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Human Rights



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**NGO information to the United Nations Committee on the Rights of the
Child**

**For consideration when compiling the Concluding Observations on the
Third Periodic Report of Slovakia under
the Convention on the Rights of the Child**

Submitted by the

Mental Disability Advocacy Centre (MDAC) & Forum for Human Rights
(FORUM)

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I. OVERVIEW

1. This written submission provides information on issues of concern with regard to the Slovak Republic's compliance with the provisions of the United Nations Convention on the Rights of the Child (hereinafter "the Convention"), with particular focus on the enjoyment of those rights by children with disabilities. The purpose of the submission is to assist the United Nations Committee on the Rights of the Child (hereinafter "the Committee") with its consideration of the Slovak Republic's Third Periodic Report (hereinafter "Government Report") in the compilation of the Committee's concluding observation.
2. The submission has been written by a coalition of domestic and international human rights organisations, namely the Mental Disability Advocacy Centre (MDAC)¹, Forum for Human Rights (FORUM)², Slovak National Disability Council (NROZP)³, and SOCIA – Social Reform Foundation⁴.

II. SPECIFIC COMMENTS

3. The key concerns on the situation of children with disabilities from Slovakia fall predominantly into four areas: i) policy framework, ii) early intervention, ii) inclusive education, and iv) institutional care.

¹ MDAC is an international human rights organization which uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide, including in Slovakia. MDAC'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 realized for all persons without discrimination of any form. MDAC has participatory status at the Council of Europe, and special consultative status at ECOSOC. For more information, please visit www.mdac.org.

² FORUM is an international human rights organisation working in the Central European region. It provides support and leads domestic and international litigation and advocacy activities. FORUM has been supporting a number of cases pending before domestic judicial authorities and before the European Court of Human Rights, *inter alia* on violation of social rights, on the rights of women with disabilities, on protection of vulnerable groups against torture and ill-treatment in different settings, etc. and authored and co-authored number of alternative reports, including reports on children rights.

³ The Slovak Disability Council was established in 2003. It has 19 members and DPOs representing all types of disability. The mission of Slovak Disability Council is to ensure that persons with disabilities have full access to all human rights through their active involvement in policy development and implementation in the Slovak Republic and in Europe. It participates in development and implementation of legislation, it is active in the Government Council for Human Rights, National Minorities and Gender Equality and especially its Committee for Persons with Disabilities, and other advisory bodies and working groups. Its activities are based on principles of the UN CRPD. Slovak Disability Council is a member of the European disability forum.

⁴ SOCIA – Social Reform Foundation wishes to bring about changes in the social system through financial support and its own activities for the benefit of the social groups that are most at risk. Vision of SOCIA Foundation is a tolerant civic society with disadvantaged and endangered people as their integral part. The collaboration of „weaker and stronger“ should result in building quality and accessible social services - services that would meet the individual needs of their beneficiaries in their natural environment. SOCIA providing grants for non-profit organizations and individuals to improve the quality of life of socially, physically and mentally disadvantaged groups. SOCIA has also own projects supporting community based services. SOCIA collaborate with NGOs and the public administration forming policies and legislative proposals to reform the social system (www.socia.sk).

i) VAGUE POLICY FRAMEWORK

4. Before turning to specific issues under each identified topics we would like to draw the Committee's attention into the overly vague policy framework which is primarily regulated by the *National Action Plan for Children 2013-2017* and the *2014 National programme for the development of the living conditions of citizens with disabilities in all areas of life*. The National Action Plan recognises that the UN Convention on the Rights of Persons with Disabilities is particularly relevant, especially as regards the rights of children with disabilities.
5. Even though chapter five from the National Action Plan deals with health care, disability and social services, concrete and targeted objectives to ensure complex inclusion of children with disabilities in society are missing. Subordinate objective no. 5.1. is labelled generally as „*integrating children with disabilities into the life of society*“, however actions to ensure performance are too general and narrow to be effective as are defined as „*by development of all instruments supporting the social integration of children with disabilities in order to facilitate access to all types of services and transport to institutions, particularly educational and cultural institutions.*“ Thus, the lack of precisely identified goals and benchmarks and lack of timelines and assigned responsible authorities makes the coordinated implementation of the rights of children with disabilities enormously difficult.

Recommendations

- **Please ensure that the policy framework relevant for the implementation of the rights of children with disabilities stipulates precise goals and precise benchmarks and timelines for their achievement.**
- **Please ensure that there is a clear distribution of tasks to concrete authorities responsible for implementing the policing framework relevant for children with disabilities.**

ii) EARLY INTERVENTION FOR CHILDREN WITH DISABILITIES

6. It is crucial to understand existing impairments and disabilities in early childhood and parents should find all necessary information and support required to ensure appropriate development of their children with disability. Functioning system of early intervention thus requires necessary counselling services, including social and health care services and available and accessible welfare measures aiming to prevent social exclusion and poverty of children with disabilities and their families.
7. In relation to social care services, an amendment to the Act on Social Services entered

into force in January 2014 which introduced specialised **social service of early intervention** for children with disabilities up to seven years of age.⁵ While this development is a positive step, there are two significant concerns. Firstly, the number of early intervention centres continues to be absolutely insufficient, parents often need to travel with children with disabilities long distances, leaving their family circle for long periods.⁶ In 2015, only three centres have been opened, all of them being funded by private donors. Thus, secondly, there is a significant lack of financial support from local authorities and the Ministry of Social Affairs. Thus, the issue is primarily availability and accessibility of specialised services of early intervention in all Slovak regions, including rural areas.

8. Further, children with disabilities and their families who require early intervention are enormously endangered by social exclusion and their situation is critical. Existing benefits for persons with disability do not satisfactorily cover additional expenses of families for necessary intensive physical treatments, stimulation, and other inevitable procedures. Time-consuming character of the whole process forces mothers to leave their jobs, decreases earning capacity of families, and often leads to poverty and even break-ups of families.
9. In particular, the **parental allowance** is EUR 203.20 a month (pursuant to the Act No 571/2009 Coll. on the parental allowance). The sum of the allowance does not reflect specific needs of parents with children with disabilities. The law only provides for possibility to extend the period of providing the allowance until the age of 6 years of the child.⁷ Secondly, granting **financial contributions to compensate severe disability** to children (pursuant to the Act No. 447/2008 Coll. on Financial Contributions to compensate severe disability) is dependent on unfair income assessment of the persons with disability and his or her family. The law omits the principle that these compensations are granted to the child, not to his or her parents. And thirdly, the **care allowance** (pursuant to the Act No. 447/2008 Coll. on Financial Contributions to compensate severe disability) for the family taking 24hours care of severely disabled child is EUR 220 a month. The amount of the care allowance can vary according to the income of the carer, and can be lower if the child attends an educational institution for more than 20 hours per week. This allowance is extremely low, taking also into account the comparison that in residential care the costs is approximately EUR 1000 a month. Paradoxically, the state is failing to support adequately home care which has indeed priority over residential care.

⁵ The amendment was provided by the Law No. 485/2013 Coll.

⁶ Záharcová, V. Early Intervention – main conceptual intentions. *Včasná intervencia – hlavné koncepčné zámery*. Available at: <http://www.zpmpvrs.sk/index.php/co-robime/nase-projekty/uzitocne/vcasna-starostlivost/117-vcasna-intervencia-hlavne-koncepcne-zamery?showall=&limitstart=>

⁷ In case of a child without disability the period is 3 years of age.

Recommendations:

- **Increase the amount of the parental allowance for families with children with a severe disability;**
- **Grant a special childcare allowance to families taking care of the child with a severe disability;**
- **Repeal the income assessment and ensure that compensations are granted regardless of the income;**
- **Raise the amount of the care allowance to the amount of the minimum wage at minimum. In 2016 the minimum is EUR 405.**

iii) INCLUSIVE EDUCATION

10. Slovakia has the obligation to respect, protect and fulfil the right to education for children with disabilities under its national law, and the international human rights treaties that it has ratified. Article 28 of the Convention on the Rights of the Child provides for the right to education for all children, including children with disabilities. Article 24 of the Convention on the Rights of Persons with Disabilities expands on this provision, discussing the specific elements of this right when it comes to children with disabilities. The right to education is guaranteed in the Slovak Republic also under Article 24 of the Constitution, the Act No. 245/2008 Coll. on Upbringing and Education (the "Education Act"), and in the Act No. 596/2003 Coll. on State Administration in Education and School Self-governing bodies.

11. Unfortunately, the application of these legal instruments remains deficient in the Slovak Republic and the right to education of children with disabilities is widely violated. Firstly, most children with disabilities are educated in "special" segregated schools. The 2015 statistics show that 22 189⁸ children with special educational needs were educated in special basic schools or special classes. This number includes children with autism, mental disability, sensory disability, communication problems, physical disability, behavioural disorders and talented children. Only 3767 children presumably with intellectual disabilities were integrated into mainstream basic schools. However, integration in education does not equal inclusion in education, and falls short of implementing international standards. Besides that, most of the children labelled as having intellectual disabilities and being integrated are very likely not children with disabilities. That is because most of them are from Prešov region (990) and Košice region (872), which have the largest populations of Roma people in the country. It is very likely that Romani children are incorrectly diagnosed as children with mental disabilities and reported in statistics as "integrated" into mainstream schools. In contrast, in Bratislava region, which has a comparable population size but significantly

⁸ In detail: 21 473 in public special schools and special classes; 353 in private schools; and 363 in church schools.

lower Romani population, the number of children with mental disability integrated into mainstream schools was as low as 65. These statistics thus show that **the number of children with mental disabilities integrated into mainstream schools is critically low.**

12. Secondly, the relevant legislation and policies existing at the national level are problematic. The actual Education Act enables children with special educational needs⁹ to attend, under certain conditions, mainstream schools through “*school integration*”.¹⁰ However, individual “*integration*” of children with disabilities is not recognised in the law as a priority, neither is the right to be taught primarily in the inclusive settings. Moreover, despite the Education Act allowing for integration (not inclusion) of children with disabilities, it does not provide for enforceable supportive measures and contains several provisions hindering the effective access of children with disabilities to mainstream education. For example, the school director or the counselling facility can decide that integration is “*not in the interest of the child*” and request the court to decide about the child’s education.
13. Even though the sixth chapter of the National Action Plan for Children 2013-2017 deals with education, the lack of subordinate objectives for inclusive education is identified as a major problem to ensure a real implementation. Even more, the Slovak legislation does not recognise the term „inclusion” or „inclusive approach” in education and does not provide for the list of concretely identified accommodations, which would be enforceable by the child or his or her parents. There are also no national policies providing for required transition from segregated into inclusive educational system.
14. The 2014 National Plan for Developing Living Conditions for Persons with Disabilities includes the obligation of the Ministry of Education to ensure higher accessibility of individualised support for children with disabilities, in particular through the employment of teaching assistants, school psychologists and special pedagogues. But as the National Plan has no specific timeframe and contains only so called “*continual obligations*,” there is a well-founded concern that it will not be properly implemented. At the same time, we emphasise that the National Plan is only partial and fails to solve the complex issue of the transformation of segregated education. For this purpose, it is necessary to create a complex national policy of transformation of the special education system and its gradual desegregation – containing concrete objectives, responsibilities and deadlines – in order to secure inclusive education for all children,

⁹ Act no. 245/2008 Coll., Education Act (*zákon o výchove a vzdelávaní*), art. 2(i) states that „*a special educational need is a requirement for accommodation of conditions, content, form, method and approaches in education of a child or a pupil, which stems from their disability or talent or their development in a socially deprived environment, use of which is necessary for the development of capacities or individuality of the child or pupil and for attainment of an adequate level of education and adequate inclusion in the society*”

¹⁰ Act no. 245/2008 Coll., Education Act (*zákon o výchove a vzdelávaní*), art. 2(s) states that “*the school integration means education of children or pupils with special educational needs in classes of schools or educational facilities for children or pupils without special educational needs.*”

pupils and students at all levels of education.

15. This deficient legislation and policy framework has important negative consequences on the implementation of the right to education of children with disabilities. The current educational system does not allow for setting flexible educational environment in mainstream schools which could absorb without difficulties also children with special educational needs.¹¹ Methodological and personal support to regular teachers is unsatisfactory with especially low number of assistants, psychologists, special pedagogues and other experts in schools.¹² There is lack of allocation of sufficient material, financial and human resources.

Recommendations

- **Amend the Act No. 245/2008 Coll. on Upbringing and Education (Education Act) in order to explicitly regulate the principle of inclusive education, to safeguard the right of every child, pupil and student to inclusive education, and to secure arrangement of reasonable accommodation;**
- **Adopt national policy on transformation and desegregation of special education system. The policy should define concrete tasks, responsible subjects and timetable with the aim to ensure the right to inclusive education to all children, pupils and students with disabilities on all levels of education in accordance with Article 28 of the Convention on the Rights of the Child and Article 24 of the Convention on the Rights of Persons with Disabilities;**
- **Secure sufficient material, financial and human resources as well expert support in order to enable basic and secondary schools to ensure inclusive education in practice for all children, pupils and students with disabilities;**

iv) INSTITUTIONALISATION OF CHILDREN WITH DISABILITIES

16. The Article 2 of the Convention on the Rights of the Child prohibits discrimination of any kind, including on the basis of disability. The Article 23 of the same Convention recognize the right of children with disabilities to live full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. Segregation on the basis of disability in institutions is therefore in violation of this Convention, as of other international instruments, such as the

¹¹ Zimenová, Z., Havrilová, M. Start to new quality of education. *Štart k novej kvalite vzdelávania*, Nové školstvo, 2011, p. 21.

¹² *Ibidem*, p. 22.

Convention on the Rights of Persons with Disabilities which, in its Article 19 provides for the right to be included in the community.

17. However, the Slovak Republic continues to segregate important numbers of children with disabilities. The country had 492 children in social care homes and 455 children in children homes. Most of these children are facing lifelong isolation.
18. Slovakia adopted a deinstitutionalization policy aimed at the **transformation of the residential social care system, but this policy is facing significant delays and it has not timeframe.** Unfortunately however, between 2007 and 2011, the state invested almost 200 million euros for building residential institutions instead of tailor made community based services.¹³ Moreover, there is unequal distribution of resources for social care services, especially negatively affecting community-based services and significant lack of community-based social services and home care services in several geographic regions and rural areas.
19. Another issue of concern is **the institutionalization of children under the age of six.** The Act on the Social and Legal Protection of Children and Social Guardianship requires that children under the age of six are placed in a professional family instead of children home. However the Section 53(2) in conjunction with Section 100j(8) of the Act provides for an exemption in cases of children with disabilities, who can be institutionalised regardless their age. According to actual statistics, there have been 455 children with disabilities placed in institutions and without prospect of growing in family environment. Paradoxically, the law does not protect the most vulnerable children, creating the basis for a life-long institutionalisation of people with disabilities.

Recommendations

- **Commit to the implementation of the deinstitutionalization policy in order to ensure children no longer live segregated from the community in institutional settings;**
- **Ensure available funding is not use on the refurbishment, renovation or construction of new institutional setting. Such funding should focus on the development of community based services;**
- **Amend the Act on the Social and Legal Protection of Children and Social Guardianship to ensure the institutionalization of children with disabilities is strictly prohibited.**

Contact details:

¹³ Betinský, J., Burajová, B., Duháčková, J., Ďurana, R., Monitoring of Absorption of structural funds in social sphere for the period of 2007-2011. *Monitoring čerpania štrukturálnych fondov v sociálnej oblasti*. INESS, 2013. Costly increasing of the numbers of beds and facilities, isolation of clients from community remains. Available at: <http://www.iness.sk/stranka/8362-Monitoring-of-Absorption-of-structural-funds.html>

Mr. Steven Allen, steven@mdac.org
Campaigns Director, **Mental Disability Advocacy Centre**

Ms. Šárka Dušková, forum@forumhr.eu
Human Rights Counsel, **Forum for Human Rights**

Mr. Branislav Mamojka, mamojka@nrozp.sk
Chair, **Slovak National Disability Council**

Mr. Vladislav Matej, matej@socia.sk
Executive director, **SOCIA - Social Reform Foundation**