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EUROPEAN SOCIAL CHARTER

Comments by the Forum for Human Rights, Validity Foundation, Social Work Advisory Board, SOCIA

on the 11th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF SLOVAK REPUBLIC

for the period 01/01/2016 – 31/12/2019

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on 01 July 2021

CYCLE 2021

EUROPEAN SOCIAL CHARTER (revised)

NGOs' comments on the 11th national report on the implementation of the European Social Charter revised (ESC) submitted by the Government of the Slovak Republic (reference period 2016 – 2019)

The reporting procedure to the European Committee of Social Rights (ECSR) relating to the provisions belonging to thematic group 2 on health, social security and social protection

CYCLE 2020

Submitted by:

Forum for Human Rights (FORUM)

Validity Foundation – Mental Disability Advocacy Centre

Social Work Advisory Board (RPSP)

SOCIA – Social Reform Foundation (SOCIA)

30 June 2021

INTRODUCTION

1. The submission provides comments on the 11th national report of the Slovak Republic under the reporting procedure to the European Committee of Social Rights ("ECSR") relating to the provisions belonging to thematic group 2 on health, social security, and social protection. This submission will focus on the following provisions of the European Social Charter revised ("ESC revised"): Article 11 of the ESC revised (the right to protection of health), Article 13 of the ESC revised (the right to social and medical assistance), Article 14 of the ESC revised (the right to benefit from social welfare services) and Article 23 of the ESC revised (the right of elderly persons to social protection).

2. The submission has been written by Forum for Human Rights (FORUM), Validity Foundation, Social Work Advisory Board and is supported by SOCIA – Social Reform Foundation (SOCIA).

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

4. Validity Foundation – Mental Disability Advocacy Centre is an international non-governmental organisation that uses legal strategies to promote, protect and defend the human rights of people with mental disabilities worldwide. Validity's vision is a world of equality where emotional, mental, and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form. Validity has participatory status at the Council of Europe, and special consultative status at ECOSOC. For more information, please visit www.validity.ngo.

5. 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 in the 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.

6. 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.

SPECIFIC COMMENTS

I. INDEPENDENT LIVING A CRUCIAL ISSUE OF HEALTH, SOCIAL SECURITY, AND SOCIAL PROTECTION

(a) Failure to deinstitutionalise social services

7. Thematic group 2 on health, social security, and social protection provides an important opportunity to assess the nexus between independent living, the process of deinstitutionalisation of persons with disabilities, and the rights to independent living and inclusion in the community of persons with disabilities as enshrined by Article 19 of the UN Convention on the Rights of Persons with Disabilities (*hereinafter* "the CRPD"). The right to independent living was connected with the right to health as far back as 2005 by the then-UN Special Rapporteur on the right to health, Paul Hunt, in his report on mental disability and the right to health where he emphasised that the right to community integration can be understood as being derived from the right to health, and that this had general application to all persons with mental disabilities."[1] The complex nature of the right to health has also been underlined by the UN Committee on Economic, Social, and Cultural Rights which has stated that the right to health also includes the right to social determinants of health.[2] Structural dimensions of the right to health have also most recently been highlighted by the previous UN Special Rapporteur on the right to health, Dainius Pūras, in his report of 2020 entitled 'Mental Health and Human Rights: Setting a Rights-based Global Agenda'. In that report, the UN Special Rapporteur listed social inclusion among as among the key components in pursuing a right-based approach in the field of mental health and explained that exclusion is premised on discriminatory structural factors, including, *inter alia,* cultures of institutional and

[1] E/CN.4/2005/51, para. 85.
[2] E/C.12/2000/4, para. 4.

segregated care of persons with intellectual, cognitive or psychosocial disabilities.[3]

8. Unfortunately, as we have already highlighted in our earlier report to the ECSR of June 2020, Slovakia still relies extensively on institutional care for persons with disabilities, across different age groups, and the situation hasn't changed much since the submission of the report. Table no. 1 shows the extent of institutionalisation of persons with disabilities in Slovakia. In December 2019, the four major types of residential facilities for persons with disabilities had more than 40,000 beds and accommodated more than 40,000 people. This capacity represented in 2019 approximately 85,9 % of the total capacity of social services facilities for persons dependent on the support of other persons[4] and the number of clients exceeds approximately 2,5 times the number of clients who are provided nursing service in their natural environment.[5]

Table no. 1: The number of institutions for persons with disabilities, their capacity, and the number of the placed persons in 2018 and 2019

	2018			**2019**		
	Number of facilities	**Number of beds[6]**	**Number of placed persons[7]**	**Number of facilities**	**Number of beds[8]**	**Number of placed persons[9]**
Homes of social services[10]	288	11 348	12 144	276	10 624	11 767
Facilities for Seniors[11]	386	19 019	18 741	388	19 401	18 851
Specialised facilities[12]	166	7 328	7 348	174	7 830	7 967

[3] A/HRC/44/48, para. 59.
[4] See the National Strategy to Deinstitutionalise the System of Social Services and Alternative Care, 2021, p. 17-18. The National Strategy is available in Slovak at: https://www.employment.gov.sk/files/slovensky/rodina-socialna-pomoc/socialne-sluzby/narodna-strategia-deinstitucionalizacie-systemu-socialnych-sluzieb-nahradnej-starostlivosti-2021.pdf.
[5] 16 124 in December 2019. See Report on the Social Situation of the Population of the Slovak Republic for 2019, Annex to the Chapter III. Available in Slovak at: https://www.employment.gov.sk/sk/ministerstvo/vyskum-oblasti-prace-socialnych-veci-institut-socialnej-politiky/spravy-socialnej-situacii-obyvatelstva/rok-2019.html
[6] Continuing stays during the whole week, including weekends, plus stays when the person goes to her natural environment for the weekend and then returns back.
[7] The number may include also those persons who use the service only in its ambulatory form.
[8] Continuing stays during the whole week, including weekends, plus stays when the person goes to her natural environment for the weekend and then returns back.
[9] The number may include also those persons who use the service only in its ambulatory form.
[10] Facilities for persons with disabilities up to the older age. Nevertheless, if the person is client of the facility before she gets old, she may stay even in her old age.
[11] Facilities for older persons who are dependent on the support by other persons.
[12] Facilities for persons with mental disabilities with high need of support – older persons with dementia, Alzheimer disease, Parkinson disease, schisophrenia, etc.

Nursing service facilities[13]	107	2 489	2 308	102	2 475	2 311
In total	**947**	**40 184**	**40 541**	**940**	**40 330**	**40 896**

Source: *The Ministry of Labour, Social Affairs and Family*

9. Although the Slovak Government committed itself to deinstitutionalisation already in 2011, the process is "slow and partial".[14] Furthermore, the National Strategy on Deinstitutionalisation was renewed in 2021[15] and Action Plan is currently being prepared. But implementation is very slow and there is strong opposition from most municipalities and regional governments in Slovakia. Since August 2018, the Government has been implementing a national project entitled "Deinstitutionalisation of social services facilities – Support for transformation teams" which follows up on a previous national project. This project aims to prepare, create, and provide systematic support to transformation teams whose task are to create transformation plans for facilities from the provision of institutional care to community-based support. However, according to the report, only 60 facilities[16] have been involved in the project so far.

10. Furthermore, table no. 1 shows that despite deinstitutionalisation efforts, the total number of institutional facilities, their capacity, and their clients is in fact growing. The reason is that national deinstitutionalisation processes do not include all affected segments of the population. In particular they exclude older persons who require the support of other persons, many of whom are institutionalised in facilities for seniors and other specialised facilities. These are the types of institutions that are growing in number and overall capacity. Table no. 2 shows that older persons represented in December 2019 74,44% of the total number of clients of these facilities. Tables no. 1 and 2 also show that the only facilities which are slightly decreasing in their number, number of their beds and clients, are facilities for younger persons with disabilities – homes of social services with only 28,89% of persons in older age among their clients in December 2019. On the contrary, the facilities where older persons represent majority of clients – specialised facilities (76,99%), and facilities for seniors (99,62%) keep on growing in numbers, capacities, and placed persons. Only nursing service facilities (92,17%) experienced slight decrease between 2018 and 2019.

[13] Facilities for persons with disabilities who are dependent on the support by other persons who cannot be provided nursing care in their natural environment.
[14] 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.
[15] The Strategy is available in Slovak at: https://www.employment.gov.sk/files/slovensky/rodina-socialna-pomoc/socialne-sluzby/narodna-strategia-deinstitucionalizacie-systemu-socialnych-sluzieb-nahradnej-starostlivosti-2021.pdf.
[16] The latest data by the Ministry of Labour, Social Affairs and Family.

Table no. 2: The number of older persons in institutional facilities in 2019

	The total number of placed persons	Those in older age	Percentage of older persons among the placed persons
Homes of social services	11 767	3 400	28,89%
Facilities for seniors	18 851	18 779	99,62%
Specialised facilities	7 967	6 134	76,99%
Nursing service facilities	2 311	2 130	92,17%
In total	**40 896**	**30 443**	**74,44%**

Source: *Ministry of Labour, Social Affairs and Family*

11. Also the approach to budgeting for social services undermines a genuine process of deinstitutionalisation since the allocations for institutions remains disproportionately high compared to budgetary allocations for alternative, community-based services. One example is nursing care – a type of social service that is delivered within the person's natural environment. The Report on the Social Situation of the Population of the Slovak Republic for 2019 states that the Ministry of Labour and Social Affairs, following completion of a project financed from the national budget focused on nursing care, then switched to providing funding for this service from European Structural Funds. From the European Structural Funds, The Slovak Government plans to allocate 58 million EUR to support at least 2,700 jobs for nurses and 5 million EUR to support the development of outreach nursing service in small municipalities with less than 1,000 inhabitants.[17] Unfortunately, the development of alternatives to institutionalisation is not financed primarily by the national budget but instead by European investments, and moreover the total amount allocated for outreach nursing care represents only approximately 13.8% of the total investment made into institutional settings in 2018. In addition, budgetary allocations for institutions continue growing: just between the years 2018 and 2019, public investments into institutions grew by approximately 59,6 million EUR, i. e. practically the amount planned to be allocated from the European Social Funds to the development of outreach nursing care. For more information on incomes and expenses of institutions see table no. 3.

[17] Report on the Social Situation of the Population of the Slovak Republic for 2019, p. 111. Available in Slovak at: https://www.employment.gov.sk/sk/ministerstvo/vyskum-oblasti-prace-socialnych-veci-institut-socialnej-politiky/spravy-socialnej-situacii-obyvatelstva/rok-2019.html.

Table no. 3: Incomes and expenses of institutional settings in 2018 and 2019

	2018		2019	
	Incomes (EUR)	**Expenses (EUR)**	**Incomes (EUR)**	**Expenses (EUR)**
Homes of social services	151 888 987	151 634 907	158 102 105	158 118 587
Facilities for seniors	191 896 392	192 978 921	217 471 814	219 584 725
Specialised facilities	89 204 816	88 631 095	112 061 752	112 443 492
Nursing service facilities	23 721 416	24 030 654	26 314 704	26 765 731
In total	**456 711 611**	**457 275 577**	**513 950 375**	**516 912 535**

Source: *The Ministry of Labour, Social Affairs and Family*

12. Slovak legislation still fails to enact measures that would ensure reorientation of the system of social care from institutional care to community-based support, especially supporting the creation of personal assistance as "a tool for independent living",[18] alongside other community-based services. Slovak legislation still enables the establishment and extension of existing institutional infrastructure and there is no moratorium on new admissions, which prevents any systemic change from taking place.[19] The legislative framework of planning the development of the net of social services and their capacities is neutral as to obligations deriving from the right of persons with disabilities to 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 provide an adequate structure to regulate the redistribution of financial (and other) resources allocated by the state for social services for persons with disabilities.

13. 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 inclusion in the community, and is fundamentally built on an outdated medical model of disability.[20] A contract upon which a person is provided

[18] 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.

[19] 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."

[20] 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

with social services may be concluded only under the condition that the person has an official recommendation for that type of service (unless the person is willing to pay for the social service a price that reaches at least the economic costs of its provision[21]). A recommendation is issued in this process comprised of a medical assessment[22] and a social assessment[23], however, even the social assessment focuses predominantly on functional impairments of the person and not as much on his/her needs to have the practical and effective possibility to live independently. We may therefore conclude that even the social assessment element is built on disabling and medicalised notions of disability.

14. 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, the free choice of the person with a disability is formal, rather than substantive. Given that the availability of community-based services is not guaranteed under Slovak law or policy, there is a substantial lack of services that would be able to support persons with disabilities in their natural environment and prevent them from being institutionalised.

15. In addition, the system of assessment for different types of social services is highly complex and inaccessible. If a person chooses to use a variety of types of social services, he/she needs a recommendation for every type of social service, whereas the bodies competent to issue such recommendations differ as a consequence of the fragmentation of the system of social services in the country. This puts a huge burden on the person applying for social services and impedes access to social services. Furthermore, maintainers of social services are actively involved in the formulation of such recommendations and may therefore bias the whole process in order to manage the capacity of social services according to their, mainly budgetary, needs.

16. We would like to highlight that the system of social services as it currently operates is discriminatory against persons with disabilities, both because it enables institutionalisation of persons with disabilities and in its overwhelming reliance on institutions, and also due to the economic burdens placed on persons with disabilities who are forced to bear the costs of support services they may require. This happens because the cost for provision of social

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disability, persons with disabilities are not recognized as rights holders but are instead „reduced" to their impairments. Under these models, discriminatory or differential treatment 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 earlist 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.

[21] Ibid., § 51a.

[22] Ibid., § 49.

[23] Ibid., § 50.

services is set taking into account property owned by the person seeking support.[24] The greater the value of property a person has, the higher the cost of support services are rated (while the law stipulates a maximum price). We find this practice of funding discriminatory since it systematically results in persons with disabilities having to bear the costs of disability, contravening the social model of disability under which disability cannot be merely understood as an individual condition or impairment, but as a result of the interaction between impairment and social barriers.[25]

Recommendation:

Slovakia must implement consistently its new deinstitutionalisation strategy with its main goal to create and ensure conditions for independent and free life of all persons who are dependent on the support of others in their natural social environment of their community with the support of that community, experts, family members, volunteers.[26] To this end, the Slovak government should adopt all the necessary legislative, administrative, economic, and other measures in a reasonable timeframe. Throughout the whole process, Slovakia must pay due attention to not create new institutions, although smaller or better equipped. The General Comment no. 5 of the CRPD Community should serve the government as a primary guideline in the whole deinstitutionalisation process.

(b) Failure to deinstitutionalise care for young children with disabilities

17. Slovak legislation systemically discriminates against young children with disabilities. Even though it enshrines a minimum age of 6 under which a child cannot be placed in institutional care, this age limit does not apply universally. The legislation directly excludes children whose relationships with the siblings require so, as well as children:
    a. whose health condition is deemed to require placement in a "specialised separate unit" where the care is said not to be able to be ensured in the family environment of a professional foster family;
    b. who have been imposed an "educational order" or "interim order" by the court and where it is deemed that placement in professional foster care is not appropriate to the educational purpose of the order.[27]

[24] Act no. 448/2008 Coll., on Social Services, § 72 et seq.
[25] In its General Comment no. 5 the CRPD Committee has emphasised, relying on Article 28 of the CRPD, that „it is considered contrary to the Convention for persons with disabilities to pay for disability-related expenses by themselves." - CRPD/C/GC/5, para. 92.
[26] See the National Strategy to Deinstitutionalise the System of Social Services and Alternative Care, 2021, p. 28. The National Strategy is available in Slovak at: https://www.employment.gov.sk/files/slovensky/rodina-socialna-pomoc/socialne-sluzby/narodna-strategia-deinstitucionalizacie-systemu-socialnych-sluzieb-nahradnej-starostlivosti-2021.pdf.
[27] Act no. 305/2005 Coll., on Social and Legal Protection of Children and Social Curatorship, § 51 (6) and (7).

18. In its Concluding Observations on the initial periodic report of Slovakia under the CRPD, 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."[28] Similarly, the UN Committee on the Rights of the Child in their most recent Concluding Observations regarding Slovakia expressly recommended that the Government amend domestic law[29] to prohibit the institutionalisation of children with disabilities under the age of 6 and to prioritise family and community care, and to fully commit to the implementation of the "deinstitutionalisation policy" to ensure that children with disabilities no longer live in segregated institutional settings.[30]

19. So far, the Government has failed to take any relevant steps. The latest available data show that in 2018, 763 children were assessed as requiring an institutional form of alternative care due to their disability (the assessment is the condition for applying for the exemption from the legal prohibition of institutionalising children up to 6 years of age).[31] This number has been almost constant since 2017 when there were 755 children younger than 6 years of age assessed as requiring institutional care, in 2016 814, and for instance as far back as in 2012, i.e. the year in which the legal prohibition of institutionalising children younger than 6 years of age came into force, when there were 696 such children.[32]

20. The 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, experts estimate that the rate of children with disabilities and children whose development is at risk is 3.5%. Thus, we believe that there

[28] 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.
[29] Act no. 305/2005 Coll., on social and legal protection of children and on social guardianship.
[30] 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.
[31] 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/.
[32] 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/.

live approximately 14,000 children with disabilities under 7 years of age in Slovakia[33].

21. The new National Strategy to Deinstitutionalise the System of Social Services and Alternative Care, adopted in 2021, includes among its mid-term goals to increase the quality of care for children with disabilities and improve the conditions for their integration and inclusion as well as the support for families with children or parents with disabilities. The goal formally declares its interconnection with other goals improving the network of services for children and families and declares the necessity to improve the conditions for placing children with disabilities in alternative family care. Nevertheless, its measurable outputs only address the improvement of conditions of residential alternative care centres and the specialisation of these centres. The National Strategy fails to address to existing exception from the prohibition of institutionalise young children applicable to children with disabilities and does not contain sufficient measures that would systematically and urgently eliminate this harmful form of care.[34]

Recommendation:

Slovakia must pay due attention to the harmfulness of any residential care for children, including children with disabilities, and fully respect the right of children with disabilities to suitable alternative care that may be ensured only in a family – primarily in the child's natural family and if not possible in alternative family care. To this end, Slovakia must urgently amend its legislation containing the exception from the prohibition of institutionalisation of young children for children with disabilities and adopt also other necessary legislative, administrative, economic, and other measures that would ensure that children with disabilities have the practical and effective opportunity to grow up in families.

(c) Failure to deinstitutionalise psychiatric care

22. Persons with intellectual and psychosocial disabilities may also be institutionalised in psychiatric institutions. Slovakia is among those countries with quite a high rate of hospitalisation in psychiatric facilities – in 2019 there were 44,070 persons hospitalised due to "mental and behaviour disorders", representing 80.8 persons per 10,000 inhabitants. The most common reason for hospitalisation was substance abuse (25.6%), followed by schizophrenia (18.8%), organic disorders, including symptomatic, mental disorders (15%), and affective disorders (13.8%). The number of hospitalised persons has slightly increased over the years – the overall population of persons institutionalised in psychiatric facilities was in fact 12.9% higher in 2019 than

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

[34] The UN CRPD Committee has emphasised in its General Comment no. 5 that „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." – CRPD/C/GC/5, para. 16 (c).

it was back in 2004. The highest increase affects adolescents between 15 – 19 years of age,[35] for whom the most common reasons given for hospitalisation are: 1) "behaviour syndromes associated with psychological disturbances and physical factors" (326 out of the total number of 1,947 hospitalised persons between 15 and 19); 2) "behavioural and emotional disorders with onset usually occurring in childhood and adolescence" (324 hospitalised persons between 15 and 19 years of age); "mental and behavioural disorders due to psychoactive substance use" (298 hospitalised persons between 15 and 19 years of age) and intellectual disability – labelled as "mental retardation" according to ICD 10 (290 hospitalised persons between 15 and 19 years of age).[36]

23. Despite this dismal situation, Slovakia currently does not have in the field of psychiatry any transformation strategy. The new government named in Spring 2020 included in its programme that it would focus on reforming the system of mental health care and that it would promote the development of community-based mental health services.[37] On 24th February 2021, the Government established a Governmental Council for Mental Health, but fail to give it concrete, targeted, time-bound tasks to pursue the transformation of psychiatric care. The whole process is still at a very early stage of development, without any concrete aims or outputs.[38]

Recommendation:

Slovakia must accelerate its efforts in the field of transformation and deinstitutionalisation of psychiatric care and to this end adopt and coherently implement a comprehensive and effective strategy and action plan, containing concrete, targeted and time-framed steps.

II. PSYCHIATRIC CARE AND THE PROHIBITION OF ILL-TREATMENT

24. The lack of alternatives to institutional care in the field of mental health and psychiatry creates an environment where persons with intellectual and psychosocial disabilities easily become victims of ill-treatment, including structural ill-treatment. The use of restraints in psychiatry, including netted cage-beds, is an example of such structural ill-treatment. It is not regulated

[35] Data by The National Centre for Health Information [Národné centrum zdravotnických informácií] – Psychiatric Care in the Slovak Republic in 2019. Available in Slovak at: http://data.nczisk.sk/statisticke_vystupy/Psychiatricka_starostlivost/Psychiatricka_starostlivost_v_SR_2019_Sprava_k_publikovanym_vystupom.pdf.

[36] Ibid., table no. T5: Hospitalised patients between 15 and 19 according to diagnosis, 2008 – 2019. Available to download in Slovak at: http://www.nczisk.sk/Statisticke_vystupy/Tematicke_statisticke_vystupy/Psychiatricka_starostlivost/Pages/default.aspx.

[37] The Programme Declaration may be downloaded in Slovak from: https://denikn.cz/343974/program-slovenske-matovicovy-vlady-proti-korupci-kontrola-politiku-detektory-lzi-i-odmeny-za-volby/.

[38] See the Government's resolution no. 112 of 24 February 2021, that contains only the tasks associeted with the establishment of the Government's Council for Mental Health and its organs. The resolution is available in Slovak at: https://rokovania.gov.sk/RVL/Resolution/19080/1.

directly by the Health Care Act[39], but only by a methodological ordinance of the Ministry of Health no. 13787/2009 – OZS adopted on 27/5/2009 on the Use of Restraint Means Against Patients in Health Care Settings Providing Psychiatric Care. The ordinance enables the use of the following restraints:

a. placement in a netted cage-bed;
b. placement in solitary confinement;
c. strapping to the bed;
d. using bed restraints;
e. using physical force [according to the national legislation "body superiority"].[40]

25. According to the ordinance, the abovementioned restraints may be used against persons in case of:

f. psychosis;
g. organic disorders;
h. serious behaviour disorders associated with aggressiveness against oneself or his/her environment;
i. continuing suicidal attempts;
j. acute therapeutic interventions;
k. inevitable examining steps;
l. etc. [sic!].[41]

To use the restraint, the ordinance requires that the person "threatens himself/herself or his/her environment with his/her behaviour". It also provides for the *ultima ratio* principle, i.e. that the restraints may be used only exceptionally, as a measure of last resort when there are no milder alternatives and only for as long as necessary.[42] Nevertheless, any concrete safeguards are absent.

26. The UN Committee on the Rights of Persons with Disabilities condemns the use of restraints as a form of ill-treatment and calls upon States "to protect the security and personal integrity of persons with disabilities who are deprived of their liberty, including by eliminating the use of forced treatment, seclusion and various methods of restraint in medical facilities, including physical, chemical and mechanical restraints."[43] The former UN Special Rapporteur on the right to health, Dainius Pūras, stated that "the use of physical and chemical restraints, forced medical treatment and solitary confinement" amounts to a form of violence[44], and warned against approaches "focused on controlling the individual with "medical necessity", commonly invoked as grounds to justify such control"[45] and calls

[39] Act no. 576/2004 Coll., on Health Care and Services Associated with the Provision of Health Care.
[40] The cited ordinance, Article III.
[41] Ibid., Article III.
[42] Ibid., Article II.
[43] A/72/55, paras. 12 and 38.
[44] A/HRC/38/36, para. 32.
[45] A/HRC/48/44, para. 32.

for a more structural, rights-based approach to the provision of mental health care.[46]

27. Unfortunately, Slovakia fails to systematically implement efforts to eliminate the use of restraints in psychiatry. According to data collected by FORUM in 2018, there were at least 156 netted cage-beds in use across Slovakia.

Recommendation:

Slovakia must urgently adopt all the necessary legislative, administrative, economic, educational, and other measures to eliminate the use of restraints in psychiatry as a form of ill-treatment of persons with mental disabilities.

III. LEGAL CAPACITY

28. For persons with disabilities, the issues of health and social protection are also closely connected with the exercise of their legal capacity and this is guaranteed, *inter alia,* by Article 12 of the CRPD. The UN CRPD Committee has stated that "the right to equal recognition before the law implies that legal capacity is a universal attribute inherent in all persons by virtue of their humanity and must be upheld for persons with disabilities on an equal basis with others".[47] It thus excludes the application of any substitute decision-making regime, be it guardianship, conservatorship, or mental health laws permitting forced treatment of persons with disabilities.[48]

29. The right to exercise legal capacity is particularly important in the context of health care and reproductive health, since it is directly connected with freedoms deriving from the right to health, including „the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation."[49] In its General Comment no. 1 the CRPD Committee has clearly identified substitute decision-making in provision of health care as violation of Article 25 of the CRPD, guaranteeing the right to the highest attainable standard of health and has emphasised that when providing medical care „all health and medical personnel should ensure appropriate consultation that directly engages the person with disabilities."[50]

30. Equal recognition of the full legal capacity of persons with disabilities must be not only formal but also practical and effective[51]. States thus must implement an effective system of support for persons with disabilities when exercising their legal capacity that is not be based on restrictions but that

[46] Ibid., paras. 50-69.
[47] CRPD/C/GC/1, para. 8.
[48] CRPD/C/GC/1, para. 7.
[49] E/C.12/2000/4, para. 8.
[50] CRPD/C/GC/1, para. 41.
[51] See para. 3 of Article 12 of the UN Convention on the Rights of Persons with Disabilities.

"must respect the rights, will, and preferences of persons with disabilities and should never amount to substitute decision-making".[52]

31. Unfortunately, in Slovakia, support for persons with disabilities to exercise their legal capacity, including in the field of health care, does not exist. National legislation dating back to 1964 still only provides for one response to a person's need for support in exercising her legal capacity, and that is the restriction of her legal capacity.[53] The only amendment to national legislation following the ratification of the UN Convention on the Rights of Persons with Disabilities in 2010 was the abolishment of the measure of total deprivation of legal capacity. The Ministry of Justice has been working for a long time on a proposal for the reform of the guardianship system in Slovakia. According to the Plan of Legislative Works for 2020, it should have submitted a legislative proposal for the reform in 2020.[54] Unfortunately, this task has not been met. The Commissioner for the Rights of Persons with Disabilities states on her Office's website that she was assured by the Ministry of Justice that the task remains active and by the end of 2021 the Ministry should have submitted the proposal to the Government, following which it will start working on an amendment to the Civil Code.[55] Although these efforts of the Slovak government are welcome, they remain too slow and their result uncertain.

Recommendation:

Slovakia must systematically pursue its intent to reform the system of guardianship to replace the system of substitute decision-making by supported decision-making alternatives. Particular attention must be paid to the field of health care and reproductive health to ensure that persons with mental disabilities have the right not to be subjected to non-consensual medical treatment on an equal basis with others.

IV. SOCIAL PROTECTION OF PERSONS WITH DISABILITIES AS VICTIMS OF CRIME

32. The last topic we would like to cover is the specific situation of persons with disabilities who become victims of crime and their access to psychosocial and legal support and protection. The right to health contains not only freedoms but also entitlements including "the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health".[56] Regarding the complex definition of health[57], the right to health will be practically always affected because of a crime, especially in cases of violent crimes, including domestic violence,

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[52] CRPD/C/GC/1, para. 17.
[53] See Act no. 40/1964 Coll., Civil Code, § 10.
[54] The Plan is available in Slovak at: https://www.vlada.gov.sk/data/files/7961_plan-legislativnych-uloh-vlady-sr-na-rok-2020.pdf (point 25.).
[55] See https://www.komisarprezdravotnepostihnutych.sk/Aktuality/Spravy/Prerokovanie-zasadnych-pripomienok-komisarky-k-leg.
[56] E/C.12/2000/4, para. 8.
[57] „A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." – Preamble of the Constitution of WHO.

abuse, and exploitation. To ensure equality of opportunity for victims of crime to enjoy the highest attainable standard of health, the State must create a net of supportive services that will be able to provide the victim with the necessary assistance with her recovery and social rehabilitation, including psychosocial support. These principles have been already stated in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[58] and are also part of the EU law[59].

33. The fundamental legislative framework for victims' rights in EU Member States is directive 2012/29/EU. Slovakia implemented this directive quite late through adoption of the Victims Act in 2017[60], which came into force on 1 January 2018. Although the adoption of the Act was a step forward in the protection of the rights of victims of crime, it fails to guarantee access to the necessary psychosocial and legal support for all groups of victims. Victims with mental disabilities belong among those for whom victim support services are not available and accessible.

34. The Victims Act guarantees to all victims the right to expert support – either in a general form or in a specialised form where the victim is particularly vulnerable. Expert support is provided by victim support organisations that are registered by the Ministry of Justice. According to its most recent update of 31/1/2019, the register contained 14 organisations, the vast majority of which specialised in women or children who are victims of domestic violence or sexual violence. Only two local organisations registered themselves as also offering support to persons with disabilities. Unfortunately, it seems that their primary target group is different from persons with mental disabilities and that they do not systematically raise the awareness of their services amongst persons with disabilities, and particularly persons with intellectual or psychosocial disabilities.[61]

35. The poor coverage of victim support services represents a serious barrier for persons with disabilities to access justice, remedies, as well as psychological and social rehabilitation and other forms of support. The Ministry of the Interior is currently implementing a project of "information offices for victims" that provide basic social, legal, and psychological counselling to all victims.[62] However, the information offices cannot compensate for the lack of victim support organisations since their task is to serve as basic contact points for victims and not to provide victims with the systemic support they

[58] A/RES/40/34, 1985; in particular the principle 14: „Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means."
[59] Directive 2012/29/EU, in particular Articles 8 and 9 guaranteeing victims the right to access to victim support services and stipulating that victims support services should provide the victims with, inter alia, emotional and, where available, psychological support [Article 9(c)].
[60] Act no. 274/2017 Coll, on Victims of Crime.
[61] The register of victims support organisations in Slovakia is available in Slovak at: https://www.justice.gov.sk/Stranky/Registre/Zoznamy-vedene-MS-SR/Register-pomoc-obetiam-zoznam.aspx .
[62] More information about the Information Offices is available in Slovak at: https://prevenciakriminality.sk/p/o-pomoci-obetiam.

need. Their existence is thus not an answer to the lack of victim support organisations for all categories of victims, including persons with disabilities.

Recommendation:

Slovakia must adopt all the necessary measures, including economic measures, to develop the net of victim support services that would be available and accessible also for victims with mental disabilities and that would be able to provide those victims with the necessary support, including psychosocial and psychological assistance.

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