

**Advance Unedited Version**Distr.: General  
27 March 2026

Original: English

**Committee on the Rights of Persons with Disabilities****Views adopted by the Committee under article 5  
of the Optional Protocol, concerning communication  
No. 78/2020\*, \*\***

<i>Communication submitted by:</i>	Lívia Černáková (represented by Maroš Matiaško, Forum for Human Rights)
<i>Alleged victim:</i>	Lucia Černáková
<i>State Party:</i>	Slovakia
<i>Date of communication:</i>	8 August 2018 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 68 of the Committee's rules of procedure, transmitted to the State Party on 29 January 2020 (not issued in document form)
<i>Date of adoption of decision:</i>	26 March 2026
<i>Subject matter:</i>	Failure to hear a woman with disabilities following abuse in an institution
<i>Procedural issues:</i>	Exhaustion of domestic remedies; substantiation of claims
<i>Substantive issues:</i>	Equality and non-discrimination; women with disabilities; equal recognition before the law; access to justice; freedom from torture or cruel, inhuman or degrading treatment or punishment; freedom from exploitation, violence and abuse
<i>Articles of the Convention:</i>	5, 6, 12, 13, 15 and 16
<i>Article of the Optional Protocol:</i>	2(d) and (e)

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

\*\* The following members of the Committee participated in the consideration of the communication: Muhannad Salah Al-Azzeh, Magino Corporán Lorenzo, Gerel Dondovdorj, Amalia Eva Gamio Ríos, Natalia Guala Beathyate, Miyeon Kim, Alfred Kouadio Kouassi, Abdelmajid Makni, Floyd Morris, Christopher Nwanoro, Gertrude Oforiwa Fefoame, Markus Schefer and Hiroshi Tamon. Pursuant to rule 60 of the Committee's rules of procedure, Inmaculada Placencia Porrero did not participate in the consideration of the communication.

1.1 The author of the communication is Lívía Černáková. She submits the communication on behalf of her daughter, Lucia Černáková (Ms. Černáková), a national of Slovakia born in 1983. The author claims that the State Party has violated the rights of Ms. Černáková under articles 5, 6, 13, 15 and 16 of the Convention. The Optional Protocol entered into force for the State Party on 25 June 2010. The author is represented by counsel.

1.2 On 15 April 2020, the State Party requested that the admissibility of the communication be examined separately from the merits. On 24 March 2021, the Committee, acting through its Special Rapporteur on new communications and interim measures, denied the State Party's request.

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

### Factual background

#### *Facts prior to the submission of the communication*

2.1 Ms. Černáková has an intellectual disability and an autism spectrum disorder. On 29 January 2002, the Nitra District Court deprived her of her legal capacity and appointed the author as her guardian. From 2 August 2010 until 31 May 2013, Ms. Černáková was institutionalised in the Harlekýn Social Care Home in Topoľčany. During this period, she was beaten by employees of the institution, who instructed other residents to beat her as well. She was tied up at least six times in what she described to the author as a straitjacket. Once, her legs were tied up with a diaper. When anxious, Ms. Černáková would scream, and the staff would respond by restraining her and tying her up until she would stop. Each night during six weeks, she was locked up in an isolation room to prevent her from calling the nurses.

2.2 On 21 April 2011 and 19 September 2013, the author complained about Ms. Černáková's ill-treatment to the Nitra Regional Authority, the supervisory body of the Harlekýn Social Care Home. On 18 October 2013, the Nitra Regional Authority conducted an inquiry at the institution together with the author and Ms. Černáková. On 31 October 2013, it concluded that the complaint was manifestly ill-founded. On 14 November 2013, the author submitted a new complaint to the same Authority, which it dismissed on 20 November 2013.

2.3 On 9 February 2015, the author filed a criminal complaint of abuse with the Topoľčany Police Department, claiming that Ms. Černáková had been repeatedly beaten, including with sticks, by the institution staff and by other residents at the instruction of that staff, slapped, restrained at least six times in a straitjacket, left to sleep on the floor, which resulted in a chronic inflammation of her kidneys, administered the wrong psychiatric medication, not treated in accordance with her health status, and treated inappropriately by the personnel, who called her 'devil's semen'. On 20 March 2015, the Topoľčany Police Department dismissed the complaint in the absence of grounds to open an investigation. The preliminary investigator heard the director of the Harlekýn Social Care Home, but not Ms. Černáková. On 22 April 2015, the Topoľčany District Prosecutor dismissed the author's complaint against the decision of the Topoľčany Police Department. On 5 and 28 May 2015, the author complained about the outcome of the investigation to the Regional Prosecutor's Office in Nitra. On 17 July 2015, the Regional Prosecutor upheld the decision by the District Prosecutor not to open an investigation into the crime of abuse but ordered that an investigation be opened into the crime of restricting Ms. Černáková's personal liberty under article 183 of the Criminal Code.

2.4 During this new investigation, the director and staff members of the Harlekýn Social Care Home were heard, all of whom denied that Ms. Černáková was restrained in a straitjacket or locked in an isolation room. Ms. Černáková herself was not heard. On 10 March 2016, the investigator of the Topoľčany Police Force District requested a psychological expert opinion to know whether Ms. Černáková had the capacity to "correctly perceive, remember and reproduce" the events under investigation and whether she tends to "confabulat[e]". In his expert opinion dated 10 May 2016, the expert concluded that Ms. Černáková has a "medium severe intellectual disability"; that her thinking is "without a capacity to rationalise"; and that she has "no general [or] specific credibility" due to her

“mental deficiency, emotional liability and behavioural disorders”. On 26 January 2017, the investigator discontinued the investigation on the ground that no offence had been committed. On 14 March 2017, the Topoľčany District Prosecutor’s Office confirmed said decision. On 15 June 2017, the Constitutional Court dismissed the author’s constitutional complaint against the decisions of 26 January and 14 March 2017 as manifestly ill-founded, finding that the investigator and the District Prosecutor had not infringed any of Ms. Černáková’s procedural rights.

#### *Facts after the submission of the communication*

2.5 On 2 July 2019, following repeated complaints by the author, the Ministry of Labour, Social Affairs and Family filed a motion to the General Prosecutor’s Office to investigate the complaint of abuse. The motion was transmitted to the Topoľčany District Prosecutor’s Office. According to the latter’s statement of 20 August 2019, the alleged abuse had already been investigated in 2015. The Topoľčany District Prosecutor’s Office therefore considered that the request by the Ministry of Labour, Social Affairs and Family duplicated the prior investigation.

#### **The complaint**

3.1 The author submits that the State Party failed to conduct an effective investigation into her daughter’s ill-treatment. Through the author, Ms. Černáková provided a detailed description, including the names of specific staff members of the Harlekýn Social Care Home who abused her. She made these allegations repeatedly and consistently before the Nitra Regional Authority and the criminal justice authorities and provided all available evidence, which, she submits, should have sufficed for the Regional Prosecutor’s Office to order the police to open an investigation.

3.2 Referring to article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the author argues that the authorities had sufficient grounds to initiate an investigation *ex officio*<sup>1</sup> given her credible assertions of ill-treatment, and that the State Party was therefore obliged to conduct an official investigation. She argues that articles 15(2) and 16(5) of the Convention recognise the procedural obligation to effectively investigate credible assertions of torture, cruel, inhuman and degrading treatment or punishment and exploitation, violence and abuse.<sup>2</sup>

3.3 The author refers to international and regional standards providing that a criminal investigation and prosecution of those responsible is a necessary remedy for torture and ill-treatment;<sup>3</sup> that the investigation must seek to obtain statements from the victim of the alleged torture and to determine the circumstances<sup>4</sup>; that the authorities must proactively support victims with disabilities to understand criminal proceedings and be understood;<sup>5</sup> that the enjoyment of the right to freedom from exploitation, violence and abuse can be hindered by harmful stereotypes, particularly in relation to women with disabilities;<sup>6</sup> and that the State Party has a due diligence obligation to effectively investigate allegations of violent acts, particularly against women.<sup>7</sup> The author argues that an effective investigation requires the investigating authorities to take into account manifestations of distress, non-verbal indications of violence and the victim’s potentially limited or apparently confusing verbal narrative. Persons with intellectual disabilities often rely on family members to report violence, face difficulties because of their experiences of discrimination leading to anxiety or defensiveness, particularly in the presence of perceived authority features such as doctors,

<sup>1</sup> *Blanco Abad v. Spain* (CAT/C/20/D/59/1996), para. 8.3; *Thabti v. Tunisia* (CAT/C/31/D/187/2011), para. 10.5.

<sup>2</sup> *X. v. Tanzania* (CRPD/C/18/D/22/2014), para. 8.6; CRPD/C/OMN/CO/1, para. 32; CRPD/C/SVN/CO/1, para. 28; CRPD/C/SDN/CO/1, para. 14; CRPD/C/HTI/CO/1, para. 31; CRPD/C/RUS/CO/1, para. 37; CRPD/C/MNE/CO/1, para. 33.

<sup>3</sup> *Suleimenov v. Kazakhstan* (CCPR/C/119/D/2146/2012), para. 8.3.

<sup>4</sup> Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (HR/P/PT/8/Rev.1), para. 77.

<sup>5</sup> EU Directive 2012/29/EU.

<sup>6</sup> CRPD/C/GC/3, para. 30.

<sup>7</sup> CRPD/C/SVK/CO/1, para. 48.

police and lawyers, and are at increased risk of acquiescing, complying and being suggestible. This requires appropriate interviewing techniques.

3.4 However, in the present case, the authorities did not commission an expert opinion on how to question Ms. Černáková appropriately, her skills in terms of being interviewed or the support she would require. Thus, due to stereotypes about her credibility, she was prevented from participating effectively in the proceedings, in violation of article 15(2) and 16(5) of the Convention. The authorities' dismissive attitude is also apparent from the failure to hear any other residents of the institution.

3.5 The author also claims a violation of Ms. Černáková's rights under article 13 of the Convention. As Ms. Černáková was not heard, her credibility as a witness was dismissed and she was not provided with support or accommodation, thereby preventing her from exercising her right to access to justice. The author posits that persons with disabilities, especially women, face barriers to access to justice owing to harmful stereotypes, discrimination and lack of procedural and reasonable accommodation.<sup>8</sup> The Committee has recommended the State Party to amend its procedural rules to ensure that persons with intellectual disabilities are provided with procedural accommodation from the outset.<sup>9</sup>

3.6 As Ms. Černáková's right to access to justice was not ensured on the grounds of her disability and gender, she was subjected to discriminatory treatment in violation of articles 5(1) and (2) and 6 of the Convention.<sup>10</sup>

3.7 The author requests that an effective remedy be provided to Ms. Černáková, including reimbursement of legal costs, compensation and an apology; an impartial, speedy and effective investigation and procedural accommodation for Ms. Černáková's effective, direct participation in the proceedings; and that the Committee's Views be translated into Slovak and widely circulated in accessible formats so that they are available to all sectors of the population. Regarding measures of non-repetition, the author requests the Committee to invite the State Party to prohibit and repeal practices and provisions allowing persons with disabilities to be denied direct participation in proceedings and to be heard as witnesses; to adopt policies and instructions providing for reasonable and procedural accommodation; to provide safeguards against abuse in social care institutions and independent monitoring of the implementation of care standards; and to train judges, lawyers, law enforcement personnel and care institutions on the prohibition of torture, ill-treatment and abuse of persons with disabilities, including women with disabilities.

#### **State Party's observations on admissibility**

4. In its observations dated 15 April 2020, the State Party refers to the conclusion in the expert opinion regarding Ms. Černáková's lack of credibility and "mental retardation". It notes that under Act No. 448/2008 Coll. On Social Services and Act No. 455/1992 Coll. On Trade Licensing (Trade Licensing Act) as amended, where a life is directly endangered or the health of the social service recipient or other persons are directly endangered, the social service recipient may be "limited" for the time necessary to eliminate the threat. Means of physical restraint include special handles, placing the social service recipient in a safe-stay room or administering medication pursuant to the instructions of a psychiatrist. The social service provider is obliged to notify the Ministry of Labour, Social Affairs and Family of any such restrictions. The State Party therefore requests the Committee to declare the communication inadmissible as insufficiently substantiated under article 2(e) of the Optional Protocol.

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<sup>8</sup> CRPD/C/KEN/CO/1, para. 25; CRPD/C/SLV/CO/1, para. 29; CRPD/C/GC/3, para. 52; A/HRC/20/5 and Corr.1, para. 41; and A/67/227, para. 42.

<sup>9</sup> CRPD/C/SVK/CO/1, para. 41.

<sup>10</sup> The author cites the OHCHR Report to the Human Rights Council entitled "Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities", A/HRC/37/25, para. 25, stating that failure to provide procedural accommodation required by a person with disabilities constitutes a form of discrimination on the basis of disability in connection with the right to access to justice.

**Author's comments on the State Party's observations on admissibility**

5. In her comments dated 15 June 2020, the author argues that the State Party's reference to Ms. Černáková's "mental retardation" and the expert opinion reflects a strictly medical approach to disability aimed at discrediting her and holding her responsible for the State Party's violations, contrary to article 12(3) and (4) of the Convention. The State Party fails to acknowledge that Ms. Černáková made credible assertions; that she was not accommodated; that no effective investigation was conducted; and that its domestic framework on restraint measures is incompatible with the Convention. Thus, the State Party replicates the domestic authorities' discrimination, stereotypes and stigma against persons with intellectual disabilities and erroneously and discriminatorily assumes that they are not credible and that service providers always comply with their legal obligations.

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

6.1 In its observations dated 22 September 2021, the State Party submits that its authorities have taken the necessary legislative, administrative, judicial and other measures to prevent torture and cruel, inhuman or degrading treatment and punishment of persons with disabilities on an equal basis with others. Section 10 of the Act on Social Services stipulates that it is not allowed to use means of non-corporal and physical restraint of the social service recipient in facilities except when the life or health of a person is directly threatened. Accordingly, the dignity of the recipient must never be compromised. The Ministry of Labour, Social Affairs and Family maintains a register of restrictions used for the purpose of state oversight. Independent bodies such as the Public Defender of Rights, the Commissioner for Persons with Disabilities and the Commissioner for Children conduct regular monitoring.

6.2 The State Party notes that despite several investigations, none of the author's allegations of abuse were confirmed. In its decision of 15 June 2017, the Constitutional Court held that the right to judicial protection does not entail a right to a criminal prosecution or conviction and found that the law enforcement authorities had correctly established that no crime had been committed against Ms. Černáková. The Ministry of Labour, Social Affairs and Family also examined the Harlekýn Social Care Home, but this did not reveal that Ms. Černáková had been treated as the author claimed. The Nitra Self-Governing Region repeatedly examined the allegations and suggested that the author change Ms. Černáková's social service provider. In addition, the independent Office of the Commissioner for Children conducted human rights monitoring in the Harlekýn Social Care Home in 2019. According to the latter's director, the author has "verbal conflicts" with the parents of other residents who claim that Ms. Černáková attacked them.

6.3 The State Party observes that the Anti-Discrimination Act No. 365/2004 Coll prohibits discrimination on grounds of gender and disability among others and covers direct and indirect discrimination. Pursuant to domestic jurisprudence, complainants of discrimination must state a specific ground on which they have been discriminated against. However, the author's and Ms. Černáková's complaints did not specify any such grounds. The complainant bears the burden of proof to establish prima facie that discrimination occurred. In the present case, the author's allegation of gender-based discrimination does not show that such discrimination occurred. The author did not make any allegations from which it could be concluded that Ms. Černáková was discriminated against. According to the State Party, a subjective feeling or deep conviction without any further evidence cannot be regarded as proof of a violation of the principle of equal treatment.

6.4 The State Party observes that the author filed a communication to the Committee against Torture on behalf of Ms. Černáková, but that the facts in that case were not the same as those in the present communication. Therefore, the State Party does not object to the admissibility of the present communication under article 2(c) of the Optional Protocol.

6.5 According to the State Party, if Ms. Černáková believed that her human dignity had been violated, she could have filed a civil action "relating to personality" against the Harlekýn Social Care Home. However, she did not do so. She also did not invoke discrimination based on gender during the domestic proceedings, and the courts did not consider this.

6.6 In relation to the author's claims under articles 5 and 6 of the Convention, the State Party argues that the domestic authorities found that the investigation had been conducted in compliance with applicable legislation, considering Ms. Černáková's status as a person with disabilities, including her gender. According to the State Party, the author's statements do not support the allegation of discrimination, including in light of the conclusions of the expert opinion and the time taken by the author to file a criminal complaint since the occurrence of the alleged abuse.

6.7 Under article 13 of the Convention, the State Party observes that the author of the expert opinion, who has many years of experience, drafted the opinion after having acquainted himself with the file and having psychologically examined Ms. Černáková. Apart from the author's complaints and objections, no relevant facts challenging the expert opinion were produced. The expert opinion and the results of the investigation were therefore correct.

6.8 As for the fact that Ms. Černáková was not heard, the State Party observes that pursuant to article 48(1) of the Code of Criminal Procedure (Act No. 301/2005 Coll.), if the aggrieved party is unable to execute legal actions, their rights may be exercised by the lawful representative, in this case, by the author. The State Party argues that the investigator's decision not to question Ms. Černáková was not arbitrary or discriminatory in view of the conclusions of the expert opinion. The decision to close the criminal procedure only on the basis of testimonies of the accused, whose statements enabled the investigator to establish the facts, does not mean that the facts were insufficiently examined. In addition, Ms. Černáková stayed in the Harlekýn Social Care Home from 2010 until 2013, but the author filed a criminal complaint only in February 2015. This made it more difficult to secure evidence and hear witnesses and "weakens the good intention" of the author to protect Ms. Černáková's rights. Given the sufficient procedural guarantees to protect Ms. Černáková's rights and interests under article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (right to a fair trial), the fact that she was not questioned does not amount to a violation of article 13 of the Convention.

6.9 According to the State Party, the nature of the author's allegations that Ms. Černáková was not interrogated and that her statements were not considered "cannot be connected with the purpose of article 16 of the Convention". Said provision has therefore not been breached.

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

7.1 In her comments dated 24 June 2022, the author argues that the State Party has not addressed any of her claims. Even if the State Party's legislation on the use of restraints complied with the provisions of the Convention, which is not part of the author's claims, that is not relevant for the assessment of the State Party's fulfilment of its obligation to conduct a prompt, effective, impartial and participatory investigation of Ms. Černáková's ill-treatment under articles 15 and 16 of the Convention. While there is no right to an investigation, any investigation must satisfy certain criteria, including having a participatory nature under article 13 read in conjunction with articles 5, 15 and 16 of the Convention. Not only was Ms. Černáková not heard, but the expert opinion deemed her statements unreliable simply based on her disability, which is an outrageous denial of agency to any person with a disability. According to the author, although she is Ms. Černáková's guardian, her participation cannot substitute for Ms. Černáková's. Not only is partial guardianship in violation of article 12 of the Convention, but the procedural obligation to investigate arguable claims can only be satisfied if the authorities provide procedural accommodation and take all necessary steps to ensure the participation of the person with disabilities and establish the relevant circumstances, including information the investigator could only have obtained from Ms. Černáková.

7.2 The author disagrees that she shoulders the burden of proof to establish discrimination; as the evidence presented establishes discrimination *prima facie*, it is up to the State Party to demonstrate that discrimination did not occur and to explain why it did not provide procedural accommodation. According to the author, the State Party failed to consider that Ms. Černáková was discriminated against through the compounded effect of her being a woman and a person with a disability, including as the investigating authorities' only focus was to question her ability to recall events accurately.

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

### Consideration of admissibility

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

8.2 The Committee considers that it transpires from the present communication that the alleged victim is the author's daughter, a person with disabilities within the meaning of article 1 of the Convention, and that she is claiming her rights under the Convention through the author's representation. Therefore, the Committee concludes that the author has *ius standi* under article 1 of the Optional Protocol and that it is not precluded from considering the present communication on the basis of this provision.<sup>11</sup>

8.3 The Committee notes that the State Party does not object to the admissibility of the communication under article 2(c) of the Optional Protocol as the facts complained of are not the same as those examined by the Committee against Torture in its Views adopted on another communication concerning Ms. Černáková.<sup>12</sup> The Committee therefore finds that said provision does not preclude it from examining the present communication.

8.4 The Committee notes the State Party's contention that Ms. Černáková could have raised her claim of stereotypes against women with disabilities in the court proceedings and that she could have filed a civil action against the Harlekýn Social Care Home. The Committee notes that the author has not explained why she could not have raised her claim of stereotypes against women with disabilities before the domestic authorities. The Committee therefore finds that the author has not exhausted all available domestic remedies in relation to her claim under article 6 of the Convention, which it declares inadmissible pursuant to article 2(d) of the Optional Protocol. However, the Committee notes that the State Party has not explained to what extent the remedy of a civil action was available to Ms. Černáková in practice, given that the conclusion of the expert opinion that she lacks credibility constituted a ground for the authorities not to hear her and that she was not provided with any procedural accommodation. Moreover, the Committee agrees with the Committee against Torture that a civil remedy would not lead to establishing accountability of the perpetrators.<sup>13</sup> A civil remedy would therefore not be commensurate to the seriousness of the alleged offence and would be ineffective for the purpose of the claims brought before the Committee.<sup>14</sup> The Committee therefore considers that the absence of a civil action does not preclude it from examining the author's remaining claims under article 2(d) of the Optional Protocol.

8.5 The Committee notes the State Party's submission that the communication is insufficiently substantiated under article 2(e) of the Optional Protocol. However, the Committee considers that the author has sufficiently substantiated, for the purpose of admissibility, that the State Party violated Ms. Černáková's rights under articles 5, 13, 15 and 16 of the Convention by failing to hear and accommodate her in the context of the investigation of the allegations of abuse. Concerning the author's claim in her comments dated 15 June 2020 of a violation of article 12 of the Convention regarding the expert opinion, the Committee notes that the author did not make any such claim in her initial submission and has not justified why she did not raise this claim earlier. As the Committee finds no further obstacles to admissibility, it declares the author's claims under articles 5, 13, 15 and 16 of the Convention admissible and proceeds to its consideration of the merits.

<sup>11</sup> *Handke v. Germany* (CRPD/C/32/D/82/2020), para. 8.2.

<sup>12</sup> *Černáková v. Slovakia* (CAT/C/72/D/890/2018).

<sup>13</sup> *Černáková v. Slovakia*, para. 8.2.

<sup>14</sup> *Purna Maya v. Nepal* (CCPR/C/119/D/2245/2013), para. 11.6.

### Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information that it has received, in accordance with article 5 of the Optional Protocol and rule 73 (1) of the Committee's rules of procedure.

9.2 The main question before the Committee is whether the failure to hear Ms. Černáková in the context of the author's allegations of ill-treatment against Ms. Černáková at the Harlekýn Social Care Home breached her rights under the Convention. The Committee notes that the author complained, specifically, that Ms. Černáková was beaten with sticks by personnel members and other residents following instructions from the personnel, slapped, restrained in a straitjacket, left to sleep on the floor, given the wrong psychiatric medication, not treated in accordance with her health status, and otherwise treated inappropriately. The Committee notes that on 20 March 2015, the Topolčany Police Department dismissed the author's complaint without having heard Ms. Černáková. Similarly, the Committee notes that on 26 January 2017, the investigator of the Topolčany Police Force District discontinued a second investigation without having heard Ms. Černáková, based on an expert opinion that concluded, *inter alia*, that she has "no general [or] specific credibility" due to her "mental deficiency, emotional liability and behavioural disorders". The Committee notes that on 15 June 2017, the Constitutional Court dismissed the author's constitutional complaint against the decisions of 26 January and 14 March 2017 as manifestly ill-founded.

9.3 The Committee recalls that under article 13(1) of the Convention, "States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages". The Committee considers that while States parties are best placed to determine the specific form of procedural arrangements that can enable persons with disabilities to exercise their legal capacity, the relevant rights of the person concerned must be respected.<sup>15</sup> In the present case, the Committee considers that, by not hearing Ms. Černáková and not providing any procedural accommodation to her, the State Party's authorities prevented her from participating in the investigation of the ill-treatment of which she was the alleged victim and thus did not ensure her effective access to justice, on an equal basis with others, in violation of her rights under article 13 of the Convention.

9.4 The Committee recalls that State Parties' obligations under articles 15 and 16 of the Convention include adopting measures to ensure that acts of ill-treatment or torture and exploitation, violence or abuse, respectively, are investigated and, where appropriate, perpetrators are prosecuted, and that those subjected to such acts receive fair and adequate compensation, reparation and rehabilitation.<sup>16</sup> In the present case, the Committee considers that there is no indication that the investigations into allegations of acts that would fall within the scope of articles 15 and 16 of the Convention were effective and impartial, as no witnesses were called other than the staff of the Harlekýn Social Care Home and no criminal proceedings were initiated despite the identification of staff allegedly responsible. The Committee therefore considers that the investigations were ineffective, in violation of Ms. Černáková's rights under articles 15(2) and 16(5) of the Convention.

9.5 The Committee recalls that under article 5 (1) and (2) of the Convention, States Parties must ensure that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law, and must take all appropriate steps to ensure that reasonable accommodation is provided to promote equality and eliminate discrimination. The Committee also recalls that discrimination can result from the discriminatory effect of a rule or measure that is not intended to discriminate, but that disproportionately affects persons with disabilities.<sup>17</sup> In the present case, the Committee notes that Ms. Černáková was not heard in the investigation concerning the allegations of ill-treatment on the ground of an expert opinion that was confined to examining whether she

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<sup>15</sup> See, similarly, *Noble v. Australia* (CRPD/C/16/D/7/2012), para. 8.6.

<sup>16</sup> CRPD/C/3, paras. 17(e) and 18(d); A/72/55, paras. 39 and 41.

<sup>17</sup> *S.C. v. Brazil* (CRPD/C/12/D/10/2013), para. 6.4.

could “correctly perceive, remember and reproduce” the alleged events. The Committee notes that Ms. Černáková’s rights to participate in the investigation and to access to justice were thus impaired on the sole ground of an assessment of her disability that had no regard to her requirements for procedural accommodation. The Committee therefore considers that Ms. Černáková was discriminated against, in violation of her rights under article 5 of the Convention.

9.6 In light of the foregoing, the Committee considers that the State Party has breached Ms. Černáková’s rights under articles 5, 13, 15(2) and 16(5) of the Convention.

### C. Conclusions and recommendations

10. The Committee, acting under article 5 of the Optional Protocol, is of the view that the State Party has failed to fulfil its obligations under articles 5, 13, 15(2) and 16(5) of the Convention. The Committee therefore makes the following recommendations to the State Party:

- (a) With respect to Ms. Černáková, the State Party is under an obligation:
  - (i) To promptly, impartially and effectively investigate the allegations of ill-treatment of Ms. Černáková, including by hearing her and providing her with procedural accommodation;
  - (ii) To provide her with an effective remedy, including effective reparation, adequate monetary compensation and an apology for the violations of her rights under the Convention;
  - (iii) To publish the present Views, translate them into the official language of the State Party and circulate them widely in accessible formats so that they are available to all sectors of the population;

(b) In general, the State Party is under an obligation to take measures to prevent similar violations in the future. In that regard, the Committee refers to the recommendations contained in its concluding observations on the initial report of the State Party<sup>18</sup>, and requires the State Party to take measures to ensure the effective role of persons with disabilities as direct and indirect participants in all legal proceedings, including at investigative and other preliminary stages, including by providing procedural accommodation.

11. In accordance with article 5 of the Optional Protocol and rule 76 of the Committee’s rules of procedure, the State Party should submit to the Committee within six months a written response, including information on any action taken in the light of the present Views and recommendations of the Committee.

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<sup>18</sup> CRPD/C/SVK/CO/1.