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TYPICAL METHODS OF VIOLATION OF HUMAN RIGHTS IN HOMES FOR ELDERLY PEOPLE

The subject of the paper is the analysis of human rights violations in homes for the elderly. There is an increased need for such homes, but those in which the elderly will truly be cared for, without fear that somebody's carelessness or, even worse, malicious intentions, can endanger their lives. The author highlights potential forms of human rights violations in state and private homes for the elderly. The results of the research indicate that users of such homes suffer most often due to violations of dignity and pressures to transfer property rights to their real estate to staff members of such homes. The procedure for admission to a private elderly home is much easier, but in practice this often means bypassing the users' consent for accommodation, amongst other regulations. As one of the solutions of these unwanted institutional treatments, the author sees the intensification and expansion of non-institutional care, whereby the elderly are not displaced from their homes.

Keywords: state and private homes for the elderly, Serbia, violation of human rights, home as a prison, development of non-institutional care

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1. Introduction - general situation

*The world of the old is a world of
loneliness and sadness, and death is
loneliness that always wins in the end.*
(Milić, 2023)

Demographic ageing seems to be one of the greatest social transformations of the 21st century, with a strong impact across all segments of society (Batrićević, 2022: 465). All projections point to an increase in the number of inhabitants over 80 years of age, in particular the near-doubling of the number of women in this age category. Although this process is also present in Serbia, the ageing of the nation and the problems of old people are still on the margins of interest of both the state and society (Helsinki Committee, 2009: 5). Elderly fellow citizens often state that they need help at home, that they have no one to turn to, and that their children are not around, do not have time for them, or are already burdened enough (Poverenik, 2021: 133). It is known that a fear of loneliness and illness is omnipresent amongst the elderly, and it is also stated that depression and loneliness are primary causes of dementia (Milić, 2023). Elderly people are regularly faced by poverty, discrimination and violence, and a particular problem is the lack of specialist services and support, in particular home help services. Neglect and violence against the elderly are still not sufficiently reported, with primary factors in this being the inability of elderly to report, a lack of support for reporting, and an unwillingness to report violence they suffer at the hands of close members of their families, most often their own children, as well as due to an insufficient recognition of their own suffering due to emotional, social and economic violence.

The aforementioned problems are particularly pertinent in rural areas, where older women living in single households or who are usually dependent on other family members to meet their needs are in a particularly vulnerable position, given that they usually do not have ownership rights to immovable and movable property, income, nor adequate access to social and health services in places where traffic and public transport structures have not been established (Zaštinik, 2023: 12-13). It is noted that Serbia is a country of the elderly, a country with more and more infirm and sick people in need of care. In such circumstances, there is an increasing need for homes for the elderly. The ageing of the population, which demographers have reliably established, as well as data on long waiting lists for places in homes for elderly, lead to the need for a critical analysis of the situation in nursing homes. There is no comprehensive record of homes for the

elderly, because their owners often register them with the Business Registers Agency (APR) as guesthouses, hotels, joint-stock or joint-stock companies.

Many homes for elderly people do not have enough staff - or enough adequately trained staff - to provide the required care and support to their users. This can result in lack of attentiveness, neglect or insufficient medical care. A number of homes for the elderly in Serbia have poor infrastructure and insufficiently equipped rooms to provide residential care. The lack of spaces specifically adapted for persons with disabilities and a lack of space for recreation and social activities can negatively affect the quality of life of the elderly. In some cases, the lack of supervision can lead to inadequate treatment or a violation of rights. The lack of adequate inspections and legal mechanisms can further exacerbate the inadequacy of care provision. In Serbia, homes do exist that have excellent conditions and provide a high level of care, but standards vary, and are in no way uniform across different institutions.

Guarantees of users' rights and freedoms are generally insufficient. Although homes for the elderly are social institutions of an open type, the majority of users actually do not have any real possibility to freely choose the way of life that suits them best (Helsinki Board, 2009: 9).

In Serbia, it has long been no longer a shame and a defeat to send a father or mother to a home for elderly (Nastevski, 2022). There are not enough state homes, and there is a mistrust of private facilities: which homes have licenses, whether they will really take care of their users, and an overarching fear that someone's negligence will endanger a resident's health and life.

In the Republic of Serbia, there are 40 registered private and state gerontological centers and homes for the accommodation of adults and the elderly (most of which are located in Vojvodina), with a total capacity of 9,326 places. With the onset of the COVID-19 pandemic in 2020 and 2021, an abrupt halt of the trend of growth according to needs appeared, so that in 2022 there were significantly more users on the waiting lists than in 2021. In the Gerontology Center Belgrade, there are currently 315 people on waiting lists for homes for the elderly (Tanjug 2023). About 65-70 percent of registered private homes are located in Belgrade. A much smaller number of places than it should be. Surplus space was also sought in private homes until 2015-2017. and then the 'era of mass opening of private homes' began.

2. Insufficient accommodation capacity

In particular, it has been observed that the onus of provision for residences for the elderly is increasingly falling upon healthcare institutions, and, gradually, bed wards

intended for immobile users are commonly used as geriatric wards, even palliative care wings, which have been designed for the end-of-life care of patients with severe malignant diseases. Due to the profile of users, increased average age, and more pronounced infirmity, there is a need to establish specialized homes for the elderly, such as psycho-geriatric facilities. The cohort that requires such care is increasing in number, and they are becoming a disproportionate burden on the institutions that currently house them, which are ill-prepared for residents with deteriorated mental capacities, in the late stages of Alzheimer's or Parkinson's disease. In general, late-stage care is somewhat taboo, and only early-stage dementia and degenerative illnesses are discussed, while better-prepared care facilities openly discuss this as a major issue (Zaštitnik, 2011).

Occupancy is 100%, so waiting for a vacancy can take as long as a year and a half. The insufficient number of homes for the elderly in Serbia and the great interest in them from potential users or their family members is the main reason behind investors being increasingly interested in opening them. Private homes represent a source of income, so they are often registered under other business types, such as guesthouses, clinics, catering or tourist facilities, in order for the owners to avoid having to fulfill the legal obligations prescribed for care homes in terms of space, equipment and personnel. In some places in Vojvodina, nursing homes are registered as boarding houses for the provision of tourist services or as various agencies. Due to the fact that they are not officially registered as social welfare institutions, the Ministry of Labor, Employment and Social Policy cannot control their work (Kovačević, Spalević: 2007, 23.04).

Attention is drawn to the fact that in eastern Serbia, where the population is demographically very old, there are almost no homes to accommodate these people. Serbian society is among the ten oldest in the world, with the population in 85 percent of municipalities being demographically very old. In this group of municipalities, Knjaževac, Ražanj, Rekovac, Babušnica, Svrljig, Gadžin Han and Crna Trava stand out as those with the highest median age: In these municipalities, the share of people over the age of 60 is two to three times higher than the number of young people under the age of 20 (Poverenik, 2021).

3. Private homes for the elderly

Many non-conditional (i.e. those whose operations are not controlled by the Ministry of Labor, Employment and Social Policy) private homes for elderly were opened, because the owners saw a good profit in it. Persons with dementia and other degenerative illnesses require particular care and attention. Not only old people with their physical illnesses wait, there is a long list of those waiting for accommodation, especially

for bed-bound persons and those with dementia and other degenerative illnesses (Dnevnik, 2023). There is a very long waiting list for places in homes for elderly everywhere, especially in those institutions where there is a higher standard of accommodation. Where vacancies exist, these tend to be in homes in the Serbian interior, and in those where standards are low. The importance of having a tradition of housing for the elderly has been noted, whereby in areas where institutions for the accommodation of the elderly have existed for a longer period, they tend to be better organized, visible overcrowding in all, and not only in two homes separated by that characteristic; there are still five- and six-bed rooms, the house management tries to rationally use the entire available space, literally ‘from the basement to the attic’ by placing beds in all the available space; everywhere there is a shortage of employees, especially when it comes to nursing and medical staff, which is partly caused by systemic solutions (normatives), but also some other occupations are in deficit (e.g. social workers) (Zaštitnik, 2011: 3,4). However, one positive can be noted in this respect: on the website of the Ministry of Labor, Employment, Veterans and Social Affairs there is a list of licensed homes, as well as one for those that are prohibited from working, as well as all shelters and a record of by-laws that regulate institutional social protection of the residential type.

There are norms that prescribe that bedrooms must have a certain square footage, that the corridors in the building must be of a certain width, that there are separate rooms for work activities, a living room, a laundry room, an isolation room, a storage area, etc. The presence of a social worker, caregiver, cook, chambermaid, among others, is also required. More evidence is required, more documentation is required when submitting a request, with all of this being aimed toward raising the services to a higher level than before (Dnevnik, 2023).

4. Violations of user rights

The Protector of Citizens (Zaštitnik građana, aka Ombudsman) continuously points out, through its annual reports, recommendations and opinions, the existence of violations of the rights of the elderly, i.e. the rights of the elderly in social and health care institutions, the right to social care services for the elderly, and the right to specialist healthcare provision (Zaštitnik, 2023: 55,57). The work of the Protector of Citizens shows that there are homes for the elderly that do not meet the prescribed conditions for work, do not have appropriate work permits, i.e. they have lost their work licenses and been banned from working by the social protection inspection, and, in spite of measures taken by the Ministry of Labor, Employment, Veterans and Social Affairs, continue to work

and receive users. Their illegal work violates the guaranteed rights of elderly people housed in such institutions (Zaštitnik, 2023: 58).

One problem is that, in order to register a privately run home for the elderly, the key requirement is to fulfill the construction and technical conditions, but consent of the user is somehow neglected or even forgotten. Abuses are also pointed out from many sides when persons are placed in accommodation without their own consent, because the territorially competent center for social work has no role in such accommodation, and people who are accommodated in such homes are rarely asked about their welfare, with their accommodation and residence being solely dependent on the regular payment of the accommodation price, which is usually twice as high as that of state-run homes (Zaštitnik, 2011).

One of the problems is that there is actually no strictly prescribed and in-practice respected legal regulation of all aspects of accommodation in homes for the elderly, partially due to the fact that they are not considered to be 'closed' institutions, and therefore dissatisfied users (or customers) can always leave them. However, many are unable to leave, either because they have nowhere to go physically, or due to obstacles resulting from their own health (illnesses, mobility issues, physical and mental weakness), age, family (the primary family sent them to the home and is unwilling or unable anymore to let them return), fear of loneliness and abandonment, etc. Barriers act sometimes one by one, sometimes in synergies, in combination, so that it could not be considered simple to leave elderly people home.

Perhaps the regulation of the protection of human rights in prisons and offenders' institutions is a framework that can also be applied when it comes to homes for the elderly, primarily for the reason of protecting their human rights. Limitation of human rights of users may be possible only to the extent to which it is necessary for the execution of their institutional care and treatment. Criteria for protection of their human rights are to be processed on the basis of five fields of observation, these being: i) prohibition of discrimination, ii) prohibition of use of coercive measures, iii) use of special measures and procedures, iv) respect of political rights and v) respect of economic rights (Igrački, Ilijić, Stepanović, 2016: 331).

Probably the worst type of residential facility is the so-called 'reception centers' for the elderly, which function in such a way that private persons enter into lifetime maintenance contracts with the residents, which they certify in court, taking over the residents' pensions or their land and other valuable real estate. In return, they take care of residents who are often housed in unheated auxiliary rooms of the house without adequate care (Zaštitnik, 2011).

Taking over apartments and other valuable real estate, a form of abuse conducted by employees in homes for the elderly, although a long-noted phenomenon, is not sufficiently prevented by Serbia's legal framework. Solutions to this do, however, exist in the region; for example, Art. 8 of the 2021 Law on Social and Child Protection of Montenegro lists a series of prohibited actions of employees. The article prescribes that an employee of an institution is prohibited from any form of exploitation of the user, or abuse of trust or authority that they enjoy in relation to the user.

While a comparable solution exists in Serbia, where there is a ban on exploitation, this is not as a legal provision, but a sub-provision of the 2012 Order on Prohibited Behaviors of Employees in Social Protection (Art. 5: General prohibition of taking advantage of users and abuse of trust). The prohibition of exploitation is defined in more detail in the provisions of Art. 10, whereby 'exploitation' can be taken to include the following: the use of coercion, fraud, violent methods of persuasion, the dependent position of the user, their health, property or other condition, as well as the abuse of trust and power, the use of the user by the employee to perform tasks that bring material or immaterial profit, which are not in the interest of the user, but in the interest of the employee, service provider or third party.

The legal protection that exists in Croatia is far more comprehensive. The 2022 Law on Social Welfare contains an explicit prohibition of conclusion of a contract with the beneficiary on the disposal of the beneficiary's property, through Art. 170: (1) *A legal or natural person who performs social welfare activities and a person employed in social welfare activities cannot conclude a contract with the beneficiary that alienates or encumbers the beneficiary from real estate or a life or death alimony contract.* (2) *A contract concluded contrary to the provisions of this article is null and void.*

Apart from drastic cases that endanger the health - and even life - of users, alongside abusive approaches to their property, there are also a number of practices that directly violate the dignity of users. These include inappropriate language (such as addressing the residents as 'grandma' or 'grandpa'), and entering private dormitories without knocking, which poses a significant encroachment upon and undermining of personal privacy. There is a lack of explanation of medicines prescribed and given to users, general infantilization of residents, intra-resident violence, especially by men against women (during the monitoring visit, female users sometimes talked about such cases), users' consent to accommodation often does not exist when private homes are in question, or it is falsified or merely implied, the lack of staff also leads to a lack of adequate therapies and programs against depression and reducing the symptoms of dementia, with those suffering from dementia often being simply locked away, without any access to outdoor areas. Green areas that belong to homes are often neglected, which makes it impossible for healthy and

mobile users to utilize them, with walks and exercises being rarely organized anywhere. Many homes exude a gloomy atmosphere, hygiene is poor, and the smell of urine and feces can be felt (Zaštitnik, 2011: 68). It should be added that even in the best homes, there is depression and fear of death among the users, with only 10% having entered the home under their own volition, and the remainder believing that they were wrongly pressured into spending their twilight years away from their own homes (Zaštitnik, 2011: 9). Dignity implies that each person is worthy of honor and respect for who they are, not just for what they can do (Ćorić, 2020: 31).

5. Users of homes for the elderly

In Serbia, elderly people go to gerontological centers and homes for the elderly, as a rule, only when they become an unbearable burden for their families and when nobody is able to take care of them due to their health and general condition. In Serbia, it is rare for people to enter residential facilities in a state of health and age where they are still relatively capable and strong enough to undertake a (semi-)independent life in the community with their peers, under medical and therapeutic care. The demographics of the users determine the way of organization and the type(s) of service provision in homes for the elderly, which are obvious life's final stop, a place where one only waits for the end of life, and where no radical change or improvement in health-related circumstances is expected.

When making the decision to place an old person in an institution, the needs of that person certainly should be taken into account, at the very least. However, it is often the case that, when making family decisions, priority is given to the needs and interests of other family members, not to the best interests of the old person. The number of 'younger' users of such homes is decreasing, the trend is that people of increasingly advanced age, mostly in their eighties and older, and in increasingly poor health, make up the greatest proportion of new residents. The largest percentage of residents are wholly dependent and semi-dependent, meaning that elderly care homes are increasingly falling within the sphere of institutional accommodation for persons with disabilities, or chronic patients and those recovering after operations. Completely independent and partially dependent users are increasingly rare, with the director of one such institution being quoted as saying they do not remember the last time a completely 'capable' person was admitted to their institution, and in one institution (in the town of Zrenjanin), from 280 users, 240 are immobile (Zaštitnik, 2011: 32).

6. Gender aspects

The position of elderly women in Serbia has a direct impact on their worse position as users of residential care for the elderly. For years, the Commissioner¹ has been pointing to their worse position and more difficult, in first place economic, situation, compared to elderly men, their lesser involvement in decision-making that affects their lives and the need for support measures, as well as the violence they suffer (Poverenik, 2021: 134). Violence, abuse and neglect is a particular problem when it comes to older women. The elderly often decide not to report the violence, preferring instead to ‘put up with it’, considering themselves to be a burden to both their families and broader society (Zaštitnik, 2023: 161). Discrimination on the basis of age, as the second reason for the frequency of complaints filed to the Commissioner, most often refers to discrimination of persons over 65 years of age. Older women in Serbia are in a worse position compared to older men, as well as compared to women and men from other age groups. The problems they face are numerous: socio-economic position and exposure to poverty, lack of income to meet basic life needs, increased medical costs, inadequate access to public transport, unequal access to healthcare institutions and social and healthcare services, social exclusion and isolation, insufficient political participation, etc. (Petrušić, Satarić & Beker, 2020).

Homes for the elderly are essentially a ‘women’s story’, because women are the noticeable majority of users, outnumbering male residents by two-or-three-to-one. Namely, one quarter of the users are men, and three quarters are women, and in some places even 90% are women. At the same time, both the administrative staff and caregiving employees in the homes are made up mostly of women, because as in all social institutions, the employees have traditionally low incomes, unenviable working conditions, and exposure to a general decline in standards.

As, according to traditional gender stereotypical roles, women are more dedicated to raising children during their lives and are generally more oriented toward family life, the fact of the predominance of women in residential facilities for the elderly indicates that this ‘female’ life investment probably did not ‘pay off’ for many, because obviously, when they are getting not old, they do not receive reciprocal care and attention from their descendants and other family members. Instead of expected family care, they become the majority users of those social institutions. Women compose the majority of users of homes for the elderly because, as the institutions’ management often points out, they ‘easily’ make the decision to ‘leave their children an apartment or house’, and are

¹ Poverenik za zaštitu ravnopravnosti

more lenient, silent, do not complain, and take on a background role in the broader family life (Zaštitnik, 2011: 27). Of course, that decision is not at all easy for them, especially considering that many have never worked outside the house, and that their own house and family is the only environment familiar to them. Adaptation under the pressure of harsh reality is therefore not evidence of 'easier adaptation' but rather the result of the typical socialization of women who, according to gender stereotypes, are expected to primarily serve others, to put the interests of family members before their own, with many of them wanting to spare their offspring the obligation of taking care of them, especially if they are semi-dependent or dependent, fearing that they will contribute to the divorce of their child or, as one beneficiary said, had she stayed in her house, her children's marriages would 'crack' (direct address by female users to the monitoring team members in some elderly people's homes).

7. Conclusion: possible solutions

The observed situation in homes for the elderly illustrates the lack of respect for the human dignity of the users, and that there is much work to be done in this area. Individuals and the societies to which they belong have a responsibility to ensure that all people, older persons included, are afforded full human rights and dignity (Radaković, 2022: 566). Dignity is a beacon of freedom for all beings; if that beacon is in the fog, then humanity's future becomes equally foggy and uncertain (Ćorić, 2022: 42). Dignity cannot be earned and cannot be taken away. It is an inseparable component of what makes us human, and every other good thing in life depends on the safeguarding of our basic dignity. The vital role of dignity can be demonstrated by contrasting it with its absence (i.e. humiliation) and the contribution of this to escalations of violence (Ćorić, 2022: 31).

It is necessary to expand the program of subsidized accommodation of users in private homes. Beneficiaries who do not have the means to pay for a home can be accommodated in private homes with the help of the state (Marković, 2020: October 2).

It is necessary to insist on project activities of the elderly people homes' management, and an active approach to donors as a way of securing significant additional funds, which makes a noticeable difference compared to other similar social institutions, in a situation where all tenders for projects are open to others. All employees should undergo training for working with users, not only those who work directly with them, e.g. caregivers and nurses, but also drivers, directors, craftsmen, 'maintenance staff' lawyers, accountants, and similar (Zaštitnik, 2011: 13).

It is also necessary to strengthen the network of formal and informal domestic help providers. Volunteers in the community are an important source of both formal and

informal caregivers, as well as support for elderly persons who do not have anyone to rely on. However, it seems that their potential is not being sufficiently tapped in our country, which is the reason why a support mechanism for volunteers and intergenerational solidarity should be encouraged (Batrićević, 2022: 481). It is necessary to draw up and enforce a legal provision prohibiting the entering into a contract on the transfer of ownership of real estate from users of such homes to their employees, as exists in Croatia. Moreover, it is necessary to legally regulate the protection of human rights in homes for the elderly on the basis of five fields of observation, namely prohibition of discrimination, use of coercive measures, use of special measures and procedures, respect of political rights and respect of economic rights.

In the Gerontological Center in Subotica, once declared the best institution of its kind in Serbia for housing the elderly, users are allowed to keep pets. Veterinary care is provided for these animals, alongside necessary sanitary and hygienic protection (Zaštitnik, 2011: 10). Having pets in the institutions contributes to positive community relations among the users, and also seems to improve the general atmosphere within the institution, as well as the mental health situation of the users. It also has a secondary effect in terms of other broader social issues, such as the rescue of abandoned and stray animals. Moreover, care for pets has been seen to increase the levels of users' self-esteem, trust and self-confidence, and also to alleviate the symptoms of loneliness. Pets in institutions are also important from an ethical perspective, since these programs target a vulnerable and marginalized population (Batrićević 2019: 17-19), i.e. users of homes for the elderly. A variety of elderly people homes are needed, including those that provide specialized care, as well as supported homes for independent living. Both Sweden and Norway have well-developed care systems that support independence and quality of life. In addition to elderly people homes, there is a wide range of support services for independent living.

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