

FORUM

Human Rights



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NGO information to the United Nations Human Rights Committee

For consideration when compiling the List of Issues on the Fourth Periodic Report of the Slovak Republic under the International Covenant on Civil and Political Rights

Submitted by:

Mental Disability Advocacy Centre (MDAC)
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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 Civil and Political Rights (hereinafter "the ICCPR"), with particular focus on the enjoyment of those rights by persons with disabilities. The purpose of the submission is to assist the Human Rights Committee (hereinafter the "Committee") with its consideration of the Slovak Republic's Fourth Periodic Report (hereinafter "the Government Report") in this initial stage of the compilation of the list of issues by the Country Report Task Force.
2. The submission has been written by the Mental Disability Advocacy Centre (MDAC)¹ and Forum for Human Rights (FORUM)² and supported by domestic non-governmental and disability persons' organisations, namely the Slovak Disability Council, Slovak Association of Help to Persons with Intellectual Disabilities and SOCIA - Social Reform Foundation.

II. SPECIFIC COMMENTS

Definition of discrimination - Articles 2 and 26 ICCPR

3. 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. We argue that Slovak law should provide a clear and enforceable right to reasonable accommodation in order to ensure that persons with disabilities enjoy effective equality in Slovak society. Denial of reasonable accommodation should create an individual cause of action. *Secondly*, 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.

¹ The Mental Disability Advocacy Centre (MDAC) 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. MDAC has participatory status at the Council of Europe, and observer status at ECOSOC. For more information, please visit www.mdac.org.

² FORUM is an international human rights organisation working in the Central European region. It provides support 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 authored and co-authored a number of reports and informations with UN and Council of Europe bodies on the situation in the Central European region, especially Slovakia and the Czech Republic.

Proposed questions for adoption in the List of Issues

Please provide information about 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.

Institutionalisation of persons with mental disabilities - Article 7 ICCPR

4. In the Slovak Republic, social care services for persons with disabilities are predominantly provided in institutional settings and community services are rare. In December 2013, there were 300 institutions for elderly people with 12,237 persons in their care; 381 social care homes housing 18,196 adults with disabilities; and 70 specialised institutions with 1,886 adult residents. With regard to children, there were 44 social care homes with 1,205 children. In total, there were 33,524 persons living in institutions, which is 0.62% of the whole population of Slovakia. Institutionalisation also affects children living in foster care group homes. In December 2013, there were 66 children's homes with 4,379 children, out of which 478 were children with disabilities.
5. Many persons with disabilities face lifelong isolation in the Slovak Republic, including permanent institutionalisation and deprivation of legal capacity. They are often forced to live in large artificial and segregated institutions, e.g. castles or monasteries, which resemble warehouses for human beings. It has been argued that large-scale institutionalisation and warehousing of human beings raises very serious issues under Article 7 ICCPR.³ Also the UN Committee on the Rights of Persons with Disabilities has addressed the issue of institutionalisation under Article 15 of the Convention on the Rights of Persons with Disabilities, which prohibits ill-treatment.⁴
6. The Slovak Republic formally committed itself to deinstitutionalisation and transformation of services for persons with disabilities in its *Strategy on Deinstitutionalisation*⁵ and *National Action Plan on Transformation of Residential Social Services*.⁶ This was followed in December 2014 with further statements in *National priorities of development of social services in 2015 - 2020*. Although these are positive steps, practical realisation has faced several difficulties. *First*, the

³ Degener, T., Quinn, G. Human rights and disability. The current use and future potential of United Nations human rights instruments in the context of disability. OHCHR, 2002, p. 55. Document is available online at: <http://www.ohchr.org/documents/publications/hrdisabilityen.pdf>.

⁴ See, Concluding observations on the initial report of Paraguay CRPD/C/PRY/CO/1 15 May 2013, para 38;

Concluding observations on the initial report of Azerbaijan CRPD/C/AZE/CO/1 11 May 2014, para 28-29.

⁵ Available in Slovak online at: <http://www.employment.gov.sk/strategia-deinstitucionalizacie-systemu-socialnych-sluzieb-a-nahradnej-starostlivosti-v-sr.html>.

⁶ Available in English online at:

<http://www.employment.gov.sk/narodny-akcny-plan-deinstitucionalizacie.html>.

national project on transformation and deinstitutionalisation concerns only 10 pilot institutions out of almost 800.⁷ *Second*, there are no strategies at the level of local municipalities which would recognise deinstitutionalisation as a systemic aim and there has been no public campaign explaining and supporting deinstitutionalisation. *Third*, even the limited scope of the transformation process to date has seen significant delays. Moreover, there are also concerns about the overall sustainability of the process because the above mentioned *Action on Transformation of Residential Social Services* will cease to exist at the end of 2015 and the Government has failed, to date, to take appropriate steps to either prolong it or amend it.

Proposed questions for adoption in the List of Issues

Please provide information on how the Government plans to continue and expand the deinstitutionalisation process for persons with disabilities.

Please provide information on whether the Government is planning to introduce a campaign explaining deinstitutionalisation of residential social care and the human rights of persons with disabilities.

Please provide information on the availability and accessibility of community-based social services for persons with disabilities. In addition, please provide information on actual and planned reallocation of resources for the transformation of large residential institutions towards the development of community-based services, and how the Government is planning to ensure that any allocated resources will be used on transformation and deinstitutionalisation.

Deprivation and restriction of legal capacity - Article 16 ICCPR

7. The legal capacity of persons with mental disabilities is regulated in Act No. 40/1964 Coll. the Civil Code, and Act No. 99/1963 Coll. the Civil Procedure Code. Section 10 of the Civil Code enables the court to deprive or restrict an individual's legal capacity on the basis of his or her mental disability. Slovak law operates solely within the framework of substitute decision-making, and there are no provisions based on the concept of supported decision-making.
8. A person deprived of legal capacity cannot validly exercise any legal act and is automatically stripped of various fundamental rights and freedoms, such as the right to enter into marriage, and 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.

⁷ Moreover, these institutions had practical difficulties due to complicated regulations on public procurement.

9. In June 2015, the Parliament adopted a new law on non-contentious civil proceedings that should enter into force in July 2016. The law introduces, *inter alia*, new procedural rules regulating legal capacity proceedings. Notably, the court will no longer be able to *deprive* individuals of legal capacity and will be limited instead to *restriction* of legal capacity. Though this is a positive development, it is regrettable that these changes in procedural law were not accompanied by corresponding changes in the Civil Code. Even though the new Civil Code has been in the drafting stages for years, the regime of deprivation of legal capacity remains intact, and no alternatives to current modes of substitute decision making have been enacted. In our opinion, such a situation conflicts with obligations of the state party under Article 16 ICCPR.

Proposed question for adoption in the List of Issues

Please provide information whether and when the Government plans to abolish plenary and partial guardianship and replace these with supported-decision making alternatives.

The right to family life and the right to marry - Article 17 and 23 ICCPR

10. The right to family life and especially the right to marry is universally recognised and enshrined in a number of international human rights treaties, including the ICCPR. The Slovak Republic however denies this right to persons with mental disabilities who are placed under guardianship. Under Section 12 paragraph 1 of the Family Act No. 36/2005 Coll. persons deprived of legal capacity automatically lose their right to marry. Moreover, those whose legal capacity has been restricted can enter into marriage under Section 12 paragraph 2 of the Family Act only with the approval of the guardianship court. Furthermore, under Section 12 paragraph 3 of the Family Act, a person with a mental disability who is *at risk* of having their legal capacity restricted cannot marry. This provision is highly problematic and raises serious concern regarding its conformity with human rights standards, including Articles 17 and 23 ICCPR, in conjunction with Article 2 ICCPR.

Proposed question for adoption in the List of Issues

Please provide information about the application of Section 12 of the Family Act and the extent to which this affects persons with mental disabilities exercising their right to marry. In addition, please inform the Committee about any intentions to repeal these provisions.

The right to vote and to be elected - Article 25 ICCPR

The right to vote and to stand for elections is governed by Act no. 180/2014 Coll. on the Conditions of the Right to Vote. Section 4 letter c) states that deprivation of legal capacity is a lawful impediment to the right to vote. This means that any person deprived of legal capacity cannot vote. The same logic applies as well to the right to stand for elections. Section 6 letter c) states that deprivation of legal capacity is also a lawful impediment to the right to stand for elections. Moreover, such impediments to the right to vote and stand

for elections are unreasonable and should be obsolete in modern democracies.⁸ This approach leads to the disenfranchisement of a vulnerable section of Slovak society, reinforces their political invisibility and social marginalisation and violates contemporary international human rights law. As such, these provisions are not in conformity with Article 25(b) ICCPR which provides for the right to vote and stand for elections for every citizen without any distinction or unreasonable restriction.

Proposed question for adoption in the List of Issues

Please provide information on the steps the Government is planning to take to ensure that all citizens, including those with mental disabilities who are currently under guardianship, can vote and stand for elections without any distinction based on their disability and without unreasonable restrictions.

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⁸ FRA, The right to political participation of persons with mental health problems and persons with intellectual disabilities. November 2010. The report is available online at: <http://fra.europa.eu/en/publication/2010/right-political-participation-persons-mental-health-problems-and-persons>.