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

For consideration when compiling the Concluding Observations on the Third Periodic Report of the Slovak Republic under the International Covenant on Economic, Social and Cultural Rights

Submitted by:

Forum for Human Rights (FORUM)

SOCIA – Social Reform Foundation (SOCIA)

Social Work Advisory Board (RPSP)

Platform of families with children with health disadvantage (Platform)

The Slovak Disability Council

September 6, 2019

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 rights of 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 of Third Periodic Report of the Slovak Republic, and in adopting the Concluding Observation thereto.
2. The submission has been written by the Forum for Human Rights (FORUM)ⁱ, SOCIA – Social Reform Foundationⁱⁱ, Social Work Advisory Board (RPSP),ⁱⁱⁱ Platform of families with children with health disadvantage (Platform)^{iv} and the Slovak Disability Council^v.

II. SPECIFIC COMMENTS

(a) Definition of discrimination (Art. 2)

1. 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 recognize 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 recommendation

Amend the Anti-Discrimination Act and introduced definition of reasonable accommodation in line with the international human rights standards and ensure that multiple discrimination is recognized in the law.

(b) The use of netted cage-beds and other forms of restraints against persons with disabilities (Art. 12)

2. In Slovakia, the use of mechanical restraints in psychiatry is allowed by methodological ordinance of the Ministry of Health adopted on 27 May 2009. Netted cage-beds¹ 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

¹ Information about netted cage-bed, their construction and how they look is available here: <http://www.zdravzar.sk/produkty/postel-pre-mentalne-postihnutyach/>

of this report collected these data through the Freedom of Information Act. Statistics show striking reality in Slovak psychiatric hospitals. In 2018, there were at least 156 netted cage beds in actual use across Slovakia.

3. According to the applicable norms of international law, all persons with disability have the right to freedom from abusive and coercive practices during hospitalization 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.²
4. The use of restraints and in particular the netted cage-beds have long been criticized 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.³ 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**.⁴ The same year, the UN Committee on the Rights of Persons with Disabilities called on Slovakia to immediately discontinue the practice of using physical, mechanical and chemical restraints, and the use of isolation and seclusion for persons with psychosocial disabilities.⁵ The Government have not taken any actions.

Proposed recommendation:

Take immediate action to abolish the use of netted cage-beds and other forms of seclusion and restraint in psychiatric and related institutions.

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

3. People with disabilities continue to be interested in the independent living and the consider life in institutions to be a last resort solution. According to the statistical data of the Central Office of Labour, Social Affairs and Family, in June 2019 10 765 people were beneficiaries of the financial contributions for the personal

² 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.

³ 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.

⁴ 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.

⁵ 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.

assistance. 56 877 persons benefited from the home care services in the same period. These numbers have been growing slowly in the recent years).

4. Reduction or withdrawal of the contribution for the personal assistance in case the person's income exceeds the given threshold was eliminated by the abolition of the income testing in July 2019. However, if a person with disability happens to have a disability after he or she turns 65, there is no entitlement to receive financial contribution. This contribution is for children over 6 years of age. People with disabilities consider these situations discrimination based on age.
5. In 2017 (December, 31), there were 1262 social services facilities. Social services with long-term care were provided to 46 617 users in different types of social services – mostly institutional care. In total, 42 857 users (83.3%) lived in institutions providing unlimited care, 645 persons (1.3%) were provided institutional care on weekly basis, 7 974 (15.5%) users accessed daily care. 62,6% of all users in social care facilities were elderly people. 8,624 (15,6 %) were under guardianship.
6. Social care services for persons with disabilities are predominantly provided in institutional settings and community services are rare. In December 2017, there were 387 institutions for elderly people; 291 social care homes housing 13 273 adults with disabilities; and 153 specialized institutions with 6 860 adult residents. With regard to children, there were over 500 children in specialized groups as part of the foster care group homes. As a result, many persons with disabilities face lifelong segregation.
7. Slovakia committed itself to deinstitutionalisation (hereinafter “DI”) and transformation of residential services for persons with disabilities in its Strategy on Deinstitutionalisation and National Action Plan on Transformation of Residential Social Services. This was followed in December 2014 with further proclamations in National priorities of development of social services in 2015 - 2020. Enormous delays and lack of effective implementation of DI have recently been criticized by the CRPD Committee in 2016.
8. Enormous delays and lack of effective implementation of DI have recently been criticised by the CRPD Committee.⁶ 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.⁷ 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.

⁶ 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.

⁷ 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.

Proposed recommendations:

The State party should take measures to continue and expedite the deinstitutionalisation process in relation to all types of institutions.

The State party should adapt new National plan to achieve deinstitutionalisation of persons with disabilities. This plan should include the planned timelines of the deinstitutionalisation process, the timeframe for all relevant institutions be transformed into community-based services and plan how resources will be reallocated from financing institutions to the development of community-based services.

The State party should take measures to ensure the availability and accessibility of community-based services for all persons with disabilities, including housing, social services and community mental health care, especially in small municipalities and rural areas.

(d) Early childhood development services and institutionalisation of children with disabilities (Arts. 10 and 12)

9. There is no official register of the number of children with disabilities in Slovakia who are entitled to early intervention services. However, the experts estimate that the rate of children with disabilities and children whose development is at risk is 3.5 %. Thus, we believe that there live approximately 14 000 children with disabilities under 7 years of age in Slovakia. In the recent years, provision of the early intervention service has increased (30 providers in December 2018). In spite of that, it was only available for 1 219 families at that time.
10. The inter-ministerial cooperation and creation of the complex network of services – health, social and educational is still lacking. The ministry of Labour, Social Affairs and Family created a working group in 2018 to deal with these problems. Unfortunately, there are no results of their work present. Neither has it been clarified if children whose development is at risk due to their social disadvantages are entitled to the early intervention services as well. The consequences become evident when they start their compulsory primary education and they are diagnosed as children with intellectual disability (such as marginalized Roma communities).
11. An issue of additional concern is the discriminatory institutionalisation of children with disabilities under the age of six as compared with other children.
12. 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.

13. 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 prioritize 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.⁸ So far, the Government have failed to take any relevant steps.

Proposed recommendations:

The State party should take measures to ensure holistic and comprehensive network of health, educational and social care services.

The State party should take measures to ensure the availability of the early intervention services in all regions and services for family at least once a week.

The State party should take measures to ensure that early intervention services for children from marginalized communities prevent them from acquiring disabilities.

The State party should amend the Act on the Social and Legal Protection of Children and Social Guardianship to ensure that institutionalisation of children with disabilities is strictly prohibited.

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

14. Slovakia is the country with the highest share of children being educated in special schools in the EU. The share of pupils with special educational needs is the fourth highest in Europe and they comprise almost a fifth of the children educated at elementary schools. In comparison to other European countries, however, a large group of these children are not educated in classes at mainstream schools with the most children. While in Slovakia the share of children enrolled in special schools or classes is 5.88 % (34 299 pupils in 2018/2019), the European average is almost four times lower.

15. Unfortunately, the Slovak Republic has not adopted yet a strategy to reform the educational system, and to organize the transition from segregated schools into

⁸ 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.

inclusive education. Neither teachers, nor students in the process of their vocational training are prepared systematically for the transformation.

16. The situation concerning unavailability and unenforceability of education for children with disabilities at the mainstream school have not changed since 2015. We would like to stress some of the most striking issues in this report.
17. Significant lack of available pre-school education for children with disabilities is current emerging issue. The kindergarten, even a special kindergarten is entitled to reject the child in case it cannot provide for material and technical requirements. The requirements mentioned are not provided for – the schools have many barriers, they do not have school aids needed, there are not enough teachers' assistants and other experts.
18. The new legislation introduced obligatory preschool education for children from 5 years of age contains the exception concerning children with disabilities as well. That means the right to education in the kindergarten is unenforceable as well (no possibility to appeal after rejecting the child).
19. The situation continues to repeat where the centre for special pedagogical counselling (CSPC) decides that the child needs an individual form of education and a shorter frame. In most cases it is 2 hours a week and, thus, children with multiple disabilities do not have an adequate scope of education even in special schools where it is not possible for school to create appropriate conditions for education. The involuntary home schooling is the consequence of this situation.
20. Slovakia fails to allocate sufficient financial resource to support teaching assistants and teams of experts in schools – school psychologists and special pedagogues and pedagogical assistants. The child is not provided for with the support as recommended by the counselling centres. In the school year of 2018/2019 5 845 teaching assistants were required and only 2 374 were allocated, which is only 40 % (kindergartens are excluded from this scheme where assistants are exclusively financed by the founder).
21. The mechanism of assigning pedagogical assistants is not flexible enough; it does not take changes during the school year into consideration.
22. The absence of the supporting services worsens the inclusion as well. The pedagogical assistant provides the services of medical and personal assistance as well. According to the School Act nurses are not allowed to be present in a school facility.
23. The situation is even more critical at secondary schools. The schools where the child with special educational needs is interested to enroll have many barriers. The staff is not trained to meet the individual requirements of integrated students.

24. Within the pending educational system children with intellectual disabilities cannot continue their studies at secondary schools because they only have ISCED 1 level of education. Thus, they are disqualified from being enrolled for the secondary school and from future professional opportunities.

Proposed recommendation:

The State party should take measures to ensure availability and accessibility of pre-school education for all children with disabilities, including funding of expert teams and support services in pre-school facilities and schools.

The State party should immediately take concrete and targeted steps to transform and desegregate special education system and ensure inclusion of all children and students with disabilities into mainstream education.

The State party should 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.

The State party should ensure that teachers and future teachers should take part in professional training within the specific educational programs at universities of meaningful length. Content of the educational program should be in line with the real needs and enable students of pedagogical specializations to take the professional training with children with special educational needs.

The State party should take measures to ensure that secondary school students with special educational needs are integrated into mainstream secondary schools, so they can succeed in entering into the labor market or enrolling in universities.

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ⁱ **FORUM** is an international human rights organization active in the Central European region. It provides support to domestic and international human rights organizations 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.

ⁱⁱ **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 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 collaborates with NGOs and the public administration forming policies and legislative proposals to reform the social system, please visit www.socia.sk.

ⁱⁱⁱ **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 organizations, municipalities and other educators. The main strategic vision of RPSP is to support the process of changing quality of social services in society, realization of transformation, deinstitutionalisation and decentralization of social services, and community services development. RPSP realized first deinstitutionalisation projects in social services in Slovakia since 1999. For more information, please visit www.rpsp.sk.

^{iv} **Platform** is parental NGO, which joins families of children with all the disabilities, collects their needs for change in social, health and education system. Platform provides peer counselling and advocates rights of children with disabilities e.g. for social services, education and independent life – building a bridge among them and the state institutions. www.platformarodin.sk

^v **The Slovak Disability Council** was established in 2003. It has 18 member organisations and DPOs representing all types of disabilities. The mission of the 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 in its Committee for Persons with Disabilities, and other advisory bodies and working groups. Its activities are based on principles of the UNCRPD. The Slovak Disability Council is a member of the European Disability Forum. Persons with disabilities constitute majority in all decision making bodies of the Slovak Disability Council and all its member organisations. The report has been drafted by the representatives of all types of disabilities or their parents. www.nrozp.sk