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Human Rights

VALIDITY

NGOs information to the European Committee of Social Rights for consideration when adopting Conclusions with respect to the Tenth report on the application of the Revised European Social Charter submitted of by the Government of the Slovak Republic

(for the period 1 January 2015 - 31 December 2018)

Submitted by:

Forum for Human Rights (FORUM)

SOCIA – Social Reform Foundation (SOCIA)

Social Work Advisory Board (RPSP)

Validity (formerly Mental Disability Advocacy Centre)

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I. Widespread institutionalisation of Persons with Disabilities in Slovakia

1.1 General Introduction

Article 15 of the European Social Charter (Revised) stipulates in its paragraph 3 a set of fundamental rights that constitute indispensable preconditions of persons with disabilities having real chance to live independently and be included in society. Compared to the UN Convention on the Rights of Persons with Disabilities it concentrates in it a set of rights covered in the UN Convention on the Rights of Persons with Disabilities under different Articles – different fundamental rights. To be more concrete, these rights are especially:

- the right to independent living and be included in the community (Article 19) – “to promote their full social integration and participation in the life of the community”;
- the right to accessibility (Article 9) – “particular through measures, including technical aids, aiming to overcome barriers to communication (...) and enabling access to transport”;
- the right to personal mobility (Article 20) – “and mobility”;
- the right to an adequate standard of living and social protection (Article 28); and
- the right to participate in cultural life, recreation, leisure and sport (Article 30) – “cultural activities and leisure”.

This list of rights demonstrates the compound nature of the right of persons with disabilities to independent living as well as the incompatibility of this right with the policy and practice of institutionalizing people with disabilities. However, in Slovakia institutionalisation of persons with disabilities remains dominant, contrary to its obligations deriving from the European Social Charter (Revised) and the UN Convention on the Rights of Persons with Disabilities. We may identify several causes of this state of affairs which we elaborate on below in greater detail:

- deficiencies in the system of social services;
- deficiencies in the social protection system;
- deficiencies in ensuring accessibility and
- deficiencies in ensuring mobility.

1.2 Deficiencies in the system of social services

In Slovakia, the number of persons with disabilities who face institutionalisation is quite high compared to other countries of the European Union and has not decreased significantly. For instance, in December 2017, 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.¹ 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 residents². With regard to children, there were over 500 children in specialized groups as part of the foster care group homes³. As a result, many persons with disabilities face lifelong segregation.

Although Slovakia adopted in November 2011 *National Strategy on Deinstitutionalisation*, followed by two *National Action Plans for the Transition from Institutional to Community-Based Care in the Social Services Systems* for years 2012-2015 and 2016-2020, and committed itself to deinstitutionalisation, any real change has not actually happened, either on the level of the legislation or on the level of everyday experience of persons with disabilities. The UN Committee on the Rights of Persons with Disabilities called in its Concluding Observations with respect to Slovakia of 2016 the Slovak progress on the deinstitutionalisation “too slow and partial”.⁴ That, unfortunately, has not changed even in the second action period of the National Strategy.

Slovakia failed to adopt legislative amendments necessary for effective implementation of its obligations deriving from Article 15 (3) of the European Social Charter (Revised) and Article 19 of the UN Convention on the Rights of Persons with Disabilities. In particular, it failed to enact measures that would ensure reorientation of the system of social care from institutional care to such support measures that are anticipated by Article 19, especially personal assistance as “a tool for independent living”⁵ and community-based services. Slovak legislation still enables the establishment and extension of existing institutional infrastructure and there is no moratorium on new admission, which prevents any systemic change from taking place.⁶ The legislative framework of planning the development of the net of social services and their capacities is neutral as to the obligations deriving from the right of persons with disabilities to

¹ Report on the Social Situation of the Population of the Slovak Republic for 2018. https://www.employment.gov.sk/files/slovensky/ministerstvo/analyticke-centrum/2019/material_sprava_o_soc_situacii_obyvatelstva_sr_2018_vlada.pdf

² Report on the Social Situation of the Population of the Slovak Republic for 2018. https://www.employment.gov.sk/files/slovensky/ministerstvo/analyticke-centrum/2019/material_sprava_o_soc_situacii_obyvatelstva_sr_2018_vlada.pdf

³ https://www.upsvr.gov.sk/buxus/docs/statistic/vykazy/2018/Vykaz_V05_SR_2018.xlsx

⁴ Committee on the Rights of Persons with Disabilities, *Concluding Observations to the Initial Report of Slovakia*, 17 May 2016, para. 55, CRPD/C/SVK/CO/1.

⁵ Committee on the Rights of Persons with Disabilities, *General Comment no. 5 (2018): Living independently and being included in the community*, para. 16 (d), CRPD/C/GC/5.

⁶ *Ibid.*, para. 49: „To respect the rights of persons with disabilities under article 19 means that States parties need to phase out institutionalization. No new institutions may be built by States parties, nor may old institutions be renovated beyond the most urgent measures necessary to safeguard residents’ physical safety. Institutions should not be extended, new residents should not enter when others leave and “satellite” living arrangements that branch out from institutions, i.e., those that have the appearance of individual living (apartments or single homes) but revolve around institutions, should not be established.“

independent living since it does not require the progressive elimination of the capacities of institutional services in favour of community-based services and therefore does not help in any way to regulate the redistribution of financial (and other) resources allocated by the state for social services for persons with disabilities.

The described legislative deficiency constitutes by itself a failure of Slovakia to comply with the obligation to adopt concrete and targeted measures to progressively implement those obligations deriving from the right to independent living that are not applicable immediately. However, the obligation to adopt concrete and targeted steps itself is immediately applicable⁷ as well as the obligation to refrain from retrogressive measures.⁸ It should be noted in this regard that Slovakia was recommended not to allocate national resources to institutions and reallocate them into community-based services by the UN Committee on the Rights of Persons with Disabilities yet in 2016.⁹

Furthermore, not only does Slovak legislation in the field of social services lack specific guarantees against retrogressive measures, but it fails to align with the principle of progressive realization of the right to independent living, and is fundamentally built on the medical model of disability.¹⁰ A contract upon which a person is provided with social services may be concluded only under the condition that the person has an official recommendation for that type or service (unless the person is willing to pay for the social service a price that reaches at least the economic costs of its provision¹¹). A recommendation is issued in the process comprised of a medical assessment¹² and a social assessment¹³, however, even the social assessment focuses predominantly on functional impairments of the person and not as much on his/her needs in order to have the practical and effective possibility to live independently. We may therefore conclude that even the social assessment element is built on the principles of medical model of disability.

⁷ Ibid., para. 41.

⁸ Ibid., paras. 44 and 45.

⁹ 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.

¹⁰ The UN Committee on the Rights of Persons with Disabilities calls the medical model also as „individual“ and defines it as follows: „Individual or medical models of disability prevent the application of the equality principle to persons with disabilities. Under the medical model of disability, persons with disabilities are not recognized as rights holders but are instead „reduced“ to their impairments. Under these models, discriminatory or differential treatment against and the exclusion of persons with disabilities is seen as the norm and is legitimized by a medically driven incapacity approach to disability. Individual or medical models were used to determine the earliest international laws and policies relating to disability, even after the first attempts to apply the concept of equality to the context of disability.“ – See Committee on the Rights of Persons with Disabilities, [General Comment no. 6 \(2018\) on equality and non-discrimination](#), para. 8, CRPD/C/GC/6.

¹¹ Ibid., § 51a.

¹² Ibid., § 49.

¹³ Ibid., § 50.

The person is, according to the law, free in his/her choice about what type of social service he/she wants to use, and he/she may combine different types of social services. However, this free choice of the person with disability seems rather formal. Since the availability of community-based services is not systematically ensured under Slovak law, there is a significant lack of services that would be able to support persons with disabilities in their natural environment and protect them thereby from institutionalisation.

In addition, the system of assessment for different types of social services is very complicated. If the person chooses to use more types of social services, he/she needs a recommendation for every type of social service while the bodies competent to issue the recommendation may differ since the whole system is not centralised. This puts another burden on the person applying for social services and impedes the accessibility of social services. Furthermore, founders – local authorities - of social services are actively involved in the formulation of the recommendation and may therefore bias the whole process in order to manage the capacity of social services according to their, mainly budgetary, needs.

As mentioned above, the assessment is not carried out only if the person with disabilities agrees to pay for the social service such an amount that reaches at least the economic costs of its provision.¹⁴ In other words, a person with disabilities has the right to choose the type of social service according to his/her free will only if he/she has enough property to pay for the social service the prescribed prices. We submit this differentiation among persons with disabilities on the ground of their property as discrimination prohibited by Article E of the European Social Charter (Revised).

Last but not least, we should highlight that the system of social services as it currently operates may be assessed as discriminatory against persons with disabilities not only for the reason that it enables institutionalisation of persons with disabilities and relies predominantly on institutions, but also for the reason that programmatically let persons with disabilities bear costs of the support they need. This happens due to the fact that the price for providing social services is set according to the property of the person.¹⁵ The more property the person has, the higher is the price (while the law stipulates the maximum price). We find this practice of funding discriminatory since it systematically makes persons with disabilities bear the costs for the disability which contravenes the social model of disability under which the disability is not an individual condition of the person but a matter of the whole society. It is the society that creates the disability and the more the society is disabling and the less it is inclusive, the more social services the individual person needs to overcome the barriers the society sets for him/her. Making him/her pay for these social services according

¹⁴ Ibid., § 51a.

¹⁵ Act no. 448/2008 Coll., on Social Services, § 72 et seq.

his/her property actually means to transfer the responsibility for structural deficiencies of the society to the individual person with disability whose property is systematically reduced only due to the fact that he/she needs help of another person to survive and to have his/her basic needs met (and also to live independently, but this aim is not currently widely supported in the Slovak system of social services as mentioned above). We should remember that the UN Committee on the Rights of Persons with Disabilities states very clearly that “it is considered contrary to the Convention for persons with disabilities to pay for disability-related expenses by themselves”.¹⁶ The price of social service determined according to the person’s property is, however, definitely such a disability-related expense.

1.3 Deficiencies in the system of social protection

Other significant deficiencies hindering persons with disabilities to live independently may be found not directly in the system of social services, but in the system of social security – social protection, especially in the area of allowances for persons with disabilities. The UN Committee on the Rights of Persons with Disabilities reminds in its General Comment no. 5 the close relation between the right to independent living and be included in the society under Article 19 and the right to social protection under Article 28¹⁷ since it is aware of the exclusionary effects of poverty in general which in addition with respect to persons with disabilities are closely connected to the fact that the person with disabilities cannot be supported in his/her natural environment since he/she, eventually together with his/her family, cannot afford the support the person would need in this regard. The UN Committee on the Rights of Persons with Disabilities underlines that “to ensure that persons with disabilities enjoy an adequate standard of living (art. 28), States parties should provide, inter alia, access to support services that enable them to live independently. Therefore, there is an obligation on the part of States parties to ensure access to appropriate and affordable services, devices and other assistance for impairment-related requirements, especially for those persons with disabilities who live in poverty. Furthermore, access to public and subsidized housing programmes in the community is required. (...)”¹⁸ In its General Comment no. 6 the UN Committee on the Rights of Persons with Disabilities reminds that “to

¹⁶ Committee on the Rights of Persons with Disabilities, [General Comment no. 5 \(2018\): Living independently and being included in the community](#), para. 92, CRPD/C/GC/5.

¹⁷ In its General Comment no. 5 the Committee highlights that: „Cash transfers such as disability allowances represent one of the forms in which the States parties provide support for persons with disabilities in line with articles 19 and 28 of the Convention. Such case transfers often acknowledge disability-related expenses and facilitate the full inclusion of persons with disabilities in the community. Cash transfers also tackle situations of poverty and extreme poverty that persons with disabilities by reducing their income in times of economic or financial crisis or through austerity measures that are inconsistent with human rights standards set out in paragraph 38 above.“ - Committee on the Rights of Persons with Disabilities, [General Comment no. 5 \(2018\): Living independently and being included in the community](#), para. 62, CRPD/C/GC/5.

¹⁸ Ibid., para. 92.

reach an adequate standard of living comparable to others, persons with disabilities typically have additional expenses. (...) States parties should take effective measures to enable persons with disabilities to cover the additional expenses linked to disability. (...)"¹⁹

All these conclusions by the UN Committee on the Rights of Persons with Disabilities document well that what lies in the basis of the right to an adequate standard of living and social protection of persons with disabilities, as guaranteed by Article 15 (3) of the European Social Charter (Revised) and Article 28 of the UN Convention on the Rights of Persons with Disabilities is the requirement of equality for persons with disabilities in terms of inclusive equality²⁰ and not the mere survival of the person and his/her basic material needs.²¹ Actually, with respect to persons with disabilities the right to an adequate standard of living and social protection has a significant dimension of the need to compensate him/her for the additional expenses he/she must bear due to the disability. These expenses may take various forms – from the form of direct and visible expenses for services the person needs due to the disability for his/her survival, satisfaction of his/her basic material needs and taking an active part in the community or expenses for mobility aids, devices and assistive technologies to forms of expenses that may be harder to see as linked to disability like the loss of salary of a family member who cannot be employed since he/she supports his/her relative who is a person with disabilities. That is why Article 28 of the UN Convention on the Rights of Persons with Disabilities covers as to its personal scope not only persons with disabilities but also their families. And social protection provided to the whole family that supports the person with disabilities indisputably represents one of the measures

¹⁹ Committee on the Rights of Persons with Disabilities, [General Comment no. 6 \(2018\) on equality and non-discrimination](#), para. 68, CRPD/C/GC/6.

²⁰ The UN Committee on the Rights of Persons with Disabilities defines inclusive equality in its General Comment no. 6 as follows: „Inclusive equality is a new model of equality developed throughout the Convention. It embraces a substantive model of equality and extends and elaborates on the content of equality in: (a) a fair redistributive dimension to address socioeconomic disadvantages; (b) a recognition dimension to combat stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality; (c) a participative dimension to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society; and (d) an accommodating dimension to make space for difference as a matter of human dignity. The Convention is based on inclusive equality.“ – see Committee on the Rights of Persons with Disabilities, [General Comment no. 6 \(2018\) on equality and non-discrimination](#), para. 11, CRPD/C/GC/6.

²¹ This conclusion may be supported also by the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities on the Initial Report of Slovakia where the UN Committee recommended to Slovakia to „pay attention to the links between article 28 of the Convention and target 10.2 of the Sustainable Development Goals.“ The target 10.2 of the Sustainable Development Goals is formulated as follows: „By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status.“ - Committee on the Rights of Persons with Disabilities, [Concluding Observations to the Initial Report of Slovakia](#), 17 May 2016, para. 76, CRPD/C/SVK/CO/1.

of support of independent living for persons with disabilities in the terms of Article 15 (3) of the European Social Charter (Revised).

All these conclusions demonstrate that the State will never comply with its obligations deriving from Article 15 (3) of the European Social Charter (Revised) and Article 28 of the UN Convention on the Rights of the Child if the support for persons with disabilities offered through different social security schemes reflects only the needs for survival and for having one's basic material needs met and on the contrary ignores to focus on material support for persons with disabilities and their families to provide them with equal opportunities in terms of inclusive equality.

Slovak law tries to take into account the perspective of inclusive equality in its national social security schemes, namely by the Act on Financial Contributions to Compensate Severe Disability.²² However, this Act has still several significant deficiencies, especially with respect to older persons with disabilities and their older relatives that supports them.

The Act provides for several financial contributions for persons with disabilities while one of them is the financial contribution for the personal assistance. In July 2019 Slovakia adopted an amendment that eliminated the reduction or withdrawal of the contribution in case the person's income exceeds the given threshold which may be considered as an effort towards inclusive equality. However, the Act still excluded in the reporting period those persons with disabilities who were older than 65 years of age and who had not been granted the contribution before their 65th birthday from benefiting from the contribution.²³ In other words, those persons who became persons with severe disability after the age of 65 were not entitled to the financial contribution for personal assistance, i.e. the law did not foresee them as eligible for personal assistance. We submit that this situation, which specifically affects older persons with disabilities, amounts to discrimination on the basis of age, reflecting a negative stereotyping of older persons with disabilities as has described by the UN Special Rapporteur on the Rights of Persons with Disabilities, Catalina Devandas-Aguilar, in her report on older persons with disabilities.²⁴ It should be

²² Act no. 447/2008 Coll.

²³ Ibid., § 22 (2).

²⁴ The UN Special Rapporteur on the Rights of Persons with Disabilities, Catalina Devandas-Aguilar. [Older persons with disabilities](#), para. 7-8: „Older persons are often perceived as a burdern, dependent, unproductive, undeserving, or helpless. While disability is increasingly understood as a social construct, inequalities due to old age are predominantly seen as „natural“ or „invetable“. Therefore, older persons with disabilities are discriminated against and disadvantaged not just because they have a disability, but also because of stereotypes about older people. While some barriers that persons with disabilities experience earlier in their lives remain the same or may be exacerbated by older age, those who acquire a disability later in life may be facing those barriers for the first time, and such barriers are also compounded by are-related barriers. The intersection between older age and disability results in both aggravated forms of discrimination and specific human rights violations against older persons with disabilities. Older persons with disabilities are subject to a greater extent to loss of power, denial of autonomy, marginalization and cultura devaluation. They are also more prone to

noted that this has also been the position of the Slovak Constitutional Court expressed in its judgment of 2 April 2020²⁵ by which it abolished the cited provision due to its contradiction to, inter alia, Article 5 (1) and (2) and Article 19 (b) of the UN Convention on the Rights of Persons with Disabilities.

Furthermore, the Act discriminates not only against older persons with disabilities, but also against older home carers of persons with disabilities. Another financial contribution regulated by the Act is the financial contribution for care. However, the Act contains a specific provision on reduction of the amount of this financial contribution for those carers who benefit from one type of pension (retirement pension, early-retirement pension, disability pension due to the decline in ability to work higher than 70 %, service pension or disability service pension).²⁶ We consider this legislation as turning away from the goal of inclusive equality since it is built on the presumption that these carers do not need so high financial support since they are supported by their pension. In fact, they receive only a half of the contribution in comparison to home carers who do not benefit from pension.²⁷ In practice, this means that enhanced disability-linked expenses are transferred to with disability and his/her household, a situation which affects 22 303 people.

1.4 Deficiencies in ensuring accessibility

The principle of barrier-free use of buildings and areas is explicitly mentioned in the Act No. 50/1976 Coll. on Land-Use Planning and Building Order (the Building Act) and in Decree No. 532/2002 Coll. Both of these details the general technical requirements for the construction of and usage of buildings by persons with reduced mobility and orientation.²⁸

The first problem relates to the fact that the requirements for barrier-free access defined by the existing Decree relate only to “the buildings used by persons with reduced mobility and orientation”. The problem arises during the interpretation of the relevant provisions of the Decree. If the investor decides that the construction for housing or employment is not intended to be used by persons with reduced mobility and orientation, the building does not have to

social isolation, exclusion, poverty and abuse. In addition, the combined effect of ageism and ableism leads to gaps in human rights protection and age-biased interpretations of human rights standards. The fragmentation of policies for older persons and for persons with disabilities results in the invisibility in law and in practice of experiences of disability in later life. Moreover, since they are perceived as a „burden“ or „less deserving“, older persons with disabilities are often given lower priority in policy and therefore receive services of a lower quality, especially when there is scarcity of resources.“

²⁵ Judgment of the Slovak Constitutional Court of 2 April 2020, Pl. ÚS 16/2018-104.

²⁶ Act no. 447/2008 Coll., § 40 (10).

²⁷ Ibid., § 40 (10).

²⁸ In this part we acknowledge that these information were prepared especially by colleagues from the Slovak Disability Council and in the past already submitted in NGO coalition to UN treaty bodies.

be barrier-free. Such interpretation is, in our view, unacceptable since it is not in compliance with the concept of universal design.²⁹

Another issue relates to the fact that the Decree does not explicitly mention that barrier-free access applies to all the functional parts of a building. Consequently, barrier-free access to buildings is therefore often wrongly interpreted as a barrier-free character of the entire building. It is emphasised that the parts of the building intended for the public use have to be designed in accordance with parameters enabling access to wheelchair users as defined in the appendix to the Decree. However, the appendix also contains accessibility parameters related to persons with physical, visual and hearing impairments, which are often neglected. The Decree does not contain provisions for persons with intellectual and learning disabilities.

The Decree also stipulates the need to label constructions with the International Symbol of Access. However, there are no clear rules or authorised persons to decide on the appropriateness of such symbols. Consequently, the usage of the symbols is often misleading as they are placed on buildings/areas which do not meet accessibility criteria.

It is very worrying that the Decree does not contain any sanctions for non-compliance with the principles of accessibility. There is also no formal mechanism to monitor compliance. Moreover, it appears that the building authorities, which play a critical role in the process of permitting and granting final commissioning approval for constructions, are not sufficiently equipped and do not have the capacity or competence to promote barrier-free accessibility. Therefore, the non-compliance with the principles of accessibility often occurs not only in reconstructed buildings, but also in new buildings, such as medical facilities, schools, public administration buildings, etc. Citizens with reduced mobility, especially wheelchair users, often cannot enter public buildings in order to arrange their benefits and social services; buildings are not equipped with accessible toilets, elevators or accessible parking places.

In 2015 a draft of the new Building Act was withdrawn from the legislative process because of high number of comments. At present the draft Act on Land-Use Planning and Building Order is currently pending. There is a positive development that accessibility is required not only for buildings constructed to be used by persons with reduced mobility and orientation, but also for all

²⁹ The UN Committee on the Rights of Persons with Disabilities emphasizes in its General Comment no. 2 (2014) on accessibility that „the strict application of universal design to all new goods, products, facilities, technologies and services (...) should contribute to the creation of an unrestricted chain of movement for an individual from one space to another, including movement inside particular spaces, with no barriers. Persons with disabilities and other users should be able to move in barrier-free streets, enter accessible low-floor vehicles, access information and communication, and enter and move inside universally designed buildings, using technical aids and live assistance where necessary.“ – See Committee on the Rights of Persons with Disabilities. [General Comment no. 2 \(2014\) on accessibility](#), para. 15. CRPD/C/GC/2.

buildings to be used by public in general. However, there still have been other shortcomings:

- It does not introduce assessment of the project accessibility by experts licensed in the field of assessment of barrier-free buildings.
- It does not contain any sanction mechanisms for non-compliance with the principles of accessibility in case it is proved that the building authority granted approval for the construction that does not meet the requirements for the barrier-free use.
- It does not contain uniform criteria that entitle the operator of the construction to mark the construction with the accessibility symbol.

There is a critical lack of affordable rental flats accessible for people with disabilities. However, there are rental flats intended for people with a low income and some of them are accessible. People with disabilities however cannot rent these flats in the event that their income has risen above the fixed threshold. On the other hand, their income is not high enough to rent a standard barrier-free flat or take a mortgage.

The Slovak Disability Council reported that transport accessibility has improved especially in areas regulated by EU regulations on the rights of passengers in the air, rail, and bus transport sectors. Domestic rail and bus transport for shorter distances and public transport inside and outside city areas, which are not regulated by European legislation, remain problematic. Making related transport buildings accessible is slow and uneven. Introduction of vehicles meeting the accessibility requirements (including low-floor vehicles, internal and external voice signalling for people with visual impairments, visual signalling for people with hearing impairments), is largely dependent on the financial capacities of the State, the will of governing bodies and the support of the European structural and investment funds. The legislation defining the deadline by when it is possible to operate vehicles not meeting the accessibility requirements and the deadline after which it will not be possible to launch new vehicles not meeting the accessibility criteria, has not been set.

Due to information already provided by Slovak Disability Council to UN bodies, making the Internet, mobile applications and information system accessible to people with disabilities is regulated by the new Act no. 95/2019 Coll. on Public Administration Information Systems and the Decree 55/2014 Coll. on Standards for Public Administration Information Systems. The WCGA 2.1 recommendations and the EU Directive no 2016/2102 on the accessibility of the websites and mobile applications of public sector bodies are incorporated into legislation.

1.5 Deficiencies in ensuring mobility

Act No. 447/2008 Coll. on Financial Contributions to Compensate Severe Disability includes measures to promote personal mobility, such as the allowance to purchase a passenger motor vehicle and to adjust it, the allowance for operation of a motor vehicle, the transport allowance and the

allowance to purchase another mechanical or electric wheelchair. Act No. 448/2008 Coll. on Social Services stipulates rules and conditions for the provision of the transport service. On the basis of health insurance, it is possible to obtain, free of charge or at a discount, mobility aids, such as canes and crutches, white canes, and wheelchairs. The contribution to purchase a motor vehicle is subject to fulfilment of conditions such as commuting to work, to school, or to get social services, which logically excludes a number of persons with disabilities dependent on individual transport.³⁰

According to information from Slovak DPOs already submitted to UN bodies, another problem is the amount of co-payments for more complex aids such as electric or mechanical wheelchairs, often, paid on the basis of public health insurance. In addition to excessive co-payments, the system of payments is also problematic. Wheelchairs in standard configuration are usually reimbursed fully or with a minimal co-payment. The costs of individual adjustments required due to very severe disabilities (electric positioning of backrest, seat tilt, footrest, or special backrests for major spinal deformities, etc.) are not paid from public health insurance and therefore these groups of people do not have access to high-quality aids. Another obstacle in the provision of high-quality aids is arbitrary criteria; its application means that it isn't possible to provide an electric wheelchair with an adjustable bed at the same time. It therefore means that an insured person must choose whether he or she will move comfortably or will rather spend his or her night without assistance of another person.

Act no. 447/2008 further disqualified in the reporting period persons with disabilities who were older than 65 from the financial contribution to purchase a passenger motor³¹ a measure that should have been considered as discriminatory on the prohibited ground of age. However, it should be noted that the cited provision was abolished by the judgment of the Slovak Constitutional Court of 2 April 2020 due to its contradiction to, inter alia, Article 5 (1) and (2), Article 19 (b) and Article 20 (a) and (b) of the UN Convention on the Rights of Persons with Disabilities.³²

Last but not least it should be mentioned that persons with disabilities in small villages face greater obstacles; they have to rely on individual means of transport as the transport services or the financial allowance on transport is usually only available in larger cities or for residents of social care facilities.

³⁰ In this part we acknowledge that these information were prepared especially by colleagues from the Slovak Disability Council and in the past already submitted in NGO coalition to UN treaty bodies.

³¹ Ibid., § 34 (3).

³² Judgment of the Slovak Constitutional Court of 2 April 2020, Pl. ÚS 16/2018-10.

1.6 Failure to ensure the right to independent living for children with disabilities

In the context of the failure of Slovakia to effectively protect persons with disabilities from institutionalisation and to provide them with the possibility to live independently and be included in the community, specific attention should be paid to the situation of children with disabilities. In its General Comment no. 5 (2017) on living independently and being included in the community the UN Committee on the Rights of Persons with Disabilities highlighted the extraordinary danger that institutionalisation poses to children. The UN Committee emphasized in concrete: “Large or small group homes are especially dangerous for children, for whom there is no substitute for the need to grow up with a family. “Family-like” institutions are still institutions and are no substitute for care by a family; (...)”³³

Slovak domestic law prohibits institutionalisation of children under 6 years of age.³⁴ However, this prohibition contains an exception for children with disabilities.³⁵ Children with disabilities can thus be institutionalized regardless their age. Paradoxically, the law does not protect the most vulnerable children, creating the basis for their long-term institutionalization. Thus, Slovakia segregates and discriminates against children with disabilities by placing them into institutions.

In its Concluding Observations on the initial report of Slovakia the UN Committee on the Rights of Persons with Disabilities expressed its deep concern “about the number of children with disabilities living in institutions, especially those with intellectual disabilities” and urged Slovakia “to prevent any new placement of children with disabilities in institutions, and to introduce an action plan with a clear timetable for its implementation and budget allocations to ensure the full deinstitutionalization of children with disabilities from all residential services and their transition from institutions into the community.”³⁶ Similarly the UN Committee on the Rights of the Child in their latest Concluding Observations regarding Slovakia expressly recommended that the Government to amend the domestic law³⁷ to prohibit the institutionalization of children with disabilities under the age of 6 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.³⁸

³³ Committee on the Rights of Persons with Disabilities, [General Comment no. 5 \(2018\): Living independently and being included in the community](#), para. 16 (c), CRPD/C/GC/5.

³⁴ Act no. 305/2005 Coll., on social and legal protection of children and on social guardianship, § 51 (6) in conjunction with § 100j (8).

³⁵ Ibid., § 51 (6) and (7).

³⁶ Committee on the Rights of Persons with Disabilities, [Concluding Observations to the Initial Report of Slovakia](#), 17 May 2016, paras. 23 and 24, CRPD/C/SVK/CO/1.

³⁷ Act no. 305/2005 Coll., on social and legal protection of children and on social guardianship.

³⁸ Committee on the Rights of the Child, [Concluding Observations on the combined third to fifth periodic reports of Slovakia](#), para. 37 (c) and (d), CRC/C/SVK/CO/3-5.

So far, the Government has failed to take any relevant steps. The latest available data show that in 2018 there were 763 children who were assessed as requiring institutional form of alternative care due to their disability (the assessment is the condition for applying the exemption from the legal prohibition of institutionalising children up to 6 years of age).³⁹ This number seems quite constant, since in 2017 there were 755 children younger 6 years of age assessed as requiring institutional care, in 2016 814 and for instance in 2012, i.e. in the year when the legal prohibition of institutionalising children younger than 6 years of age came into force, there were 696 such children.⁴⁰

This ineffective protection of young children with disabilities against institutionalisation is further deepened by insufficient support for families in care for children with disabilities. 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 Slovakia⁴¹.

In recent years, the 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 time⁴². 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 at present. Neither has it been clarified if children whose development is at risk due to their social disadvantages are entitled to early intervention services. 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)⁴³. This practice should be considered as discriminatory both on the grounds of disability and ethnicity.

II. Failure to ensure inclusive education for children with disabilities

Although not explicitly mentioned in the wording of Article 15 of the European Social Charter (Revised), there is no doubt that the cited Article requires State

³⁹ Data by the Ministry of Labour, Social Affairs and Family of the Slovak Republic. Data are available at: <https://www.employment.gov.sk/sk/ministerstvo/vyskum-oblasti-prace-socialnych-veci-institut-socialnej-politiky/v5/>.

⁴⁰ Data by the Ministry of Labour, Social Affairs and Family of the Slovak Republic. Data are available at: <https://www.employment.gov.sk/sk/ministerstvo/vyskum-oblasti-prace-socialnych-veci-institut-socialnej-politiky/v5/>.

⁴¹ https://asociaciavi.sk/wp-content/uploads/2019/02/Spr%C3%A1va_o_stave_v%C4%8Dasnej_intervencie_na_Slovensku_2018.pdf

⁴² https://www.employment.gov.sk/files/slovensky/ministerstvo/analyticke-centrum/2019/material_sprava_o_soc_situacii_obyvateľstva_sr_2018_vlada.pdf

⁴³ <https://dennikn.sk/blog/1402821/diagnoza-mentalneho-postihnutia-ako-nastroj-vylucenia/>

parties to provide children with disabilities with inclusive education.⁴⁴ The right to inclusive education for children with disabilities is guaranteed also by Article 24 of the UN Convention on the Rights of Persons with Disabilities, as well as by Article 23 (3) read together with Articles 28 and 29 of the UN Convention on the Rights of the Child.⁴⁵ However, Slovakia significantly fails in fulfilling this obligation since it remains the country with the highest share of children being educated in special schools in the European Union. 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 one quarter⁴⁶.

In Slovakia, the right to education is guaranteed under Article 24 of the Constitution, Act No. 245/2008 Coll. on Upbringing and Education (the "Education Act"), and in Act No. 596/2003 Coll. on State Administration in Education and School Self-governing bodies. The Education Act considers children with disabilities to be children with "special educational needs". Children with special educational needs encompass children with health disadvantages, disability, sick children, children with developmental disorders, children with behavioural disorders, socially deprived children as well as talented children. No legal document recognises the principle of inclusion in education even though the UN Committee on the Rights of Persons with Disabilities recommended in its Concluding Observations of 2016 to Slovakia to "introduce an enforceable right to inclusive and quality education in the Education Act, including by defining inclusive education in accordance with the Incheon Declaration on education 2030: towards inclusive and equitable quality education and lifelong learning for all of the United Nations Educational, Scientific and Cultural Organization, and Sustainable Development Goal no. 4."⁴⁷ The importance of the issue is emphasized in the Observations by the Committee on Social, Economic and Cultural Rights or the Committee on the Rights of the Child.⁴⁸

The UN Committee on the Rights of Persons with Disabilities emphasizes the need for strictly differentiating between integration and inclusion and reminds that „inclusion involves a process of systemic reform embodying changes and modifications in content, teaching methods, approaches, structures and

⁴⁴ See, inter alia, Decision on admissibility and the merits: Mental Disability Advocacy Center (MDAC) v. Belgium, Complaint no. 109/2014, paras. 61-80.

⁴⁵ The General Comment of the UN Committee on the Rights of the Child no. 1 on Article 29 (1): Aims of Education, CRC/GC/2001/1, and particularly the need for education to be child-centred, child-friendly and empowering, and for the educational processes to be based upon the very principles it enunciates formulated therein (para. 2).

⁴⁶ <https://www.european-agency.org/resources/publications/european-agency-statistics-inclusive-education-2016-dataset-cross-country>

⁴⁷ Committee on the Rights of Persons with Disabilities, [Concluding Observations to the Initial Report of Slovakia](#), 17 May 2016, para. 68 (a), CRPD/C/SVK/CO/1.

⁴⁸ Committee on Economic, Social and Cultural Rights, [Concluding Observations - Slovakia](#), 8 June 2012, para. 26, E/C.12/SVK/CO/2, Committee on Economic, Social and Cultural Rights, *Third period report of the State party*, August 2017, paras. 133-150, 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.

strategies in education to overcome barriers with a vision serving to provide all students of the relevant age range with an equitable and participatory learning experience and the environment that best corresponds to their requirements and preferences."⁴⁹ Nevertheless, the Slovak Republic has not yet undertaken such a reform; nor has it adopted a strategy that would plan to undertake it and to organise the transition from segregated schools into inclusive education. Neither teachers, nor students in the process of their vocational training are prepared systematically for the transformation.

The maximum the Slovak system of education may offer to children with disabilities is integration and not inclusion⁵⁰ while the majority of children with disabilities cannot benefit even from integration and are segregated in special classes or special schools and educated according to reduced curricula. The most recent statistics from September 2019 show that 35 004 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. These statistics also show that 26 038 children with mental disabilities were educated in segregated settings.⁵¹ 21 236 children were integrated into mainstream basic schools according to the statistics, but it should be noted that this number includes also children with dyslexia, dysorthography, dyscalculia and other difficulties in learning while these children represent more than 60 % (13 021) of the total number of "children with disabilities" who are integrated in mainstream schools.⁵² The number of integrated children with disabilities is therefore much lower and in reality may be even lower than the difference between the above mentioned number of integrated children with disabilities and the number of children with difficulties in learning (the difference is 8 215), as most of the integrated children who are identified as children with "intellectual disabilities" are children from Prešov Region (792), Banská Bystrica Region (701), Košice Region (681) and Nitra Region (660), which have the largest populations of Roma people in the

⁴⁹ Committee on the Rights of Persons with Disabilities. [General Comment no. 4 \(2016\) on the right to inclusive education](#), para. 11, CRPD/C/GC/4.

⁵⁰ The Committee on the Rights of Persons with Disabilities defines integration as „the proces of placing persons with disabilities in existing mainstream educational institutions with the understanding that they can adjust to the standardized requirements of such institutions“ and reminds that „integration does not automatically guarantee the transition from segregation to inclusion“. – See Committee on the Rights of Persons with Disabilities. [General Comment no. 4 \(2016\) on the right to inclusive education](#), para. 11. CRPD/C/GC/4. The same position was expressed by the European Committee of Social Rights in its decision on admissibility and the merits: *Mental Disability Advocacy Center (MDAC) v. Belgium*, complaint no. 109/2014 (para. 67)

⁵¹ Out of this number, as much as 26 038 children with disabilities were educated in special state schools and 8 966 children with mental disabilities visited special classes within mainstream basic schools.

⁵² All statistics are available at Institute of Information and Prognosis of Education (*Ústav informácií a prognóz školstva*): https://www.cvtisr.sk/cvti-sr-vedecka-kniznica/informacie-o-skolstve/statistiky/statisticka-rocenka-publikacia/statisticka-rocenka-specialne-skoly.html?page_id=9600

country. These numbers thus indicate that Roma children continue to be treated as children with intellectual disabilities, the latter of which are discriminatorily restricted from accessing inclusive education, and in statistics reported as “integrated” into mainstream schools. In contrast, the Bratislava region, which actually has a comparable population size⁵³, the number of children with mental disability integrated into mainstream schools was as low as 63 (sic!). These statistics also show that the number of children with mental disabilities integrated into mainstream basic schools is critically low. Regarding other groups, children with physical and sensory disabilities encounter problems with physical barriers, insufficient study materials in accessible formats and insufficient training and pedagogical support for teachers and children in mainstream schools.⁵⁴

Although the Education Act allows children with special educational needs to attend mainstream basic schools, it neither recognises any explicit right to inclusive education nor views the integration of children with disabilities as a priority. Moreover, despite the Education Act allowing for integration (not inclusion) of children with disabilities, there are 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”⁵⁵. If the child’s parents disagree with reassigning their child to special school, the child may be still forced to attend special school by a court’s judgment. The Education Act further empowers the school director to establish special classes within mainstream schools for children “who are not supposed to successfully manage the learning content of the relevant grade, in order to compensate the lack in the learning content.”⁵⁶ These provisions should be removed from the legislation.

According to some experts, Slovakia does not have a sufficient legislative and political framework for inclusive education and there are number of problems in practice when attempting to integrate children.⁵⁷ These experts suggest that the integration of children with special educational needs is highly problematic because it is happening in the absence of an allocation of sufficient material, financial and personnel resources. Most striking is the complete lack of physical

⁵³ At the end of 2019 there were these numbers of people permanently living in each region: 669 592 in Bratislava Region, 826 244 people in Prešov Region, 645 276 in Banská Bystrica Region, 801 460 in Košice Region and 674 306 in Nitra Region. The data are available at: http://statdat.statistics.sk/cognosext/cgi-bin/cognos.cgi?b_action=xts.run&m=portal/cc.xts&gohome=.

⁵⁴ For example, barrier-free toilets are often missing in educational facilities, which is one of the first limiting criteria for children with physical disability in their choice of school or field of study.

⁵⁵ Act No. 245/2008 Coll. Education Act, § 29 (10).

⁵⁶ Act No. 245/2008 Coll. Education Act, § 29 (11).

⁵⁷ See especially Zimenová, Z., Havrilová, M. Start the new quality of education. Nové školstvo, 2011. Available in Slovak at:

[http://www.noveskolstvo.sk/upload/pdf/2011_Zimenova-Havrilova Start k novej kvalite vzdelavania.pdf](http://www.noveskolstvo.sk/upload/pdf/2011_Zimenova-Havrilova%20Start%20k%20novej%20kvalite%20vzdelavania.pdf).

accessibility in state schools and inadequate support for teachers.⁵⁸ As of 2014, the Ministry of Education started offering financial support to cover requests for teaching assistants. However, this support depends on the request of the school and therefore on the decision of the particular school to integrate a child with disability. The child is not provided for with the support as recommended by 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 maintainer). Furthermore, the mechanism of assigning pedagogical assistants is not flexible enough; it does not take changes during the school year into consideration.

Significant lack of available pre-school education for children with disabilities is a 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 –schools have many barriers, they do not have school aids needed, there are not enough teachers' assistants and other experts⁵⁹.

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).

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 situation⁶⁰.

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.

The situation is even more critical at secondary schools. The schools where the child with special educational needs is interested to enrol have many barriers. The staff is not trained to meet the individual requirements of integrated students.

⁵⁸ See especially Hapalová, M., Kriglerová, E. One step closer to inclusion, CVEK 2013, p. 36. Available in Slovak at:http://www.noveskolstvo.sk/upload/pdf/O_krok_blizsie_k_inkluzii.pdf.

⁵⁹ <https://dennikn.sk/blog/1439595/cakaju-nas-zapisy-do-skolok-vacsina-deti-so-zdravotnym-znevyhodnenim-sa-opat-nedocka/>

⁶⁰ <https://dennikn.sk/blog/1287696/nemas-asistenta-do-skoly-nepojdes/>

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.

Regarding university education, after long-term negotiations, the Ministry of Education adopted resolution No. 458/2012 on minimal requirements of students with specific needs, which regulates the amount of financial contributions made to universities on the basis of disability-based needs. Although there are several pilot projects to improve the physical access for students with disabilities to universities, physical barriers still pose a serious problem. The continued absence of financial resources to remove barriers at universities and related low level of accessibility are most visible in Bratislava region. Another problem is a lack of access to information systems at universities. One of the reasons for this is that these information systems are not directly covered by resolution No. 55/2014 on standards of information systems in public administration. Another reason is insufficient implementation of Act No. 131/2002 Coll. on Universities, which includes an obligation of universities to secure a generally accessible academic environment⁶¹, as well as the resolution No. 458/2012 on minimal requirements of students with specific needs, which guarantees the right of students with sight disabilities to access information and university information systems in a barrier-free manner.

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⁶¹ Act no. 131/2002 Coll., on Universities, § 100 (1).

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.

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.

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.

The Validity Foundation (formerly the Mental Disability Advocacy Centre, “MDAC”) is an international human rights organisation headquartered in Budapest, Hungary, which uses legal strategies to promote, protect and defend the human rights of adults and children with intellectual and psychosocial disabilities worldwide. Validity holds participatory status at the Council of Europe, and special consultative status at ECOSOC. For more information, please visit www.validity.ngo.