-cited address was pronounced as a reiteration of the Commissioner's commitment to strongly advocate for deinstitutionalisation expressed in the Issue Paper *The Right of people with disabilities to live independently and be included in the community*.⁹ The Issue Paper details the state obligations when it comes to preventing human rights violations caused by institutionalisation of persons with disabilities. It focuses predominantly on the obligations stemming from Article 19 of the UN CRPD, which has the same title as the Issue Paper.
23. According to the Issue Paper, the states should, among others, set deinstitutionalisation as a goal and develop a transition plan for phasing out institutions and replace them with community-based services, with measurable targets, clear timetables, and strategies to monitor progress. They must also allocate the necessary resources towards community-based supports rather than institutional placement.¹⁰ No new admissions into institutions should be allowed.¹¹ The Issue paper also explains how essentially the right to live independently and be included in the community relates to the protection of other rights of persons with disabilities, most prominently the right to personal liberty and security, and the right to private life as enshrined in Articles 5 and 8 of the Convention.¹²
24. The UN CRPD Committee, the treaty body responsible for monitoring the implementation of the UN CRPD, have since then also clarified the obligations related to Article 19 in its General Comment no. 5. The states must “*release all individuals who are confined against their will in mental health services or other disability-specific forms of deprivation of liberty*”,¹³ and phase out institutionalisation which means no new institutions may be built.¹⁴ These obligations are immediate, just as the obligation to enter into strategic planning of the deinstitutionalisation process, with adequate time frames and resourcing, in close and respectful consultation with representative organizations of persons with disabilities.¹⁵ States only enjoy a margin of appreciation as to manners of the implementation, not as to the obligation to deinstitutionalise itself.¹⁶
25. The UN CRPD Committee also emphasises the intrinsic relationship between the right to liberty and the existence of appropriate community-based services. In the General Comment

⁹ Council of Europe Commissioner for Human Rights, Issue Paper *The Right of people with disabilities to live independently and be included in the community*, 2012. Available at: <https://rm.coe.int/the-right-of-people-with-disabilities-to-live-independently-and-be-inc/16807bef65>

¹⁰ *Ibid.*, p. 7, Recommendations.

¹¹ *Ibid.*, p. 7, Recommendation no. 4.

¹² Council of Europe Commissioner for Human Rights, Issue Paper *The Right of people with disabilities to live independently and be included in the community*, 2012, p. 22.

¹³ UN CRPD General Comment no. 5, CRPD/C/GC/5, 27 October 2017, para 48. Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no5-article-19-right-live>

¹⁴ *Ibid.*, para 49.

¹⁵ *Ibid.*, para 42.

¹⁶ *Ibid.*

no. 5, the Committee emphasized that “*involuntary institutionalisation (...) is often caused or increased by a lack of disability- specific support services.*”¹⁷ As reiterated therein and also the same Committee’s Guidelines on UN CRPD Article 14, deinstitutionalisation and implementation of community-based services is essential to prevent violation of the right to liberty and security of persons with disabilities.¹⁸ The right to liberty and security of a person is often violated due to a forced institutionalisation caused by the lack of support services in the community.¹⁹

26. The above concerns and related state obligations are highly relevant for assessing the permissibility of deprivation of personal liberty in social care institutions. It has been well established in the Court’s jurisprudence that deprivation of personal liberty under Article 5 § 1 (e) is only permissible if the state proves that it is necessary for the purposes of therapy or care. In *Hadzimejlic v. Bosnia and Herzegovina*, the Court reminded that “*the detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained.*”²⁰
27. If persons with intellectual and psychosocial disabilities need support in exercising their day-to-day tasks, and such support is not available in the community, institutionalisation is their only option for receiving the therapy or care they need. Institutionalisation thus becomes “necessary” due to a state failure to implement its international legal obligations. The more time a person with disability spends in an institution, the more “necessary” such institutionalisation becomes by the inevitable dynamic of incapacitation and deprivation of choice an autonomy inherent in institutional settings.
28. Institutions hinder one’s ability to pursue, enrich and fulfil their personality and personal development through participation and membership in the life of the community. The negative effects of institutionalisation - the lack of activities, stimulation, interaction with the wider community, self-determination, self-actualisation - have been recognised as accelerating the loss of one’s social skills and individuality.²¹ As emphasised by the Court, individuality itself

¹⁷ UN CRPD Guidelines on Article 14, Adopted during the Committee’s 14th session, held in September 2015, para 82. Available at: <https://bit.ly/3lJC3gK>

¹⁸ Ibid.

¹⁹ Ibid., para 9; see also the following concluding observations: CRPD/C/ESP/CO/1, paras. 35-36; CRPD/C/CHN/CO/1, para. 26; CRPD/C/ARG/CO/1, para. 24; CRPD/C/PRY/CO/1, para. 36; CRPD/C/AUT/CO/1, para. 30; CRPD/C/SWE/CO/1, para. 36; CRPD/C/CRI/CO/1, para. 30; CRPD/C/AZE/CO/1, para. 29; CRPD/C/ECU/CO/1, para. 29; CRPD/C/MEX/CO/1, para. 30. Available at: <https://uhri.ohchr.org/en/>

²⁰ The same has been reiterated in other judgments, including *Stanev v. Bulgaria* [GC], no. 36760/06, 17 January 2012.

²¹ See, for instance, the Preliminary Draft Report of the Council of Europe Committee on Social Affairs, Health and Sustainable Development “Deinstitutionalisation of persons with disabilities”, AS/Soc (2021) 46, 30 November 2021, paras 13-15. See also the Report of the Office of the United Nations High Commissioner for Human Rights (2014): “Thematic study on the right of persons with disabilities to live independently and be included in the community”, A/HRC/28/37, p. 7, and the Report of the Special Rapporteur on the rights of persons with disabilities: “Rights of persons with disabilities” (2019), A/HRC/40/54 p. 5-6.

is acquired in relation to other human beings and through the appropriation of the culture of the community.²²

29. Paradoxically, then, the state creates conditions for infringing upon their right to liberty and security by maintaining institutions and not developing a sufficient range of therapeutic and social care services in the community. This has also been highlighted in the Preliminary Draft Report of the Council of Europe Committee on Social Affairs, Health and Sustainable Development “Deinstitutionalisation of persons with disabilities: “(p)ersons with disabilities who are placed in institutions are deprived of their liberty for long periods of time, and in some cases even for a lifetime. Most of them are institutionalised against their will or without their free and informed consent. Such practice along with the poor treatment that they receive in institutions affect their most fundamental rights, including the right to integrity and the right to liberty.”²³
30. Preventing unnecessary deprivation of liberty of persons with disabilities in social care institutions is the principal aim of the protection afforded by Article 5 § 1 (e) of the Convention. Validity and Sumero submit that is not possible to fulfil this aim without implementing comprehensive deinstitutionalisation policies and developing support and therapeutic services in the community which would enable persons with disabilities to safely stay out of institutions.
31. The last point is particularly important in the context of the Action plan in which the Government of Bosnia and Herzegovina pledges to “*release (...) individuals from social homes following a decision of a competent Court*”. Without ensuring sufficient network of support services in the community, and affordable housing accessible to persons with intellectual and psychosocial disabilities, such release of itself may lead to dreadful situations endangering the lives of persons with disabilities, exposing them to suffering or ill-treatment, or violating their right to private and family life.
32. The above-cited case of Rusi Stanev is illustrative in this respect.²⁴ Mr Stanev was released from the institution following the Court’s judgment. He had spent years in appalling conditions in an institution and had been deprived of the right to make the most elementary choices in his life. He had not been able to decide where and with whom to live, what and when to eat, how to go about his daily programme or when and how to conduct his hygiene. He had not been given an opportunity to develop skills for decision-making or for daily self-care, including washing, cooking, cleaning, or arranging basic administrative issues. Yet after his release, no support services or adequate housing were available and accessible to him in Bulgaria. His unsupported release from the institution left him with an unaddressed trauma, homeless,

²² *Stankov v. Bulgaria*, no. 25820/07, ECHR 2013, § 22.

²³ Preliminary Draft Report of the Council of Europe Committee on Social Affairs, Health and Sustainable Development “Deinstitutionalisation of persons with disabilities”, AS/Soc (2021) 46, 30 November 2021, para 11 etseq.

²⁴ *Stanev v. Bulgaria* [GC], no. 36760/06, 17 January 2012.

struggling to meet his most basic human needs and unable to solve the situation without support. Rusi Stanev eventually died at the age of 61 in 2017.²⁵

33. Rusi's story is one of the many which illustrates the tragedies which may happen if people with intellectual and psychosocial disabilities are not properly supported in the community after release from a long-term institutionalisation. The Life Esidimeni tragedy in South Africa, where at least 144 people died after the Government failed to ensure quality and appropriate community-based services to people released from institutions, speaks for all of them.²⁶
34. These situations clearly engage the state's responsibility under the Convention. Under Article 2 of the Convention, the state has a positive obligation to take appropriate steps to safeguard the lives of those within its jurisdiction.²⁷ Failure to prevent dangers to life that the state should have expected and prevented may amount to a violation of Article 2 of the Convention. Similarly, Articles 3 and 8 of the Convention may in some cases concerning people in particularly vulnerable situations rendered homeless by the state's decision, impose an obligation to provide the necessary help.²⁸
35. Development of a deinstitutionalisation strategy, with clear timeframes and sufficient budget to develop an adequate range of community-based services, must, therefore, be at the centre of the implementation of the present judgment. The Committee of Ministers has already taken a similar approach in other cases concerning social care detention of persons with disabilities, such as *Nencheva v. Bulgaria*,²⁹ or *L.R. v. North Macedonia*.³⁰ In *L.R. v. North Macedonia* the central general measure was the National Deinstitutionalisation Strategy. The consultation process involved all relevant line Ministries and agencies: social and educational institutions, residential institutions, social service providers, civil society organizations and the donor and development partners. The Committee of Minister's has reviewed not only the strategy on paper, but also analysed its practical implementation.
36. We submit that this approach is called for in *Hadzimejlic* case as well. Without making sure that deinstitutionalisation strategies are properly in place, with adequate resources and timeframes, and that they are being effectively implemented, human rights violations addressed in the present judgment will continue to take place. By reviewing Bosnia and Herzegovina's deinstitutionalisation strategies and accessibility of community-based services, the Committee of Ministers would assist Bosnia in practically preventing their recurrence, and potentially preventing further ones.

²⁵ Validity Foundation, A tribute to Rusi Stanev. Available at: <https://validity.ngo/2017/03/09/a-tribute-to-rusi-stanev/>

²⁶ See, for instance, Melvyn Colin Freeman (2018) *Global lessons for deinstitutionalisation from the ill-fated transfer of mental health-care users in Gauteng, South Africa*. The Lancet Psychiatry, 5(9): 765-768.

²⁷ *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, 17 July 2014, § 130.

²⁸ As in the cases *Moldovan and others v. Romania* (no. 2), no. 41138/98; or *V. M. v. Belgium*, no. 236/14.

²⁹ No. 48609/06, 19 September 2013.

³⁰ No. 38067/15, 23 May 2020.

c. The importance of active involvement of persons with disabilities in the proposed measures

37. In addition to insisting that Bosnia and Herzegovina adopt and implement a deinstitutionalisation strategy, we submit that it is necessary that the strategy is properly consulted with disabilities and their representative organisations. The UN CRPD explicitly requires State parties to do so in Articles 4 (3) and 33 (3). Article 4 (3) stipulates that states parties shall „*closely consult with and actively involve persons with disabilities*” in the “*development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes*” concerning issues relating to them. The UN CRPD Committee recently specified in its General Comment no. 7 that “(t)his means that legal and regulatory frameworks and procedures, (...), should explicitly require that public authorities consult closely with and actively involve persons with disabilities, (...), in the development and implementation of such processes.”³¹
38. Including persons with disabilities in decision-making and consulting them on the design of various measures is not important only from the perspective of mainstreaming disability issues and ensuring inclusion of persons with disabilities as full members of the political society. It is also a matter of good governance. The life experience and knowledge of persons with disabilities must be considered in designing policies and legislation to ensure that they are evidence-based, and do not further perpetuate their stigmatisation, exclusion, discrimination, or other human rights violations.
39. In an issue of such seriousness, such as is the prevention of unlawful deprivation of personal liberty, the importance of learning about real life experiences, needs and preferences of persons with disabilities cannot be overemphasized. As acknowledged by various Council of Europe documents, involuntary institutionalisation of persons with disabilities is one of the gravest and most widespread human rights violations experienced by this group, and Governments must make their best efforts to eradicate it.³²
40. To practically facilitate such participation, persons with disabilities and their representative organisations must be consulted timely and must be given guarantees of accessibility of the process, including provision of reasonable accommodations. The UN CRPD Committee emphasizes that “(t)her respective views must be given due consideration and weight and they must be duly informed of the outcome of the process, including an explicit explanation, in the findings, considerations or reasoning of decisions, on how their views were considered and why.”³³

³¹ UN CRPD General Comment no. 7, CRPD/GC/C/7, 21 September 2018, para 18.

³² Nils Muižnieks, *Deinstitutionalisation in the work of the Council of Europe Commissioner for Human Rights*, address to the PACE Committee on Equality and Non-Discrimination, 2014. Available at: <https://rm.coe.int/16806da7a3>; Council of Europe Commissioner for Human Rights, Issue Paper *The Right of people with disabilities to live independently and be included in the community*, 2012. Available at: <https://rm.coe.int/the-right-of-people-with-disabilities-to-live-independently-and-be-inc/16807bef65>

³³ UN CRPD General Comment no. 7, op. cit. fn. 31, para 18.

41. The UN CRPD Committee makes it clear that issues related to persons with disabilities cover the full range of legislative, administrative, and other measures that may directly or indirectly affect persons with disabilities.³⁴ The measures planned by the Government in the present case, including the work of the taskforce, and the planned legislative measures, should therefore absolutely be meaningfully consulted with organisations of persons with disabilities. The same applies to the training and awareness-raising activities planned by the Government in the framework of this Action plan, which are an exemplary type of measures which should not be implemented without participation with persons with intellectual and psychosocial disabilities.

d. Bosnia's failure to comply with its international obligations

i. The procedural safeguards

42. The Government of Bosnia and Herzegovina does not provide any specific information which would suggest that the above-outlined international human rights obligations have been complied with. The Action plan only contains measures to improve the safeguards in the procedures of deprivation of liberty in a social care institution.

43. Nevertheless, even these proposed procedural safeguards are insufficient in view of the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT"). During its visit to Bosnia and Herzegovina in April 2011, the CPT recommended that the relevant authorities institute regular **automatic reviews** for residents placed in social care homes.³⁵ Such a system hasn't been established yet, nor has it been a part of the Action plan. Under the Government proposal, the court will decide to release a person from an institution when the reasons for his or her confinement cease to exist, but there no review is set for examining if such reasons ceased to exist.

44. Moreover, according to current state law, an institutionalised person deprived of legal capacity cannot initiate the procedure of release. The procedure can only be initiated by their legal guardian, usually a state appointed social workers. Legal guardians do not have any obligation to check on their wards and in practice, the Centres for Social work who serve as guardians are overwhelmed with work. As the law states no limit to how many wards can a social worker be a legal guardian to, guardians often have over 20 wards.

45. This situation contravenes the European Court of Human Rights case law which clearly requires that persons in social care detention can trigger the review of their detention on their own motion and initiative, without reliance on a third party.³⁶ Without allowing the concerned

³⁴ Ibid., para 20.

³⁵ Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 14 April 2011, para 126.

³⁶ *Shtukaturov v. Russia*, no. 44009/05, 27 March 2008, § 113; *L.M. v. Latvia*, no. 26000/02, § 54, 19 July 2011, *Červenka v. The Czech Republic*, no. 62507/12, 13 October 2016, § 105, and others.

individuals to trigger court review of their detention, the law does not offer sufficient safeguards against arbitrary and unlawful detention.

46. Lastly, the social care detention is often also in violation of the domestic law. According to sections 27 and 33 of the Mental Health Act 2001³⁷ the court decision shall determine the duration of the involuntary admission which may not exceed one year. However, in most cases, the confinement in an institution is indefinite due to a legal loophole applied by the courts. After the maximum period of a year had passed, the courts revise the case and issue another decision in which detention is sanctioned for additional period of a year. This practice of chaining court decisions on detention contravenes the spirit of the law and practically allows persons being detained in social care institutions indefinitely.

ii. *The deinstitutionalisation strategy*

47. Further, as argued above, the above procedural measures are not capable of preventing unnecessary social care detentions. The story Ms Hadzimejlic and Mr Crepulja demonstrate that an improved court review of detention will not necessarily yield a different outcome for persons with disabilities. If not ensured supports in the community, they will still likely end up involuntarily institutionalised. Moreover, as illustrated on the case of Rusi Stanev and others, the suggested “release of individuals from unlawful social care detention” without appropriate community-based supports may yield further human rights violations.

48. However, the review of the domestic law and practice do not suggest positive developments in this respect, either. Relevant domestic law (*Zakon o zaštiti osoba sa duševnim smetnjama*³⁸) only prescribes involuntary confinement in an institution. In line with the Rulebook on Standards for Work and Provision of Services to Social Welfare Institutions in the Federation of Bosnia and Herzegovina,³⁹ there are no governmental institutions that provide community-based services in Bosnia, such as supported living with different levels of assistance (24h support, daily support, etc.), different forms of day habilitation, individualized support services, supported employment, or in-home and site-based care.

49. Community-based services are only provided by non-governmental organisations. However, these are not properly funded. Sumero provides some of these community-based services in certain Cantons. Some Cantons only fund services covering the lowest level of support needs. Certain cantons cover support services with higher level of assistance but still not up to the level which would be required by people such as the applicants in the present case. The funding provided for the community-based services is low. For example, in Sarajevo Canton, only the lowest level of assistance is covered, and the service obtains 32,66 BAM (16.72 EUR) per

³⁷ *Zakon o zaštiti osoba sa duševnim smetnjama*, OG FBH nos. 37/01 and 40/02

³⁸ OG FBH nos. 37/01 and 40/02.

³⁹ *Pravilnik o standardima za rad i pružanje usluga ustanovama socijalne skrbi u Federaciji Bosne i Hercegovine*, OG FBH nos. 15/13.

client per day. In Zenica-Doboj Canton, three levels of assistance are covered. The service obtains 27,66 BAM (14.16 EUR) per client per day for the lowest level of assistance; 35,66 BAM (18.26 EUR) for the second level of assistance, and 42,33 BAM (21.67 EUR) for the third level of assistance. State-run institutions, on the other hand, currently obtain 38,00 BAM (19.43 EUR) per client per day. Institutionalisation is, therefore, more expensive than the highest-level support service in the community.

50. Currently the Government does not have a strategy for deinstitutionalisation in place, nor is there a budget category for this purpose. There used to be a Strategy for deinstitutionalisation for 2019 - 2020, with the budget of only 20.000,00 BAM (app. 10.289,14 EUR) for the period 2014-2020. Furthermore, up until 2015, there was a specific budget category called “housing in the local community” for 100.000,00 BAM (app. 51.445,68 EUR) in the Federal Budget. Since 2016, the said category does not exist. No other funding for deinstitutionalisation exists.
51. The federation implemented a disability policy between 2011-2015 and 2016-2021⁴⁰ but many of the proposed measures failed to be implemented. Following the expiration of the state-level policy, both federal entities implement own strategic frameworks for advancement of the rights and status of persons with disabilities. Nevertheless, persons with disabilities continue to face challenges regarding access to education, healthcare, and social assistance. There are no countrywide strategies on poverty reduction, social inclusion and protection or a system at countrywide level for monitoring policy implementation. At entity level, there is a wide range of strategies and laws related to social inclusion and protection and their implementation systems. However, these are not enforced due to a lack of funding, inadequate procedures, standards and referral practices and a general lack of coordination.
52. Domestic circumstances concerning this issue are best described in European Commission’s Analytical Report⁴¹ within Council Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union. The report states that despite the country’s ratification of the UN CRPD and its Optional Protocol, multi-sectoral and comprehensive implementation mechanisms are not in place. The same gap has been noted by the UN CRPD Committee in the concluding observations on Bosnia’s initial report. The Committee noted that:

(a) Institutional care is still prevalent and there is no comprehensive strategy of deinstitutionalization in the State party;

(b) The number of institutionalized persons with disabilities remains high, and insufficient efforts have been made to provide resources for the development of support services, in particular personal assistance, in local communities for those leaving institutions;

⁴⁰ Strategy for 2011-2015 and 2016-2021, Available at: <https://bit.ly/3z0uZ7g>

⁴¹ European Commission’s Analytical Report, Brussels, 29 May 2019 SWD(2019) 222.

*(c) Resources are still invested in renovating or extending institutions, while initiatives of — and opportunities provided for — organizations of persons with disabilities for developing services within the community that enable independent living are not sufficiently supported.*⁴²

53. It is also important to note that the state does not collect disaggregated data which would allow for understanding the extent of support needs of persons with disabilities and facilitate appropriate planning for community-based services. Nor there are official data on the overall number of persons with disabilities in Bosnia and Herzegovina. Based on the country-wide census and the world statistics on the prevalence of disability, we can assume that at least 355,740 people in the Federation of Bosnia and Herzegovina live with disabilities, and about 52,175 of them are people with severe disabilities.⁴³ We can assume that a large portion of the people with severe disabilities live in institutions and will need extensive community-based supports to safely leave them. It is of vital importance that the Government of Bosnia and Herzegovina does not ignore this issue and addresses it in line with their international legal obligations.

III.

Conclusion and proposals

54. In the present communication, we firstly submitted that individual measures implemented by the Government did not suffice to ensure that Ms Hadzimejlic and Mr Crepulja are not subject to involuntary institutionalisation. As noted above, both have been institutionalised again since 2017. Based on Sumero's information, they were not ensured adequate support in the community which would correspond to their higher support needs.
55. We secondly argued that the general measures proposed by the Government of Bosnia and Herzegovina cannot in effect ensure that institutionalisations of persons with disabilities is carried out in line with Article 5 § 1, only when necessary for ensuring therapy or care. We demonstrated that mass involuntary institutionalisation is a systemic problem in Bosnia and can only be addressed by systemic and well-planned measures, considering the overall context in which institutionalisation happens. We argued that to prevent similar and other human rights violations in the future, the Government must adopt a comprehensive, properly funded deinstitutionalisation policy which will lead to implementing sufficient community-based services in the country. We also reminded that such policy, just as other related measures, needs to be adopted with close consultation and collaboration with persons with disabilities.

⁴² Concluding observations of 2 May 2017, CRPD/C/CIH/CO/1, § 34-35.

⁴³ Official report on Social services – Agency for Statistics of Bosnia and Herzegovina Sarajevo, 2021, available at: https://bhas.gov.ba/data/Publikacije/Bilteni/2021/SOC_00_2020_TB_1_BS.pdf

Nevertheless, in this Action Plan, the Government only proposes adopting certain procedural safeguards against unlawful social care detention.

56. In the context of the above, we request the Committee of Ministers to examine the implementation of the present judgment in an enhanced procedure and schedule it for debate at an upcoming CM-DH meeting.

57. We also respectfully ask the Committee to call on the Government to provide an updated Action plan. We suggest that the Committee of Ministers propose the Government to implement the following measures:

- Individual measures:

- Ensure access to housing and appropriate community-based services for Ms Hadzimejlic and Mr Crepulja in an extent sufficient to address their higher support needs, to enable them to leave the institution if they so wish.

- General measures:

- Adopt a mandatory review procedure of all social care triggered automatically if a person with disabilities expresses disagreement with the institutionalisation. This disagreement can be expressed implicitly if it is apparent from the context that it is meant seriously.
- Amend the relevant legislation to ensure the rights of persons under guardianship to trigger the review of their social care detention on their own motion. Ensure, in this respect, that they have access to the relevant information in accessible formats and are provided procedural accommodation.
- Adopt a deinstitutionalisation strategy, including the development of quality community-based services, with clear and appropriate timeframes.
- Ensure sufficient and sustainable financing for the implementation of the deinstitutionalisation strategy and the development of community-based social services.
- Involve persons with disabilities and their respective organisations in the design and implementation of the Action plan measures, including the deinstitutionalisation strategy.
- Regularly, at least on a yearly basis, publish a report monitoring the progress in implementation of the deinstitutionalisation strategy. Include, at minimum:
 - desegregated data about the number of persons with disabilities in institutional care and those receiving support services in the

community, including the extent of support services received by persons with disabilities in the community.

- data about the finances dedicated by the state for institutional care and support services in the community. Desegregate the data by costs per individual.

58. We kindly note that in the implementation of the above, the Government can rely on the extensive resources and help of the international human rights community. Among others, the Council of Europe Commissioner for Human Rights above-cited issue paper contains a list of recommendations for implementing deinstitutionalisation processes.⁴⁴ The UN CRPD Committee has similarly published important guidelines in this regard, the latest of which – the Draft Guidelines on Deinstitutionalization of Persons with Disabilities - have recently been published on the website of the Office of the United Nations Commissioner for Human Rights.⁴⁵ Furthermore, the UN CRPD Committee is available to provide technical assistance to the state wishing to implement deinstitutionalisation processes compliant with the UN CRPD.

⁴⁴ Council of Europe Commissioner for Human Rights, Issue Paper *The Right of people with disabilities to live independently and be included in the community*, 2012. Available at: <https://rm.coe.int/the-right-of-people-with-disabilities-to-live-independently-and-be-inc/16807bef65>

⁴⁵ Available online at: <https://www.ohchr.org/en/treaty-bodies/crpd/regional-consultations-and-guidelines-deinstitutionalisation-article-19>