NGOs information to the UN Committee against Torture

For consideration of the fourth periodic report of

SLOVAKIA

Submitted by:

Forum for Human Rights (FORUM)
Social Work Advisory Board (RPSP)
SOCIA – Social Reform Foundation (SOCIA)
Liga za duševné zdravie (League for Mental Health)
Nezávislá platforma SocioFórum (Independent Platform SocioForum)
Združenie na pomoc ľuďom s mentálnym postihnutím v SR (The Association for Help to People With Intellectual Disabilitie in The Slovak Republic)
Inštitút pre vzdelávanie v paliatívnej medicíne (Institute for Education in Palliative Medicine)

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OVERVIEW

1. The submission provides an outline of issues of concern with regard to Slovakia's compliance with the provisions of the UN Convention against Torture (hereinafter "CAT"), with a particular focus on the enjoyment of those rights by persons with intellectual and psychosocial disabilities. The purpose of the submission is to assist the UN Committee against Torture (hereinafter the "Committee") with its consideration of the Concluding Observations.

2. The submission has been written by a coalition of NGOs and DPOs that represent persons with disabilities, and their interests and protect their human rights. Namely, the coalition consists of six organisations: Forum for Human Rights (FORUM), Social Work Advisory Board (RPSP), SOCIA – Social Reform Foundation (SOCIA), Liga za duševné zdravie (League for Mental Health), Nezávislá platforma SocioFórum (Independent Platform SocioForum), Združenie na pomoc ľuďom s mentálnym postihnutím v SR (The Association for Help to People With Intellectual Disabilitie in The Slovak Republic), Inštitút pre vzdelávanie v paliatívnej medicíne (Institute for Education in Palliative Medicine). This submission is further supported by the Slovak Commissioner on the rights of persons with disabilities, the Slovak CRPD monitoring body.

3. As stated, this submission concerns the rights of people with disabilities, especially with intellectual and psychosocial disabilities. It addresses the situation in relation to their freedom from torture and other forms of ill-treatment in four important and actual contexts: 1) Legal definition of torture and other forms of ill-treatment, including implementation of the CAT decision *Černáková v. Slovakia* (no. CAT/C/72/D/890/2018); 2) The extent of institutionalization and conditions in institutions; 3) The problem of the use and abuse of restraints; 4) The absence of palliative care.

SPECIFIC COMMENTS

(a) Definition of torture and criminalisation of degrading treatment

1. Already in its Concluding Observations on the fourth and fifth periodic report of Slovakia of 2015, the Committee expressed its concern that in the Criminal Code, a comprehensive definition of torture incorporating all elements of article 1 CAT, in particular a specific reference to discrimination, is not included.[1] The Committee recommended amending the law, including the sanctions to ensure that penalties for torture are commensurate with the gravity of this crime. Since 2015, no actions have been taken in this regard. Moreover, other issues in relation to the crime of torture emerged.

2. Namely, the State Party's criminal law does not incorporate adequate provisions criminalising torture and cruel, inhuman and degrading

[1] CAT/C/SVK/CO/3, para. 7.

treatment and punishment ("CIDT") and ensuring effective investigation, prosecution and punishment, where appropriate, of perpetrators of torture and CIDT. The wording in the existing definition of the crime provided for under Article 420 Act no. 300/2005 (Criminal Code) mixes up torture and CIDT and fails to define elements of torture. Especially, the law does not define specific purposes for which torture can be inflicted, including the purpose of discrimination, as the Committee noted in 2015. In addition, it fails to distinguish acts of torture from CIDT on grounds of *mens rea*. Thus, the intent is required even for cases of degrading treatment, which substantively limits the provision's applicability in the practice. Thus, even though the act committed against a person would have been considered torture or cruel, inhuman or degrading treatment or punishment under international law, domestic law fails to effectively include such an act under the provisions of penal law, as happened in the case *Černáková v. Slovakia* (no. CAT/C/72/D/890/2018). This legislative situation leads to the practical impossibility to carry out effective criminal investigation and *de facto* impunity for acts of torture, and cruel, inhuman and degrading treatment against some victims, including victims with disabilities in institutional settings, such as in the above-mentioned case.

3. In the *Černáková v. Slovakia* decision, the Committee recalled that one of the purposes of the CAT is to avoid allowing persons who have committed acts of torture or ill-treatment to remain unpunished. It also recalled that elements of intent and purpose, as stipulated in article 1, do not involve a subjective inquiry into the motivations of the perpetrators, but must be objective determinations; that ill-treatment differs from torture in the severity of pain and suffering, without requiring proof of purpose; and that ill-treatment may be caused by negligence. However, as the Committee further observed, the arguable claim of the Author was formally examined, however, suspended as formal elements of article 420 of the Criminal Code have not been met, without investigating and punishing the perpetrators of the complainant's ill-treatment. Thus, there was a violation of Article 4(1) CAT, resulting from the manner, in which the legislation defines the crime of torture and other forms of ill-treatment.

Proposed recommendation:

The Committee urges the State party to adopt a definition of torture that covers all elements contained in article 1 of the Convention, including discrimination, ensures that the crime of torture is distinguished from other forms of ill-treatment that can be caused by negligence and that penalties for torture are commensurate with the gravity of this crime in accordance with article 4 (2) of the Convention.

(b) Institutionalisation of people with disabilities

4. The institutionalisation of people with disabilities has been considered crucial to amplifying the risk of ill-treatment. In Slovakia, the extent of institutionalisation is enormous and safer community-based services are scarce. Slovakia 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, over the last four years. In December 2021, 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 2021 approximately 85 % of the total capacity of social services facilities[2] and the number of clients exceeds approximately 2,5 times the number of clients who are provided nursing service in their natural environment.[3]

Table no. 1: The number of institutions for persons with disabilities, their capacity, and the number of the placed persons in 2018 and 2021

	2018			**2021**		
	Number of facilities	**Number of beds[4]**	**Number of placed persons[5]**	**Number of facilities**	**Number of beds[6]**	**Number of placed persons[7]**
Homes of social services[8]	288	11 348	12 144	273	11 797	10 994
Facilities for Seniors[9]	386	19 019	18 741	406	19 748	17 874
Specialised facilities[10]	166	7 328	7 348	190	8 934	8 294

[2] 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.

[3] 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

[4] 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.

[5] The number may include also those persons who use the service only in its ambulatory form.

[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] 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.

[9] Facilities for older persons who are dependent on the support by other persons.

[10] Facilities for persons with mental disabilities with high need of support – older persons with dementia, Alzheimer disease, Parkinson disease, schizophrenia, etc.

Nursing service facilities[11]	107	2 489	2 308	94	2 536	2 045
In total	**947**	**40 184**	**40 541**	**963**	**40 015**	**39 207**

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

5. Although the Slovak Government committed itself to deinstitutionalisation already in 2011, the process is "slow and partial".[12] 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, 90 facilities[13] have been involved in the project so far.

6. 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 senior citizens 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 2021 73,84% 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 beds and clients, are facilities for younger persons with disabilities – homes of social services with only 24,77% of persons in older age among their clients in December 2021. On the contrary, the facilities where older persons represent the majority of clients – specialised facilities (78,72%), and facilities for seniors (99,70%) keep on growing in numbers, capacities, and placed persons. Only nursing service facilities (91,83%) experienced a slight decrease from 2018 to 2021.

Table no. 2: The number of older persons in institutional facilities in 2021

	The total number of placed persons	**Those in older age**	**Percentage of older persons among the placed persons**

[11] Facilities for persons with disabilities who are dependent on the support by other persons who cannot be provided nursing care in their natural environment.
[12] 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.
[13] The latest data by the Ministry of Labour, Social Affairs and Family.

Homes of social services	10 994	2 723	24,77%
Facilities for seniors	17 874	17 820	99,70%
Specialised facilities	8 294	6 529	78,72%
Nursing service facilities	2 045	1 878	91,83%
In total	**39 207**	**28 950**	**73,84%**

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

8. Slovak legislation still fails to enact measures that would ensure the reorientation of the system of social care from institutional care to community-based support. 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.[14] 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 be free from any ill-treatment, including obligations to take all steps to prevent ill-treatment, since it does not require the elimination of the capacities of institutional services in favour of safer community-based services.

9. Further, 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 2021 there were 37,482 persons hospitalised due to "mental and behaviour disorders", representing 68.9 persons per 10,000 inhabitants. The most common reason for hospitalisation was substance abuse (25.8%), followed by schizophrenia (21%), organic disorders, including symptomatic, mental disorders (14%), and affective disorders (14.4%). The number of hospitalised persons has slightly decreased since 2019.[15]

10. Despite this extent, Slovakia does not have any transformation strategy. The government named in Spring 2020 included in its programme that it would

[14] 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."

[15] Statistics available in Slovak at: https://www.nczisk.sk/Statisticke_vystupy/Tematicke_statisticke_vystupy/Psychiatricka_starostlivost/Pages/default.aspx

focus on reforming the system of mental health care and that it would promote the development of community-based mental health services.[16] 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.[17]

Proposed recommendations:

The Committee urges the State Party to accelerate its efforts in the field of transformation and deinstitutionalisation of social and psychiatric institutional care and to this end efficiently implement a comprehensive and effective strategy and action plan, containing concrete, targeted and time-framed steps.

(c) The use of restraints

11. 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. In Slovakia, there has been a significant development. On 1 March 2023, the Health Care Act was amended, introducing a new statutory framework for the conditions for the use of restraints.

12. Restraint is defined by law as a safety measure and cannot be considered part of medical procedures. The amendment provides a definition of what a restraint is as well as a definition of when it can be used. A restraint is intended to restrict the free movement of a patient to deter dangerous behaviour. It can only be used if the patient's actions are aimed at a direct threat to life or at a direct threat to the life or health of the patient or other natural persons. Restraints can no longer be used for routine restraint, e.g. against falling out of bed, or as a precautionary measure, e.g. due to staff shortages. A restraint may only be used on a patient in a way that does not compromise the health and safety of the patient and to the extent necessary to achieve the purpose, taking into account the level of risk and the clinical condition of the patient. However, the dignity, physical and psychological integrity of the patient must always be preserved. Restraint

[16] 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/.

[17] 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.

may only be used if it has not been possible to avert the dangerous behaviour of the patient by more moderate means.

13. The amendment also broadens the definition of the rights of patients in inpatient care in psychiatry and child psychiatry, and the protection of patients in relation to the use of restraints is also to be ensured by the fact that the use of restraints is to be notified by the healthcare facility to the supervising prosecutor within 72 hours of the use of the restraint, to the person designated by the patient within 48 hours, and to the designated natural person (e.g. legal representative, guardian) within 24 hours. and amendments to certain acts, as amended, which, after many years, introduces a statutory framework for the conditions for the use of restraints in psychiatric clinics. There should be an end to the overuse of bed nets and other restraints.

14. The practice of the use of restraints is yet to be monitored and assessed. Yet, there is already one specific point of deep concern. The law, amended by members of parliament and not prepared by experts in the field also extended the legal regulation of the definition and use of restraints to all branches of medicine. Thus, it makes it lawful to use restraints routinely, even in the somatic wards of inpatient health facilities. This extension is problematic because it was not accompanied by control mechanisms, as is the case in psychiatric health facilities. The use of restraints, currently allowed in many settings, must be – when already in place, however problematic – subjected to regular and rigorous scrutiny to ensure that all legal guarantees for the protection of human rights are respected. However, the amendment failed to do this.

Recommendation:

The Committee urges the State Party to reconsider the extent of the lawfulness of the use of restraints and to ensure that any use of restraint is subject of scrutiny and monitoring.

(d) The palliative care

15. One of the most neglected areas of care in Slovakia, that concern the prohibition of ill-treatment and the obligation to ensure that care for those, who find themselves in extremely vulnerable situations, has been provided with dignity, is palliative care. In Slovakia, there were only 11 registered hospices in 2022, but one of the hospices closed down in 2022, which means that only 10 hospices with a capacity of 180 beds remained in the system. The availability of a palliatologist in a stone hospice increases compared to the previous year (from 21.1% to 37.2% in 2021), but this may also be a consequence of the absolute reduction in the total number of beds: from 204 in 2021 to 180 in 2022. The number of beds in palliative care wards and the availability of a palliatologist to palliative beds remained unchanged

compared to 2021: 85 beds, of which 19 are accessed by a palliatologist, representing 22.4% of beds. In the area of specialist outpatient palliative care in Slovakia in 2022, only a second (sic!) palliative outpatient clinic was opened. Moreover, in 2021, there were only 18 mobile hospices registered, out of which only 4 were for children. A palliatologist is available in nine out of 14 mobile hospices

16. The problem of unavailability and inaccessibility of palliative care is linked to the lack of adequate funding. It has been recently reported that the provision of palliative health care in an inpatient facility care or in the home or in the person's other natural environment both for the providers of this healthcare remains financially disadvantageous and discourages providers from setting up palliative care services. As a result, there is a negative trend of dying the hospital environment that prevails over dying in the natural environment, resulting in a ratio of 2:1 in 2019.[18]

Proposed recommendation:

The Committee recommends the State Party ensure that all forms of care for people with disabilities and senior citizens, including palliative care, are provided in an environment that fulfils the expectations of human and dignified conditions by ensuring the availability of specialised palliative care providers, including mobile hospices.

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[18] See, Škripeková, A., Stachura, P., Rybárová, E., Rusnáková, E., Šarlinová, I., Kleščíková, L. State of palliative care in Slovakia in 2022. *Paliat. med. liec. boles*., 2022;15(1-2e).

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