

Introduction

1. The authors of this submission respectfully submit the following written comments concerning Slovakia for consideration by the Human Rights Council (hereinafter "the Council") at its 18th Session of Universal Periodic Review. This report provides the Council with information about children and adults with intellectual disabilities or psycho-social disabilities and their rights to legal capacity, to vote and stand for election, to education, to community living and to freedom from ill-treatment. *Appendix 1* contains suggested recommendations to the Slovak Government to enable the Government to bring national legislation, policy and practice in line with requirements of the UN body of human rights law and standards. *Appendix 2* contains short descriptions of those organisations that submit this submission to the Council.

I. Right to legal capacity

2. Legal capacity is law's means to ensure that people are enabled to make decisions about their lives. Across Europe, including Slovakia however, people labelled with mental health diagnoses or intellectual disabilities are deprived totally of their legal capacity and placed under the plenary guardianship, or restricted partially of their legal capacity and placed under the partial guardianship. These systems are supposed to protect rights, but as the case of E.T. recently decided by the Slovak Constitutional Court shows guardianship laws and practices in Slovakia are far from protecting people's rights.¹
3. The Slovak Constitutional Court had issued a judgment in the case of E.T. regarding deprivation of legal capacity of the applicant, and found violations of the right to legal capacity, right to integrity and privacy, right to protection against unlawful interference in private and family life, right to judicial protection under the Constitution of the Slovak Republic. The Constitutional Court also found violations of the right to a fair trial, right to private and family life and the right to be free from discrimination under the European Convention on Human Rights and the right to legal capacity under the UN Convention on the Rights of Persons with Disabilities.
4. Slovak guardianship law is located in the Civil Code and the Code of Civil Procedure, according to which a court can deprive or restrict legal capacity of persons with intellectual disabilities and persons with psycho-social disabilities depending on whether the person concerned is "totally unable to perform legal acts as a result of non-temporary mental disorder" or he/she is "able to perform only certain legal acts as a result of a non-temporary mental disorder." In the latter case, the court shall limit the person's legal capacity specifying the scope of limitations in its judgment.² This basically means that the Slovak guardianship systems can be described as a regime of substituted decision-making.
5. Slovak legal capacity legislation can be described with the following features:

¹ Case No. I. ÚS 313/2012-52; judgment 28 November 2012. Available at: http://mdac.info/sites/mdac.info/files/slovak_const_court_e.t_english.pdf (last accessed on 24 June 2013)

² Article 10 paras 1-2, Act No. 40/1964 and Article 186 para 1, Act No. 99/1963.

- i. Once a person is deprived of his/her legal capacity, she/he is automatically denied exercising a list of rights including the right to access to justice, right to marry, right to vote or parental rights.
 - ii. Although the court shall change or cancel restrictions of legal capacity when the reasons for the restriction have changed or no longer exist,³ there is neither a minimum nor a maximum time limit for the duration of the measure of guardianship.
 - iii. Slovak legal capacity legislation does not provide persons with intellectual and psycho-social disabilities with any kind of alternatives to guardianship.
 - iv. According to Slovak procedural rules, courts can decide not to hear the adult concerned during the guardianship proceedings if the hearing may be harmful to the adult's health, or if participation in the hearing is not possible at all.⁴ This provision very often creates situations when the adult concerned is left out from the guardianship process based only on his/her disability and thus her/his right to access to justice is violated. Furthermore, the law makes possible that the judgment is not served on the person concerned due to the health condition of the individual. This may happen if the service of the judgment may cause harm to the person, or if s/he cannot understand the purpose and the meaning of the judgment.⁵ This is the only procedure in whole legal system in which persons with disabilities can be fully procedurally ignored by the court.
 - v. There is no legal guarantee of access to qualified legal assistance and representation,⁶ and there is no legal requirement to periodically review the court decisions on the restriction or deprivation of legal capacity of people.⁷
6. Slovakia ratified the *UN Convention on the Rights of Persons with Disabilities* (hereinafter "CRPD") on 26 May 2010,⁸ so it is under obligation to comply with the CRPD according to which "States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. [And] States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity."⁹
7. The *UN Committee on the Rights of Persons with Disabilities* (hereinafter "CRPD Committee") has reviewed seven countries to date, namely Tunisia, Spain, Peru, Argentina, China, Hungary and Paraguay. The CRPD Committee has made it clear that States parties to the CRPD have to
- i. review the laws allowing for guardianship and trusteeship;
 - ii. repeal the laws, policies and practices which permit guardianship and trusteeship for adults;
 - iii. take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making;
 - iv. provide all relevant public officials, civil servants, judges, social workers and other stakeholders with training in consultation and cooperation with persons with disabilities and

³ Article 10 para 3, Act No. 40/1964

⁴ Article 187 para 2, Act No. 99/1963

⁵ Article 189, Act No. 99/1963

⁶ European Union Agency for Fundamental Rights, Country thematic reports on the fundamental rights of persons with intellectual disabilities and persons with mental health problems – Slovakia, para 112. Report available at: http://fra.europa.eu/sites/default/files/fra_uploads/2165-mental-health-study-2009-SK.pdf (last accessed on 24 June 2013).

⁷ *Ibid.* Para 113.

⁸ See: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en (last accessed on 24 June 2013)

⁹ Article 12(2)-(3) of the CRPD

their representative organisations, at the national, regional and local levels, on the human rights model of disability and recognition of the legal capacity of persons with disabilities and on mechanisms of supported decision-making.¹⁰

8. The CRPD Committee goes further and points out that a system of supported decision-making includes the following:
 - i. recognition of all persons' legal capacity and right to exercise it;
 - ii. accommodations and access to support where necessary to exercise legal capacity;
 - iii. regulations to ensure that support respects the person's autonomy, will and preferences and establishment of feedback mechanisms to ensure that support is meeting the person's needs;
 - iv. arrangements for the promotion and establishment of supported decision-making.¹¹
9. The CRPD Committee highlighted in its jurisprudence that the right to legal capacity is a crosscutting right which is closely linked to other rights embodied in CRPD. States have to make the above changes "with respect to the individual's right, in his/her own capacity, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work, and to choose a place of residence."¹²

II. Right to education for children with intellectual and psycho-social disabilities

10. According to the Slovak Education Act no. 245/2008 (hereinafter "the Education Act"), the education of children with intellectual and psycho-social disabilities can be provided in three different ways:
 - i. in special schools;
 - ii. in special classes of mainstream schools;
 - iii. in mainstream classes.
11. While the options i. and ii. are called *segregated education*, the third option can be either *integrated education* or *inclusive education*. When a child with disabilities is simply placed in a mainstream class without any effective and appropriate support, then this system is still called integrated education.
12. The *UN Convention on the Rights of Persons with Disabilities* states that inclusive education means that, inter alia,
 - i. reasonable accommodation of the individual's requirements is provided;
 - ii. persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
 - iii. effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.¹³

¹⁰ CRPD Committee, Concluding Observations: Tunisia, para 23 (CRPD/C/TUN/CO/1); CRPD Committee, Concluding Observations: Spain, para 34 (CRPD/C/ESP/CO/1); CRPD Committee, Concluding Observations: Peru, para 25 (CRPD/C/PER/CO/1); CRPD Committee, Concluding Observations: Argentina, para 20 (CRPD/C/ARG/CO/1); CRPD Committee, Concluding Observations: China, para 22 (CRPD/C/CHN/CO/1); CRPD Committee, Concluding Observations: Hungary, para 26 (CRPD/C/HUN/CO/1).

¹¹ CRPD Committee, Concluding Observations: China, para 22 (CRPD/C/CHN/CO/1).

¹² CRPD Committee, Concluding Observations: Hungary, para 26 (CRPD/C/HUN/CO/1).

¹³ Art 24 (2) c-e) of the CRPD

13. In Slovakia, even if a child with a disability is accepted to a mainstream school, this school has no obligation to provide him or her with neither reasonable accommodations nor individualised support measures. It concerns Slovakia's failure to enshrine in legislative and administrative measures the notion of "reasonable accommodation" in fields other than employment including education, as defined in Article 2 of the CRPD.¹⁴
14. The *Office of the United Nations High Commissioner for Human Rights* has interpreted the CRPD's provisions on inclusive education by highlighting that "[t]he duty to provide reasonable accommodation of the individual's requirements must be clearly established in national legislation. [...] Together with the obligations related to the right of children with disabilities to free and compulsory primary education, such duties are immediately applicable."¹⁵
15. The *UN Convention on the Rights of Persons with Disabilities* obliges States Parties to provide an inclusive education system which ensures "the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential." It also recognises the right of persons with disabilities to an "inclusive education system at all levels and lifelong learning."
16. The *UN Committee on the Rights of Persons with Disabilities* highlighted regarding inclusive education that the State party has to
- i. allocate sufficient resources for the development of an inclusive education system for children with disabilities;
 - ii. provide reasonable accommodation to children with disabilities based on the student's individual requirements;
 - iii. train teachers and all other educational staff to enable them to work in inclusive educational settings.¹⁶
- Furthermore, the CRPD Committee called for developing "programmes to ensure that Roma children with disabilities are included in mainstream education programmes."¹⁷
17. The *UN Committee on the Rights of the Child* pointed out in its General Comment No. 9 on The Rights of Children with Disabilities¹⁸ that "[i]nclusive education should be the goal of educating children with disabilities." It is important to note that in 2011 the CRC Committee recommended that the State party "[e]nsure the provision of adequate financial, technical and human resources for schools to effectively provide mainstream education for children with disabilities; and amend its

¹⁴ Under Art 2 of the CRPD, reasonable accommodation means "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms." And discrimination on the basis of disability "includes all forms of discrimination, including denial of reasonable accommodation."

¹⁵ Thematic Study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities, para 52. Available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.48.pdf> (last accessed on 24 June 2013)

¹⁶ CRPD Committee, Concluding Observations: Hungary, para 41 (CRPD/C/HUN/CO/1).

¹⁷ *Ibid.* Para 42.

¹⁸ Committee on the Rights of the Child, General Comment 9. The Rights of Children with Disabilities, (CRC/C/GC/9), 7 February 2006.

legislation to prohibit schools from refusing children on the grounds of insufficient material resources.”¹⁹

18. In 2012, the *UN Committee on Economic, Social and Cultural Rights* has also addressed inclusive education vis-à-vis Slovakia in its concluding observations. The Committee expressed its concern about the “discrimination in schools against children with disabilities” and recommended Slovakia to “adopt and apply an inclusive approach to the education of children with disabilities.”²⁰
19. The *UN Special Rapporteur on the Right to Education*, Mr. Vernor Muñoz Villalobos, in his 2007 report for the Human Rights Council identified an obligation of the states to transition from the special education paradigm to an inclusive education paradigm with the aim of preventing discrimination.²¹ Regarding obligations of States in relation to the right to education of persons with disabilities, Mr. Muñoz called for recognition of inclusive education as an inherent component of the right to education.²²
20. The former *Commissioner for Human Rights of the Council of Europe*, Thomas Hammarberg, called for inclusive education for persons with disabilities and pointed out in his September 2009 Viewpoint that “[s]chooling is another problem. Very few children with intellectual disabilities are offered specialist assistance tailored to the individual child in ordinary schools, while ‘special schools’ – a segregated system which is often the beginning of lifelong social exclusion – remains the norm.”²³
21. In contradiction with these international human rights law standards, in Slovakia, education is provided for the majority of children with intellectual and psycho-social disabilities in special schools which are segregated from mainstream educational systems and facilities. The legal basis for this situation is that the Education Act points out that “enactment of the rights of a pupil with special educational needs cannot limit the rights of other pupils in the education process.”²⁴ In other words it means that the Slovak Education Act as well as the practice of special education does not reflect an inclusive education paradigm but rather uphold the paradigm of segregated and isolated education of children with intellectual and psycho-social disabilities which perpetuate the on-going discrimination against children with disabilities.

¹⁹ Committee on the Rights of the Child, Concluding Observations: Czech Republic, 17 June 2011, para 52(a). (CRC/C/CZE/CO/3-4). Available at http://mdac.info/sites/mdac.info/files/CRC.C.CZE_CO_3-4.doc (last accessed on 24 June 2013)

²⁰ Committee on Economic, Social and Cultural Rights, Concluding Observations: Slovakia, 8 June 2012, para 26. (E/C.12/SVK/CO/2). Available at: http://www2.ohchr.org/english/bodies/cescr/docs/co/E.C.12.SVK.CO.2_en.doc (last accessed on 24 June 2013)

²¹ Muñoz, V. The right to education of persons with disabilities, Report of the Special Rapporteur on the right to education, 2007, A/HRC/4/29. The Special Rapporteur pointed out that “[t]he practice of separating students with disabilities can lead to greater marginalization from society, a situation that persons with disability face generally, thus entrenching discrimination. In contrast, inclusive education has been shown to limit marginalization. This marginalization contributes to misconceived stereotyping, prejudice and thus discrimination.”(para 11)

²² *Ibid.* Para 26 (a).

²³ Thomas Hammarberg, A neglected human rights crisis: persons with intellectual disabilities are still stigmatised and excluded. Available at http://www.coe.int/t/commissioner/Viewpoints/090914_en.asp (last accessed on 24 June 2013)

²⁴ Article 29 of the Education Act

III. Right to vote and stand for elections

22. Although the Slovak Constitution guarantees the universal, equal and direct right to vote,²⁵ and the right to be elected under equal conditions,²⁶ persons whose legal capacity is restricted or deprived cannot exercise their right to vote in certain elections:
- i. elections of the members of the National Council of the Slovak Republic (Parliament), and of the European Parliament;²⁷
 - ii. local governments.²⁸
- However, persons whose legal capacity is restricted or denied may vote in presidential elections.²⁹
23. International human rights norms on the right to vote of persons with disabilities are evolving in a way which can be described by inclusiveness. Although General Comment No. 25 of the UN Human Rights Committee interpreted Article 25 of the International Covenant on Civil and Political Rights by highlighting that “established mental incapacity may be a ground for denying a person the right to vote or to hold office,”³⁰ the *UN Convention on the Rights of Persons with Disabilities* which is a more recent and more specific treaty than the ICCPR, explicitly says in Article 29 that “States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected”.
24. The *UN Committee on the Rights of Persons with Disabilities* has been clear in its interpretation of Article 29 of the CRPD. In its very first Concluding Observations which was issued with respect to Tunisia, it has already recommended “the urgent adoption of legislative measures to ensure that persons with disabilities, including persons who are currently under guardianship or trusteeship, can exercise their right to vote and participate in public life, on an equal basis with others”.³¹ The standpoint of the CRPD Committee has become more explicit in its second Concluding Observations, which concerned Spain, and in which the Committee recommended “that all relevant legislation be reviewed to ensure that all persons with disabilities, regardless of their impairment, *legal status* or place of residence, have the right to vote and participation in public life on an equal

²⁵ Article 30 para 3, Act No. 460/1992. <http://www.slovakia.org/sk-constitution.htm> (last accessed on 24 June 2013)

²⁶ *Ibid.* Para 4.

²⁷ Article 2 para 2 (c) Act No. 333/2004, Article 2 para 2 (c) Act No. 303/2001, Article 2 para 3 (c) Act No. 331/2003.

²⁸ Article 2 para 2 (d), Act No. 346/1990.

²⁹ Article 1 para 2 Act No. 46/1999.

³⁰ General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25), 12 July 1996, para. 4. Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument) (last accessed on 24 June 2013)

³¹ CRPD Committee, Concluding Observations: Tunisia, para 35 (CRPD/C/TUN/CO/1). Available at http://www2.ohchr.org/SPdocs/CRPD/5thsession/CRPD-C-TUN-CO-1_en.doc (last accessed on 24 June 2013)

basis with others".³² The Committee was also clear on non-compliance of restriction or denial of the right to vote based on individualised decision taken by a judge.³³

25. The *Office of the United Nations High Commissioner for Human Rights* recently prepared a Thematic Study on Participation in Political and Public Life by Persons with Disabilities for the UN Human Rights Council, and stated that Article 29 of the CRPD "does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, any exclusion or restriction of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability would constitute "discrimination on the basis of disability" within the meaning of Article 2 of the Convention [CRPD]"³⁴. The Thematic Study examines the argument that any restriction or curtailment of the right of a person with a disability to participate in political life may not in fact be based on disability itself but rather on a lack of legal capacity. Such a restriction, the report states, would be "inconsistent with the provisions of Article 12, paragraph 2 of the Convention, which recognises that persons with disabilities enjoy legal capacity "on an equal basis with others in all aspects of life".³⁵ In the light of these developments, the OHCHR recommended that the "UN Human Rights Committee should consider reviewing its general comment No. 25 [...], so as to reflect the progressive evolution of international human rights law in this field."³⁶
26. The *United Nations High Commissioner for Human Rights* recently stated that "[i]n many countries, the right to political participation continues to be linked to the legal capacity of the individual. Some States have an automatic or quasi-automatic exclusion provision in their legal systems, denying the right to political participation for all people under a protective measure, such as partial or full guardianship. In other countries, an individual assessment is carried out by a medical practitioner or by a judge on the capacity of a person with intellectual or psychosocial disabilities to vote. States should promote truly universal suffrage, including for people with disabilities. They should modify or repeal existing laws, regulations, customs and practices that link political rights to legal capacity."³⁷
27. These global developments have been mirrored by regional human rights bodies. In March 2011, Thomas Hammarberg, the then *Council of Europe Commissioner for Human Rights*, issued an official Statement on the right to political participation of people with disabilities, stating that, "there is no room for procedures in which judges or medical practitioners would assess the voting competence of a person and then give a green light—or not."³⁸ Similarly, the *Committee of Ministers of the*

³² CRPD Committee, Concluding Observations: Spain, para 48 (CRPD/C/ESP/CO/1). Available at http://www.ohchr.org/Documents/HRBodies/CRPD/6thsession/CRPD.C.ESP.CO.1_en.doc (Emphasis added) (last accessed on 24 June 2013)

³³ *Ibid.* See also CRPD Committee, Concluding Observations: Hungary, para 45 (CRPD/C/HUN/CO/1).

³⁴ OHCHR Thematic Study on Participation in Political and Public Life by Persons with Disabilities (Advanced edited version for consideration by the Human Rights Council at their 19th session in March 2012), December 2011, para 29. Available at <http://www.ohchr.org/EN/Issues/Disability/Pages/ParticipationPoliticalAndPublicLife.aspx> (last accessed on 24 June 2013)

³⁵ *Ibid.* Para 30.

³⁶ *Ibid.* Para 71.

³⁷ International Disability Alliance, IDA Human Rights Publication Series – The Right to Vote and to Stand for Election. March 2013. Page 9. Available at: http://www.internationaldisabilityalliance.org/sites/disalliance.e-presentaciones.net/files/public/files/Full%20Version_IDA%20Publication%20Series.pdf (last accessed on 24 June 2013))

³⁸ Thomas Hammarberg, "Persons with disabilities must not be denied the right to vote". Available at http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=127 (last accessed on 24 June 2013)

Council of Europe adopted a Recommendation³⁹ in November 2011 affirming that “[a]ll persons with disabilities, whether they have physical, sensory, or intellectual impairments, mental health problems or chronic illnesses, have the right to vote on the same basis as other citizens, and should not be deprived of this right by any law limiting their legal capacity, by any judicial or other decision or by any other measure based on their disability, cognitive functioning or perceived capacity. All persons with disabilities are also entitled to stand for office on an equal basis with others and should not be deprived of this right by any law restricting their legal capacity, by any judicial or other decision based on their disability, cognitive functioning or perceived capacity, or by any other means.”⁴⁰

28. In Slovakia, persons with disabilities under guardianship are automatically excluded from political participation and cannot exercise their right to vote. Legal provisions denying persons under guardianship the right to vote are in clear violation of international human rights standards, especially Article 29 CRPD.

IV. Right to live in the community

29. There are 255 large social care institutions, where 27,730 persons live. Out of 255, there are 4 institutions for more than 300 persons, 6 institutions for more than 250 persons, 12 institutions for more than 200 persons and 94 institutions for more than 100 persons, adults and children.⁴¹ These people are deprived of freedom to choose his or her residence and are forced to live in artificial, isolated and segregated large residential institutions. Community services are very rare. Furthermore, the Slovak system of social services is based on the principle of contracts; services are provided to clients who sign a contract for social services, which is standard legal action under the Civil Code. Most of residents residing in these institutions have been deprived of their legal capacity, thus prohibiting them from concluding legal contracts. Therefore it is their guardian who has signed the contracts and persons under guardianship are automatically excluded from decision about their institutionalisation. Although guardians are meant to protect the interests of the incapacitated adult and act on their behalf, in practice guardians rarely meet with and consult with the adult concerned and the decision to detain them in an institution is for the most part done against the adult’s will and without any recourse to judicial review of their placement. Nor is there independent and regular monitoring of the situation of persons detained in social care homes, nor any form of control over social services contracts.

30. International human rights norms provide for the right to community living, which inter alia means prohibition of forced institutionalization, including through guardianship and positive obligation to transform social care from large residential institution into tailor-made community based services. The *UN International Covenant on Economic, Social and Cultural Rights* provides in Article 12 for the right to the highest attainable standard of physical and mental health. According to Mr Paul Hunt, the *UN Special Rapporteur on the Right to Health*, this Article guarantees the right live in community, provides for positive obligation to deinstitutionalize residential social care institutions and requires

³⁹ Recommendation CM/Rec(2011)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life. Available at <https://wcd.coe.int/ViewDoc.jsp?id=1871285&Site=CM> (last accessed on 24 June 2013)

⁴⁰ *Ibid.* Appendix, chapter 3.

⁴¹ 2011 Strategy on Deinstitutionalisation, p. 11. Available in Slovak at: <http://www.employment.gov.sk/strategia-deinstitucionalizacie-systemu-socialnych-sluzieb-a-nahradnej-starostlivosti-v-sr.html> (last accessed on 24 June 2013)

the state to ensure informed consent of potential clients.⁴² The special rapporteur on the right to health emphasized that all persons with mental disabilities have the right to community integration and decisions to isolate or segregate persons with mental disabilities, including through unnecessary institutionalization, are inherently discriminatory and contrary to the right of community integration enshrined in international standards. Segregation and isolation in itself can also entrench stigma surrounding mental disability.⁴³ Further, in his report he emphasised that “[t]he segregation and isolation of persons with mental disabilities from society is inconsistent with the right to health, as well as the derivative right to community integration, unless justified by objective and reasonable considerations, grounded in law and subject to independent scrutiny and determination.”⁴⁴

31. The right to independent living and the right to community living as self-standing rights are recognized under Article 19 of the *UN Convention on the Rights of Persons with Disabilities*. The heading of the article is: ‘Living independently and being included in the community’. The first proposal of this provision, that time Art. 15 emphasised the exercise of choice by an individual. Analysing the discussions during the drafting process, it is evident that freedom of choice resonated, including the choice to live in institution. After discussions, the working group decided to include unequivocal right of all persons to live in the community. The intention of drafters was to highlight that every substantive article of the CRPD, including Article 19 should affirm a *right*, and it is in particular the inalienable right to live in the community not subject to proving one’s ‘ability,’ ‘eligibility’ or ‘entitlement’.⁴⁵ The final text of Art. 19 CRPD formulates the ‘right’ and therewithal emphasised the equality aspect:

Living independently and being included in the community

1. States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- a. Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- b. Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- c. Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

⁴² Hunt, P. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2005, E/CN.4/2005/51.

⁴³ *Ibid.* Para. 54.

⁴⁴ *Ibid.* Para. 86.

⁴⁵ Leibowitz, T. Living in the Community – Disentangling the Core Right. Colloquium on Disability Law and Policy, April 2010, University of Galway, p. 6.; See comment of the state of Israel, available at: <http://www.un.org/esa/socdev/enable/rights/ahc7israel.htm> (last accessed on 24 June 2013), or comments of organisations representing persons with disabilities, available at: <http://www.un.org/esa/socdev/enable/rights/ahc7contngos.htm> (last accessed on 24 June 2013).

32. The Article negates forced institutionalization, provision of para a) states: "Persons [...] have the opportunity to choose their place of residence [...] and are not obliged to live in a particular living arrangement". Under paragraph b) it also negates institutional life *per se*, even if not formally coerced. The institution represents artificial environment contributing to the group's isolation and segregation, in contrast with the obligation to "facilitate [...] full inclusion and participation in the community [...] and [...] prevent isolation and segregation [...]". As a system, an institution overrides the personhood and choices of the individuals living within it – in breach of the obligation to enable "...choices equal to others..." (chapeau). The article's emphasis that community-based services must support living and inclusion in the community and prevent isolation and segregation from the community.⁴⁶
33. The international community expressed deep concern regarding institutionalisation of children with disabilities. The *UN Committee on the Rights of the Child* recognised the right to community living as a children's right under Art. 23 of the *UN Convention on the Right of the Child*⁴⁷ and recently, the *Council of Europe Committee of Ministers* adopted Recommendation CM/Rec(2010)2 on deinstitutionalisation and community living of children with disabilities. This recommendation is calling explicitly for deinstitutionalisation of social care and provides member states with detailed necessary steps which need to be taken in order to achieve this goal. The Recommendation underlined alternatives to institutions and stated that "in exceptional cases (for example, where there has been abuse or neglect), when a child cannot live in his or her own family or a foster family, small, homely settings, that are as near to a family environment as possible, should be provided as an alternative to institutionalised forms of care".⁴⁸ Regarding children with high level of support, the Committee is calling for "expert co-ordination between professions and agencies [...], particularly for disabled children who need considerable support and constant assistance".⁴⁹
34. Between 2007 and 2011, the state invested almost 200 million euros to large and isolated residential institutions instead of tailor made community based services.⁵⁰ The authors of this submission would like to emphasise that Slovakia is under international obligation to immediately take steps to implement the right to community living of all persons with disabilities. The Slovak Republic adopted in November 2011 important *Strategy on Deinstitutionalisation*⁵¹ and *National action plan on transformation of residential social services*⁵². Authors of this submission welcome this effort and encourage the Government to fully comply with these policies and take relevant steps to implement them within a reasonable time.

⁴⁶ *Ibid.*, p. 6-7.

⁴⁷ See, Committee on the Rights of the Child. General Comment No. 9 (2006). The rights of children with disabilities. (CRC/C/GC/9)

⁴⁸ Recommendation CM/Rec(2010)2 of the Committee of Ministers to member states on deinstitutionalisation and community living of children with disabilities, para. 12.

⁴⁹ *Ibid.*, para. 35.

⁵⁰ INESS, 2013, Monitoring of Absorption of structural funds in social sphere for the period of 2007-2011. Costly increasing of the numbers of beds and facilities, isolation of clients from community remains. Study available at: <http://www.iness.sk/stranka/8362-Monitoring-of-Absorption-of-structural-funds.html> (last accessed on 24 June 2013)

⁵¹ Available in Slovak at: <http://www.employment.gov.sk/strategia-deinstitucionalizacie-systemu-socialnych-sluzieb-a-nahradnej-starostlivosti-v-sr.html> (last accessed on 24 June 2013)

⁵² Available in English at: <http://www.employment.gov.sk/narodny-akcny-plan-deinstitucionalizacie.html> (last accessed on 24 June 2013)

V. Right to liberty (involuntary hospitalisation and treatment)

35. In Slovakia, many people with disabilities are subject to detention, either through involuntary hospitalisation in psychiatric hospitals or long-term detention in social care institutions. Persons with disabilities in any of these situations are vulnerable to abuse and suffer grave and unwarranted restrictions in the exercise of their rights. In some cases, systematic abuse may constitute torture or cruel, inhuman and degrading treatment or punishment, amounting to a violation of article 7 of the ICCPR. The involuntary hospitalisation of a person with a psycho-social disability may lead to the restriction of several basic patient rights such as:

- i. appropriate and continuously accessible healthcare justified by the patient's health condition, without discrimination;
- ii. right to choose the treating doctor;
- iii. right to contact with visitors and the outside world;
- iv. self-determination;
- v. right to refuse healthcare interventions.

36. Moreover, the Slovak legal system (Act no. 576/2004 Coll. on Health Services) does not distinguish between consent to hospitalisation and consent to treatment under involuntary commitment procedures. In practice, once the court decides on the lawfulness of detention, individual concerned is stripped of her/his right to give informed consent on his/her treatment. Persons who have been involuntarily hospitalised are subject to forced treatment including the use of physical restraints or isolation, and the administration of anti-psychotic drugs as a form of restraint. Such measures imposed against the will of the individual may amount to ill-treatment and torture.

37. The principle of informed consent has been stressed in the context of detention of persons with mental disabilities by various UN bodies. The *UN Special Rapporteur on the Right to Health* has pointed out that "[...] consent to treatment is one of the most important human rights issues relating to mental disability", and accordingly "it is especially important that the procedural safeguards protecting the right to informed consent are both watertight and strictly applied."⁵³ The Special Rapporteur's report on informed consent and the right to health reiterates that informed consent is "not mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right of the patient to be involved in medical decision-making, and assigning associate duties and obligations to health-care providers, its ethical and legal normative justifications stem from its promotion of patient autonomy, self-determination, bodily integrity and well-being."⁵⁴

38. The *UN Special Rapporteur on Torture* further stated that, "the administration in detention and psychiatric institutions of drugs, including neuroleptics that cause trembling, shivering and contractions and make the subject apathetic and dull his or her intelligence has been recognized as a form of torture."⁵⁵ Recently, the *UN Special Rapporteur on Torture* also called upon the states "to

⁵³ P. Hunt, Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health, (E/CN.4/2005/51). paras. 48-50.

⁵⁴ Report of the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/64/272), para. 8.

⁵⁵ Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, A/63/175, 28 July 2008, para 63.

safeguard free and informed consent on an equal basis for all individuals without any exception, through legal framework and judicial and administrative mechanisms, including through policies and practices to protect against abuses. Moreover, instances of treatment without informed consent should be investigated; redress to victims of such treatment should be provided.⁵⁶

39. The *UN Committee on Economic, Social and Cultural Rights* has interpreted the right to health in its General Comment no. 14 as to include 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.⁵⁷ The Committee explains that "the right to health contains both freedoms and entitlements. The freedoms include 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. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health."⁵⁸
40. The *UN Committee on the Rights of Persons with Disabilities* has also analysed the question of free and informed consent and expressed its concern about the lack of clarity concerning the scope of legislation to protect persons with disabilities from being subjected to treatment without their free and informed consent, including forced treatment in mental health services, and recommended treatment without the full and informed consent of the person concerned.⁵⁹ The CRPD Committee further recommended that:
- i. laws permitting involuntary treatment and confinement, including upon the authorisation of third party decision-makers such as family members or guardians, are repealed;
 - ii. the State party develops a wide range of community-based services and supports that respond to needs expressed by persons with disabilities, and respect the person's autonomy, choices, dignity and privacy, including peer support and other alternatives to the medical model of mental health.⁶⁰
41. According to these international human rights standards, hospitalisation and treatment should always be based on a purely voluntary basis. The person concerned should be fully informed of all the potential effects and side effects and should be able to withdraw his consent and have his treatment discontinued at any time. In contradiction with these international human rights standards, involuntary hospitalisation and involuntary treatment is permissible in Slovakia.

⁵⁶ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (A/HRC/22/53), para. 85(e). Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf (last accessed (last accessed on 24 June 2013))

⁵⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (The right to the highest attainable standard of health), 2000, para 8.

⁵⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), at para 8 (article 12 of the International Covenant on Economic, Social and Cultural Rights)

⁵⁹ CRPD Committee, Concluding Observations: Tunisia, para 28. (CRPD/C/TUN/CO/1); CRPD Committee, Concluding Observations: Spain, para. 36, (CRPD/C/ESP/CO/1).

⁶⁰ CRPD Committee, Concluding Observations: China, para 38, (CRPD/C/CHN/CO/1).