

VALIDITY



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platforma rodín dětí so zdravotným znevýhodněním

NGOs information to the UN Committee on Economic, Social and Cultural Rights

For consideration when compiling the List of Issues Prior to Reporting (LOIPR)

Submitted by:

Validity (formerly Mental Disability Advocacy Centre)

Forum for Human Rights (FORUM)

SOCIA – Social Reform Foundation (SOCIA)

Social Work Advisory Board (RPSP)

Platform of families with children with health disadvantage

29 January 2018

I. OVERVIEW

1. This written submission provides an outline of issues of concern with regard to the Slovak Republic's compliance with the provisions of the International Covenant on Economic, Social and Cultural Rights (hereinafter "the CESCR"), with particular focus on the enjoyment of those rights by **persons with disabilities**. The purpose of the submission is to assist the UN Committee on Economic, Social and Cultural Rights (hereinafter the "Committee") with its consideration, at this initial stage, of the compilation of the list of issues prior to reporting.
2. The submission has been written by the Validity¹, Forum for Human Rights (FORUM)², SOCIA – Social Reform Foundation³ and Social Work Advisory Board (RPSP)⁴.

¹ **Validity** – formerly the Mental Disability Advocacy Centre – is an international human rights organisation which uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide. 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 realised for all persons without discrimination of any form. Validity has participatory status at the Council of Europe, and observer status at ECOSOC. For more information, please visit www.validity.ngo.

² **FORUM** is an international human rights organisation active in the Central European region. It provides support to domestic and international human rights organisations in advocacy and litigation and also leads domestic and international litigation activities. FORUM has been supporting a number of cases pending before domestic judicial authorities and before the European Court of Human Rights. FORUM has authored and co-authored a number of reports and has provided information to UN and Council of Europe bodies on the situation in the Central European region, especially in Slovakia and the Czech Republic. For more information, please visit www.forumhr.eu.

³ **SOCIA** – Social Reform Foundation wishes to bring about changes in the social system through financial support and its own activities for the benefit of social groups that are most at risk. The 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 meet the individual needs of their beneficiaries in their natural environment. SOCIA provides grants for non-profit organisations 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 collaborates with NGOs and the public administration forming policies and legislative proposals to reform the social system, please visit www.socia.sk.

⁴ **Social Work Advisory Board (RPSP)** (Rada pre poradenstvo v sociálnej práci) was created in 1990 and its main goal is to provide help for people in need, so they can be included to community and live an Independent life. RPSP fulfils its goals by providing advisory, supervision and education to people with special needs, especially people with severe degrees of disability and elderly people, providers of social services, state and non-governmental organisations, municipalities and other educators. The main strategic vision of RPSP is to support the process of changing quality of social services in society, realisation of transformation, deinstitutionalisation and decentralisation of social services, and community services development. RPSP realised first deinstitutionalisation projects in social services in Slovakia since 1999. For more information, please visit www.rpsp.sk.

II. SPECIFIC COMMENTS

(a) Use of netted cage-beds and other forms of restraints against persons with disabilities (Art. 12)

3. In Slovakia, the use of mechanical restraints in psychiatry is allowed by methodological ordinance of the Ministry of Health no. 13787/2009OZS, adopted on 27 May 2009. Netted cage-beds⁵ are listed under Article III as one of the allowed restraints. Data on the number of netted cage-beds in Slovak hospitals and their use are not available because the Government do not collect such data. However, the authors of this report were informed by patients about the use of net-beds in Slovak psychiatric hospitals and other similar institutions.
4. According to the applicable norms of international law, all persons with disability have the right to freedom from abusive and coercive practices during hospitalisation or institutionalisation. This right is translated into an obligation of the state to ensure that persons with disabilities should not be subjected to the use of restraints, especially netted cage-beds, and such coercive practices should be subject to an absolute ban.⁶
5. The use of restraints and in particular the netted cage-beds have long been criticised by other UN treaty bodies. In 2012 the UN CRC and in 2013 the Human Rights Committee urged to prohibit the use of netted cage beds when assessing the Czech Republic, where the situation is identical.⁷ In relation to Slovakia, the Human Rights Committee in 2016 noted its concern that the practice of physical and mechanical restraints, in netted cage-beds, continues and called on the Slovak Republic to take measures to, *inter alia*, **abolish the use of netted cage-beds and other forms of restraint in psychiatric and related institutions**.⁸ The same year, the UN Committee on the Rights of Persons with Disabilities called on Slovakia

⁵ Information about netted cage-bed, their construction and how they look is available here: <http://www.zdravzar.sk/produkty/postel-pre-mentalne-postihnutych/>

⁶ Human Rights Council, [Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez](#), 1 February 2013, para. 63, A/HRC/22/53.

⁷ Committee against Torture, [Concluding Observations - Czech Republic](#), 13 July 2012, para. 21, CAT/C/CZE/CO/4-5; Human Rights Committee, [Concluding Observations on the Third Periodic Report of the Czech Republic](#), 22 August 2013, para. 14, CCPR/C/CZE/CO/3.

⁸ Human Rights Committee, [Concluding Observations on the Fourth Periodic Report of the Slovak Republic](#), 22 November 2016, paras. 20-21, CCPR/C/SVK/CO/4.

to immediately discontinue the practice of using physical, mechanical and chemical restraints, and the use of isolation and seclusion for persons with psychosocial disabilities.⁹ The Government have not taken any actions.

Proposed question

What plans do the Government have to abolish the use of netted cage-beds and other forms of seclusion and restraint in psychiatric and related institutions?

(b) Institutionalisation of persons with disabilities (Arts. 10 and 12)

6. In 2016, the population of Slovakia was 5,487,308.¹⁰ There is no information about the number of persons with disabilities living in Slovakia due to the absence of systematic data collection disaggregated by disability, sex, and age across all sectors.
7. In 2016, there were **1,255 social services facilities**. Social services with long-term care were provided to **41,489** users in different types of social services – mostly institutional care. In total, 39,906 users (83.5%) lived in institutions providing unlimited care, 612 persons (1.3%) were provided institutional care on weekly basis, 2,676 (5.6%) received transient care and only 4,600 (9.6 %) accessed daily care. The number of all year-round places in institutions increased by 828 places. 59% of all users in social care facilities were elderly people. 30.1% of users underwent treatment for psychosis and 18.9% of users were prescribed antidepressants. 16% of users were nursed as bedridden and 8,624 (17.2%) were under guardianship.¹¹
8. Social care services for persons with disabilities are predominantly provided in institutional settings and community services are rare. In December 2015, there were 355 institutions for elderly people with 17,137 persons in their care; 288 social care homes housing 14,243 adults with disabilities; and 140 specialised institutions with 5,761 adult residents. With regard to children, there were 30 social care homes with 867 children. In total, there were 41,489 persons living in institutions, which is approximately 0.74% of the whole population of Slovakia. Institutionalisation also affects children living in foster care group homes. In December 2015, there were

⁹ Committee on the Rights of Persons with Disabilities, [Concluding Observations to the Initial Report of Slovakia](#), 17 May 2016, para. 46, CRPD/C/SVK/CO/1.

¹⁰ Available at Eurostat, <http://ec.europa.eu/eurostat/web/main/home>.

¹¹ Report on the Social Situation of the Population of the Slovak Republic for 2016. <https://www.employment.gov.sk/files/slovensky/ministerstvo/analyticke-centrum/report-on-social-situation-2016.pdf>

91 children's homes with 4,622 children, out of which 450 were children with disabilities.

9. As a result, many persons with disabilities face lifelong segregation in Slovakia. They are often forced to live in large artificial and segregated institutions such as castles or monasteries, which resemble warehouses for human beings. Even the department of oversight at the Ministry of Labour, Social Affairs and Family found considerable shortcomings and human rights violations in institutions providing social services, including restriction of freedom of movement of users, failure to meet conditions for the quality of social services and failure to observe the maximum number of clients per employee and the minimum percentage of professional staff.¹²
10. Slovakia committed itself to deinstitutionalisation (hereinafter "DI") and transformation of residential services for persons with disabilities in its *Strategy on Deinstitutionalisation*¹³ and *National Action Plan on Transformation of Residential Social Services*.¹⁴ This was followed in December 2014 with further proclamations in *National priorities of development of social services in 2015 - 2020*. Although these are positive steps, the practical realisation of the DI process has faced numerous difficulties and has been significantly delayed. The national DI policy was adopted at the end of 2011, but **not a single institution has been 'transformed'**. In addition, the planned activities under the revised National Project for the period up to 2020 (which has yet to be adopted) includes less than 10% of the 1,255 social care facilities (mostly institutions) in the country. The tremendously slow pace of reform and the low number of institutions involved are of considerable concern.
11. At the beginning of 2018, providers of community services face a concerning situation connected with changes in financing of social care. An amendment to the Social Services Act, effective as of January 2018¹⁵, will provide increased resources to providers of institutional care and less to providers of community care. Such investment choices contradict the obligation to provide continuous improvement in living conditions for

¹² Ministry of Labour, Social Affairs and Family, Report on the Social Situation of the Population of the Slovak Republic for 2016, <https://www.employment.gov.sk/files/slovensky/ministerstvo/analyticke-centrum/report-on-social-situation-2016.pdf>.

¹³ Available in Slovak online at: <https://www.employment.gov.sk/sk/rodina-socialna-pomoc/socialne-sluzby/deinstitucionalizacia-socialnych-sluzieb.html>.

¹⁴ Available in English online at: <https://www.employment.gov.sk/sk/rodina-socialna-pomoc/socialne-sluzby/deinstitucionalizacia-socialnych-sluzieb.html>.

¹⁵ Social Service Act 448/2008, effective as of January 2018: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2008/448/20180101.html>.

persons with disabilities and must be regarded as **retrogressive**,¹⁶ enhancing barriers to independent living.

12. Enormous delays and lack of effective implementation of DI have recently been criticised by the CRPD Committee.¹⁷ Further, the Committee itself dealt with a similar situation in its latest examination of the Czech Republic and expressed concern regarding the slow progress of DI process in relation to persons with disabilities and older persons.¹⁸ Under these circumstances, and considering the current situation in Slovakia, the situation of persons with disabilities living in institutions raises important issues under Articles 10 and 12 of the ICESCR.

Proposed questions

Please provide information on what measures the Government plan to take to achieve deinstitutionalisation of persons with disabilities. Please inform the Committee about the planned timelines of the deinstitutionalisation process, the number of people to be transferred to community settings in the next 3 years and the timeframe for all relevant institutions in Slovakia be transformed into community-based services.

Please provide information on the availability and accessibility of community-based services for persons with disabilities, including housing, social services and community mental health care, explaining whether the number of such services is sufficient and what measures will be taken to ensure they will continue/start being adequate and sufficient.

In addition, please provide information on financial allocations for the provision of social services to persons with disabilities. Please explain how resources will be reallocated from financing institutions to the development of community-based services.

(c) Institutionalisation of children with disabilities (Arts. 10 and 12)

13. An issue of additional concern is the discriminatory institutionalisation of children with disabilities under the age of six as compared with other children.

¹⁶ See also: Committee on the Rights of Persons with Disabilities, [General Comment on Article 19: Living independently and being include in the community](#), 27 September 2017, para. 15(e), CRPD/C/GC/5.

¹⁷ Committee on the Rights of Persons with Disabilities, [Concluding Observations to the Initial Report of Slovakia](#), 17 May 2016, para. 56, CRPD/C/SVK/CO/1.

¹⁸ Committee on Economic, Social and Cultural Rights, [Concluding Observations on the second periodic report of the Czech Republic](#), 23 June 2014, para. 18, E/C.12/CZE/CO/2.

14. Although the Act on the Social and Legal Protection of Children and Social Guardianship (Act no. 305/2005) requires that children under the age of six are placed in a professional family environment instead of a children home, its Section 53(2) in conjunction with Section 100j(8) provides for an exception in cases of children with disabilities, who can thus be institutionalised regardless their age. Paradoxically, the law does not protect the most vulnerable children, creating the basis for their long-term institutionalisation. Thus, Slovakia segregates and discriminates against children with disabilities by placing them into institutions.
15. The UN CRC in their latest concluding observations regarding Slovakia expressly recommended that the Government amend the Act on the Social and Legal Protection of Children and Social Guardianship to prohibit the institutionalisation of children with disabilities under the age of six and to prioritise family and community care and fully commit to the implementation of the “deinstitutionalisation policy” to ensure that children with disabilities no longer live in segregated institutional settings.¹⁹ So far, the Government have failed to take any relevant steps.

Proposed question

What steps will the Government take to end the placement of children with disabilities in institutions and ensure their placement in family and community care?

(d) Woman with disabilities (Arts. 10 and 12)

16. Women with disabilities placed in institutions are particularly vulnerable to various forms of ill-treatment, including use of restraints and netted cage-beds. An issue of significant concern is the sterilisation of women with disabilities under guardianship on the basis of consent given by their guardian. Sterilisation is regulated under Article 40 of the Act on Health Services (Act no. 576/2004). The intervention can generally be performed only upon written request and after signing a written informed consent of the person concerned. The informed consent must include information on alternative methods of contraception, possible change of living situation leading to sterilisation, medical consequences of sterilisation and possible failure of sterilisation. The request for sterilisation is considered by the doctor and the intervention can be performed only 30 days after the written consent has been signed.
17. However, in cases of persons with disabilities, the law allows that legal representatives, including guardians of those persons who have been deprived of legal capacity or whose legal capacity have been restricted

¹⁹ Committee on the Rights of the Child, [Concluding observations on the combined third to fifth periodic reports of Slovakia](#), 20 July 2016, para. 37, CRC/C/SVK/CO/3-5.

under Article 10 of the Civil Code²⁰, can give substitute consent. There are no additional safeguards and court approval is not required. In such situations, it is evident that sterilisation does not depend on the will of the person to be sterilised²¹ and can be forced upon persons with disabilities. Such legislation should be repealed as forced sterilisation may amount to torture, as has been clarified by the UN Special Rapporteur on Torture.²²

Proposed questions

Please provide statistics on sterilisation of women with disabilities, including those under guardianship.

Please provide information how the law protects women with disabilities, and especially those under guardianship, from involuntary sterilisation and other forms of ill-treatment.

(e) Inclusive education of children with disabilities (Art. 13)

18. In the last Concluding Observations regarding Slovakia, the Committee recommended the Government adopt and apply an inclusive approach to the provision of education to children with disabilities.²³ Unfortunately, the Government have not made any reasonable steps to comply with this recommendation. Moreover, in their report addressed to the Committee, the Government described solely the steps taken towards inclusion of children from “socially disadvantaged background” into mainstream education but completely omits the inclusion of children with disabilities into mainstream education.²⁴ Further, in their most recent observations, the UN CRC recommended that the Slovak Government set up a

²⁰ A person *deprived* of legal capacity cannot validly conduct any legal act and is automatically stripped of various fundamental rights and freedoms, such as the right to enter into marriage or the right to vote or stand for elections (see below). Alternatively, if a person's legal capacity has been *restricted*, the court delineates those legal actions that he or she cannot validly perform. In both cases, legal actions of a person deprived or restricted of legal capacity are performed by his or her guardian who is understood as a legal representative and substitute decision-maker.

²¹ According to Article 6(6)(b) of the Act No. 576/2004 on Health Services (*zákon o zdravotnej starostlivosti*), the person unable to give an informed consent shall participate on the decision making to the greatest possible extent, considering her abilities.

²² See Méndez, Juan. E. (2013) UN.Doc A/HRC/22/53 and Nowak, M. (2008) UN Doc. A/HRC/7/3.

²³ Committee on Economic, Social and Cultural Rights, [Concluding Observations - Slovakia](#), 8 June 2012, para. 26, E/C.12/SVK/CO/2.

²⁴ Committee on Economic, Social and Cultural Rights, *Third period report of the State party*, 10 August 2017, paras. 133-150.

comprehensive strategy for the inclusion of children with disabilities.²⁵ To date, none of these recommendations have been implemented. Moreover, current emerging issue is significant lack of available pre-school education for children with disabilities.

Proposed questions

Please inform the Committee whether right to inclusive education of children with disabilities is guaranteed in national legislation.

Please provide information on steps taken on the transformation and desegregation of special education system towards inclusion of all children with disabilities into mainstream education, including concrete tasks, responsible subjects and timeline.

Please inform the Committee about the availability of reasonable accommodations for children with disabilities in mainstream education, including the financing system of such accommodations.

Please inform the Committee about availability and accessibility of pre-school education for children with disabilities.

(f) Definition of discrimination (Art. 2)

19. Act No. 365/2004 Coll. on Equal Treatment (the “Anti-discrimination Act”) prohibits discrimination based on various grounds, including disability. Despite this recognition, there are two issues of concern with respect to legislation. *Firstly*, the law does not explicitly recognise that denial of reasonable accommodation constitutes discrimination. *Second*, there is no recognition of multiple discrimination in Slovak law. This concept is crucially important for vulnerable groups of persons with disabilities, including women, children, elderly people, Roma and migrants.

Proposed questions

Please provide information on the legal prohibition of discrimination against persons with disabilities and particularly whether and how the law provides that denial of reasonable accommodation constitutes discrimination.

In addition, please inform the Committee how protection against discrimination on multiple grounds is ensured in Slovak law.

²⁵ Committee on the Rights of the Child, [Concluding observations on the combined third to fifth periodic reports of Slovakia](#), 20 July 2016, para. 37, CRC/C/SVK/CO/3-5.

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