



Written Comments to the United Nations Committee on Economic, Social and Cultural Rights

For consideration when compiling the List of Issues
on the Second Periodic Report of Slovakia under the International Covenant on
Economic, Social and Cultural Rights

Submitted by the
Mental Disability Advocacy Center (MDAC)

4 April 2011



I. OVERVIEW

1. This written submission provides an outline of issues of concern with regard to Slovakia's compliance with the provisions of the International Covenant on Economic, Social and Cultural Rights (hereinafter "the Covenant"), with particular focus on the enjoyment of those rights by persons with disabilities. The purpose of the submission is to assist the Committee on Economic, Social and Cultural Rights (hereinafter "the Committee") with its consideration of Slovakia's Second Periodic Report (hereinafter "Slovakia's Report") in this initial stage of the compilation of the list of issues by the Country Report Task Force.
2. MDAC is an international human rights organization which advances the human rights of children and adults with intellectual and psycho-social disabilities. MDAC uses law to promote equality and social inclusion through strategic litigation, advocacy, capacity-building and research. MDAC has participatory status with the Council of Europe.
3. Many of the Covenant's core provisions are articulated and given a disability specificity in the UN Convention on the Rights of Persons with Disabilities (hereinafter "CRPD"). Slovakia ratified the CRPD on 26 May 2010. We therefore cross-refer to the CRPD where this is helpful. Our intention and hope is that the members of the Committee examine Slovakia's Report in a manner which is consistent with and supportive of other treaty bodies where their mandates overlap. To this end, we encourage the Committee to enhance its focus on the rights of persons with disabilities, including individuals with intellectual disabilities and individuals with psycho-social disabilities, by raising the reporting requirements of all States in this respect, and by highlighting them in the list of issues of all States.

II. SPECIFIC COMMENTS

A. Non-discrimination in Economic, Social and Cultural Rights (Article 2 ICESCR)

1. Principles of non-discrimination and equality are essential to the exercise and enjoyment of economic, social and cultural rights by persons with disabilities. The prohibition on discrimination is an immediate and cross-cutting obligation enshrined in the Covenant and it must be applied in connection with all substantive rights guaranteed by the Covenant.
2. In General Comment no. 5 the Committee defined discrimination against persons with disabilities as *“any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights”*. It further reiterated, in General Comment no. 20, that the denial of reasonable accommodation should be included in national legislation as a prohibited form of discrimination on the ground of disability. This obligation is also incorporated in Article 2 CRPD, which was ratified by the Slovak Republic in 2010. The CRPD connects the principle of reasonable accommodation with all human rights and fundamental freedoms. Even though the Slovak Antidiscrimination Act of 2004 recognises (in its Article 7) the principle of **reasonable accommodation**, it does so in a very limited way. The definition of reasonable accommodation covers only the availability and accessibility of employment for persons with disabilities. This limited approach is not in conformity with existing international standards and prevents persons with disabilities from full enjoyment of their rights on an equal basis with others.
3. In order to combat substantive discrimination and with a view toward establishing full equality, State parties may, and in some circumstances even must, adopt **special measures**. This fact was also reiterated by the Committee in General Comment no. 20. Even though Article 8a of the Slovak Antidiscrimination Act permits (as from 1 April 2008) adoption of temporary special measures, the relevant legal construction is very narrow. Such temporary special measures may only be aimed at *“removing forms of social and economic disadvantage and disadvantage following from the grounds of age and disability”*, they can only be adopted by specified State organs and only in the areas covered by the Antidiscrimination Act. By failing to broaden the scope of permitted positive measures, Slovakia has not met its obligation to combat substantive discrimination, as set out in the Covenant and other international instruments (for example ICCPR, CEDAW, CERD or CRPD). Additionally, the Committee affirmed that positive measures may sometimes need to be of a permanent nature (such as reasonable accommodation for persons with sensory impairments in accessing health care facilities). The Antidiscrimination Act, however, does not include a possibility to adopt special measures of a permanent nature. Additionally, even though the relevant State organs are obliged to report to the Slovak National Centre for Human Rights (body monitoring implementation of the Antidiscrimination Act) and inform it about measures

that would be adopted pursuant to Article 8a, no such information has been made available. It is thus very likely that this provision has not been given effect.¹

4. In view of the above legal constructions of “reasonable accommodation” and “temporary special measures” it can be established that Slovakia has failed to adopt real and concrete measures to combat and eliminate discrimination against minority groups, contrary to the Committee’s concluding recommendations following Slovakia’s initial report of 2001.

SUGGESTED QUESTIONS FOR THE SLOVAK GOVERNMENT:

- What legislative reform is planned in order to ensure that a full and legally enforceable provision for reasonable accommodation is embedded in Slovak legislation?
- What real and concrete measures does Slovakia plan to adopt to combat and eliminate discrimination against persons with disabilities?

B. Right to health (Article 12 ICESCR)

1. Article 12 provides the right to the highest attainable standard of physical and mental health. The right to health under Article 12 ICESCR was explained by Mr. Paul Hunt, former Special Rapporteur on the right to health in his report for the UN Commission on Human Rights², as having a bearing on institutionalization of persons with mental disabilities and guardianship and informed consent requirements.

Deinstitutionalisation of residential social care services

2. The obligation to ensure the right of access to health facilities, goods and services on a non-discriminatory basis is one of the core obligations arising from Article 12 (right to health). In General Comments nos. 5 and 14 the Committee stressed the need to ensure that not only the public health sector but also private providers of health services and facilities comply with the principle of non-discrimination in relation to persons with disabilities. Mr. Paul Hunt, Special Rapporteur on the right to health emphasized that all persons with mental disabilities have the right to community integration; and isolation and segregation of persons with mental disabilities, including through unnecessary institutionalization, are inherently discriminatory and contrary to the right to community integration enshrined in international standards. Segregation and isolation in themselves can also entrench stigma surrounding mental disability.³ Further, in his report Mr. Hunt emphasised that:

¹ Debrecéniová, J.: Report on measures to combat discrimination, Directives 2000/43/EC and 2000/78/EC, Country report 2009, Slovak Republic

² 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.

³ Ibid., para. 54.

...the 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.⁴

3. Large isolated and segregated residential institutions providing social care are widespread in Slovakia. Community services are unavailable to the vast majority of people who would need such services. Even though the Committee requested Slovakia to provide, in its second periodic report, information about mentally disabled persons, including the number of those hospitalized, the facilities available to them, and the legal safeguards for the protection against abuse and neglect of patients, the government failed to do so. The report submitted by the government contains no such statistical data. MDAC provides the Committee with relevant data in Table 1-3 and Graph 1-2. As seen in **Table 1** and **Table 2**, in 2008 there were 12,813 adults and 2,312 children with mental disabilities living in social care institutions. Further, as seen in **Graph 1** and **Graph 2**, the number of institutionalized adults increased since 2005; the number of institutionalized children declined in 2006, but increased in 2008. There has been only a slight rise in the number of sheltered-house services, from 11 in 2005 to 18 in 2009. On the other hand, the number of social care institutions almost doubled, from 142 in 2005 to 265 in 2009, as can be seen in **Table 3**.

Table No. 1: Number of adult residents in Social Care Institutions in 2005-2008⁵

Institutions/Year	2005	2006	2007	2008
Social care institutions for adults with physical disability	381	468	515	465
Social care institutions for adults with combined disability	5,370	6,780	7,103	7,536
Social care institutions for adults with psycho-social and intellectual disabilities and behaviour problems	4,726	4,799	4,668	4,812
TOTAL	10,477	12,047	12,286	12,813

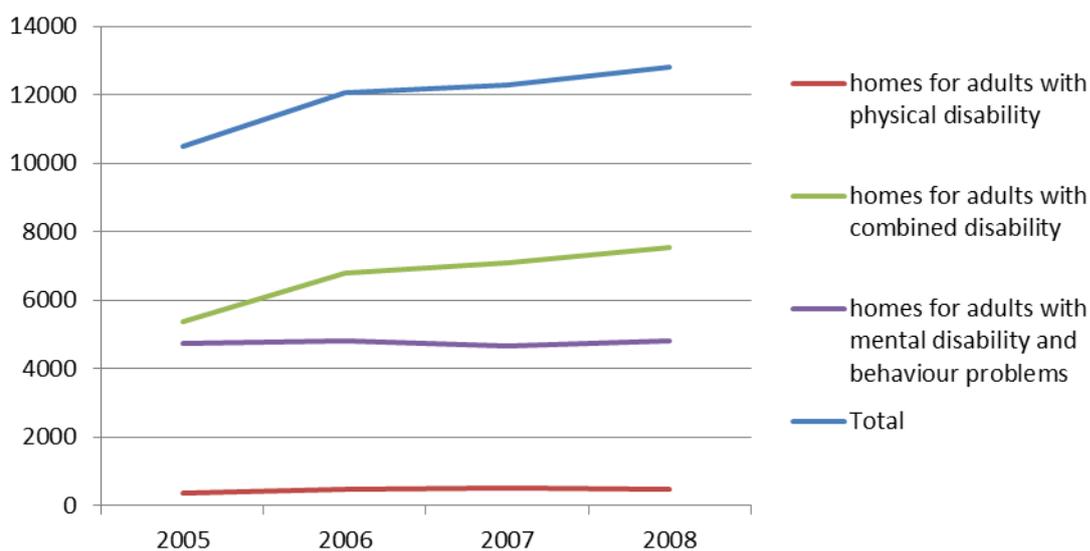
⁴ Ibid., para. 86.

⁵ Reports on Social Situation. Reports are available: <http://www.employment.gov.sk/index.php?SMC=1&id=247>

Table No. 2: Number of children in Social Care Institutions in 2005-2008⁶

Institutions/Year	2005	2006	2007	2008
Social Care Institutions for children with physical disability	417	398	193	416
Social Care Institutions for children with physical disability, psycho-social and intellectual disabilities and behavioural problems	1,666	1,552	1,462	1,620
Social Care Institutions for children with psycho-social and intellectual disabilities and behavioural problems	830	292	358	276
TOTAL	2,913	2,242	2,013	2,312

Graph No. 1: Curve of institutionalisation of adults in Social Care Institutions⁷



⁶ Reports on Social Situation. Reports are available: <http://www.employment.gov.sk/index.php?SMC=1&id=247>

⁷ Reports on Social Situation. Reports are available: <http://www.employment.gov.sk/index.php?SMC=1&id=247>

Graph No. 2: Curve of institutionalisation of children in Social Care Institutions⁸

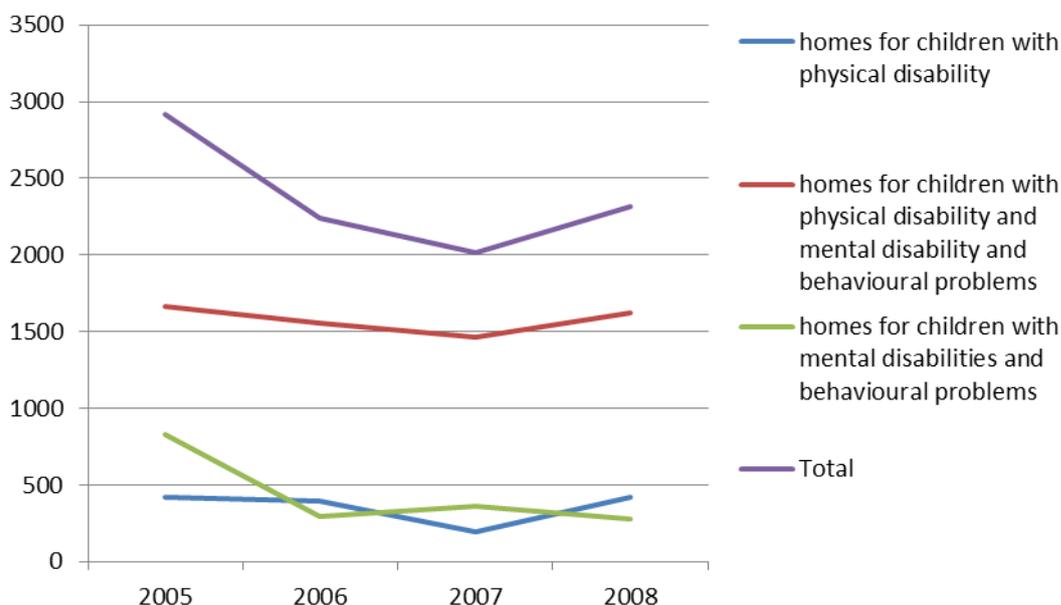


Table No. 3: Number of social care facilities⁹

Type of social care facility/Year	2005	2006	2007	2008	2009
Sheltered-house facilities	11	11	12	17	18
Homes for seniors ¹⁰	194	201	206	208	222
Care-giver facilities	91	90	88	92	96
Rehabilitation facilities	17	13	15	16	14
Social care homes	142	164	186	212	265
Specialised facilities	.	.	.	.	7
Daily care facilities	.	.	.	.	6

4. In 2003, the government approved a request for a loan from the Council of Europe Development Bank for financing infrastructure of social care institutions. The Ministry of Labour, Social Affairs and Family chose 25 facilities for this project, which received 500,332,400 Slovak crowns (approximately 16,139,754 euros).¹¹ In 2004, the government

⁸ Reports on Social Situation. Reports are available: <http://www.employment.gov.sk/index.php?SMC=1&id=247>

For graphs in colours, see the online version of this document.

⁹ Statistics of the Statistical office of the Slovak Republic.

¹⁰ The table makes a distinction between "Retirement homes" (before 2009) and "Homes for seniors" (2009). The difference is rather formal, the target group is the same.

¹¹ Comprehensive concluding report on the project "Transformation of existing facilities of social care services" (2008), the Ministry of Labour, Social Affairs and Family, p. 14-15.

lowered the number of facilities to 23.¹² In March 2008, the Ministry of Labour, Social Affairs and Family issued the *Comprehensive concluding report on the project Transformation of existing facilities of social care service*. According to the report, most of the partial projects were aimed at reconstruction and humanisation of existing services. The establishment of independent or sheltered houses was an objective in 4 projects, 2 of which were built on the premises of the existing institutional social care facility.¹³ Thus, only 2 projects out of 23 resulted in establishment of new independent sheltered-housing facilities.

5. On 6 October 2004, the government adopted a *National Programme for Mental Health*, and conception of a transformation of psychiatric care based on the World Health Organisation documents on mental health.¹⁴ The timeframe for the realisation of the plan was set in plan of actions for 2, 5 and 10 years. The aim of the document is to eliminate stigmatisation of people with mental disabilities and discrimination. However, the Slovak government failed to take any concrete and targeted steps towards promoting community services and transformation of large residential institutions. In 2009, the Ministry of Labour, Social Affairs and Family introduced the *National priorities for the Social Services Development for the period 2009-2013*. The document sets forth four main priorities for improvement in providing of social services. Apart from support for community based-services, the improvement of quality and humanisation of existing social care services is also one of the priorities.
6. **No coherent and comprehensive action plan or policy on deinstitutionalisation of social care institutions was adopted in Slovakia and current policies are aimed at humanisation of residential social care instead of promoting community based services. Continuing the state policy of "institutionalisation" is not justified by objective and reasonable grounds and hence it constitutes discrimination on grounds of disability.**

Informed consent and institutionalisation of persons under guardianship

7. The then Special Rapporteur on the right to health, Paul Hunt, emphasised that guardianship has been overused and abused in the medical as well as other contexts, including at the most extreme level to place persons with intellectual disabilities in psychiatric institutions.¹⁵ This is inappropriate medically and socially, and inconsistent with the rights of persons with intellectual disabilities to health, autonomy, participation, non-discrimination and social inclusion, as defined by Article 19 of the CRPD (for example, paragraph 1 of that provision states that 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).

¹² Comprehensive concluding report on the project "Transformation of existing facilities of social care services"(2008), the Ministry of Labour, Social Affairs and Family, p. 14.

¹³ Center for social help Humanity and Social care home Košice.

¹⁴ An Additional Report to the National Program for Mental Health, p. 2.

¹⁵ 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, para. 79.

8. Persons with intellectual and psycho-social disabilities have faced systematic discrimination for decades in Slovakia. One of the main consequences of this long-standing practise is the deprivation of a person's legal capacity, and their placement under guardianship where their decision-making is substituted by a third party, a guardian. Guardianship is regulated under the 1964 Civil Code (hereinafter "the Civil Code"), without any modification since the code was enacted. Persons with mental disabilities can be deprived or restricted of legal capacity on the grounds of mental disability. Full deprivation of legal capacity and placement under plenary guardianship can be described as a civil death, because a person under plenary guardianship automatically loses the authority to act in all aspects of his or her life. A person under partial guardianship is restricted in the exercise of numerous rights. The Slovak legislation does not provide persons with mental disabilities with any possibility of supported decision-making without restrictions on their legal capacity, as required by Article 12 of the CRPD.
9. According to the Civil Code, a court's decision on deprivation and restriction of legal capacity can be based exclusively on a diagnosis of a mental disability and thus fundamentally affect a "group" of persons with disabilities. Deprivation and restriction of legal capacity leads to an automatic presumption of incompetency, in, *inter alia*, family matters (restrictions of or completely bars to marriage and parental rights), contractual matters and political participation, including prohibition from voting and also consenting to medical treatment.
10. Pursuant to Article 6(6) of the Act No. 576/2004, the Health Care Act, a legal representative (appointed guardian) is entitled to undertake an informed consent declaration; the "incapable" person shall be involved in the decision making as much as his/her capacities allows. The Healthcare Act is silent on the definition of an "incapable person". However, according to the Slovak Civil Code "incapable persons", as defined by law, are those under plenary guardianship.¹⁶ If the guardian refuses to give his or her consent, a health care provider may turn directly to the court to decide on the health care. The law specifies that this step must be in the *interest* of an "incapable person"¹⁷. However, it is the guardian who decides on the health care; the law presumes incapacity and requires only the involvement of a person under guardianship, (e.g. providing information, explanation, etc.) not his/her decision. An automatic restriction of a certain right, in this case the right to vote based on guardianship was recently criticised by the European Court of Human Rights in the case of *Alajos Kiss v. Hungary*. The Court stated that automatic restrictions on the right to vote based on restrictions of legal capacity were not permissible.¹⁸
11. **The Health Care Act automatically excludes persons under guardianship from taking decisions on their health care. This situation can lead to arbitrary decisions on health care, including *de facto* arbitrary deprivations of liberty in psychiatric institutions.**

¹⁶ Act No. 40/1961, the Civil Code, Article 10.

¹⁷ Act No. 576/2004, the Health Care Act, Article 6(7).

¹⁸ *Alajos Kiss v. Hungary*, application no. 38832/06, judgment of 20 May 2010.

SUGGESTED QUESTIONS FOR THE SLOVAK GOVERNMENT:

- What policy and legislative amendments are planned to prevent institutionalization in social care institutions and ensure the right to independent living and being included in the community?
- How will the government ensure deinstitutionalization and establish community-based services?
- How will the government secure that persons under guardianship are not automatically excluded from decisions on their health care?

C. Right to education (Article 13 ICESCR)

1. Article 13 provides that everyone has a right to education. The states must ensure the equal enjoyment of this right for all people, by not only refraining from infringement of this right, but also by protecting all individuals from discrimination and ensuring an equal access to education for all children regardless to their disability.¹⁹ By ratification of the CRPD, Slovakia has bound itself to establish the inclusive education system at all levels of education including lifelong learning that would ensure the full development of human potential of people with disabilities and their effective participation in the society (Article 24 CRPD). The requirement for abandonment of the double track system that excludes children with disabilities from mainstream education is also expressed in other UN documents, e.g. the Committee on the Rights of the Child in its General Comment no. 9 emphasised that “inclusive education should be the goal of educating children with disabilities.”²⁰ Further, the UN Special Rapporteur on the Right to Education, Mr. Vernor Muñoz, identified an obligation of the states to transition from the special education paradigm to an inclusive education paradigm with the aim of preventing discrimination. In his 2007 report for the Human Rights Council, Mr. Muñoz emphasised:

The special schools, often based on the belief that persons with disabilities are uneducable and a burden on the mainstream educational system, often were - and remain - inflexible, non-individual-student specific and they fail to provide or even offer optimum results for their students. The negative impact of these beliefs is reflected on national and international educative assessments. [...] In addition, the 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

¹⁹ General Comment of the Committee on the Economic, Social and Cultural Rights No.13: The right to education (Art.13) from 08.12.1999, E/C.12/1999/10., para 36

²⁰ CRC, General Comment no. 9. The rights of children with disabilities, 2006, CRC/C/GC/9, para. 66.

limit marginalization. This marginalization contributes to misconceived stereotyping, prejudice and thus discrimination.²¹

2. It is indisputable that Slovakia must ensure the right of every child to choose and receive education in a wide range of available and accessible inclusive schools and schooling facilities as well as to provide a sufficient support for each child according to their needs to fully fulfil this right.
3. The term “inclusion” or “inclusive approach” in the area of education is not recognised by the Slovak legislation. The former law on primary and secondary education valid in Slovakia until 2009²² regulated only the education of children with special educational needs in special schools. The new Act No. 245/2008 Coll. (hereinafter “the Education Act”) allows for children with special educational needs²³ to attend, under certain conditions, mainstream schools through “school integration”.²⁴ However, the preference of individual “integration” of children with disabilities is not expressed in the law, neither is the right of the child to be taught primarily in the inclusive setting. Further, **there are no national policies or other national documents that would anchor the commitment of the government to establish an inclusive educational system** as proposed by the Special Rapporteur on the right to education.²⁵
4. The legislation does recognise the parental right to choose the form of education for their child, this right might be exercised only to the extent that they can choose a school or educational facility *that provides an education that corresponds to the abilities, health state, interests and hobbies of the child*.²⁶ Thus, **in case the school does not have an appropriate environment available for the child, the parent cannot freely decide on the placement of their child there**. Moreover, some methodological documents discourage the parents from placing their child in regular schools against the recommendation of the assessment centre.²⁷ An internal methodological document of the Ministry of Education²⁸ states that: *education of*

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, para. 11.

²² Act No. 29/1984 Col. on System of Primary and Secondary Schools.

²³ Art. 2 (i) of the Act No. 245/2008 Col. states that „*a special educational need is a requirement for accommodation of conditions, content, form, method and approaches in education of a child or a pupil, which stems from their disability or talent or their development in a socially deprived environment, use of which is necessary for the development of capacities or individuality of the child or pupil and for attainment of an adequate level of education and adequate inclusion in the society*“

²⁴ Art. 2 (s) of the Act No. 245/2008 Col. states that “*the school integration means education of children or pupils with special educational needs in classes of schools or educational facilities for children or pupils without special educational needs.*“

²⁵ *The right to education of persons with disabilities*, Report of the Special Rapporteur on the right to education, Vernor Munoz from 19 February 2007, A/HRC/4/29, para. 26

²⁶ Art. 144(5) of the Act No. 245/2008 Col

²⁷ The legislation recognizes two kinds of assessment centers for children with special educational needs: *Centers for Pedagogical-psychological Consultancy and Prevention*, under Art. 132 and *Centers for Special pedagogical Consultancy* under Art. 133 of the Act No. 245/2008 Col.

²⁸ An Internal Methodical Material of The State School Inspection from 2009

children with intellectual disabilities by integration in mainstream schools is not recommended from the expert point of view, and that in case there is a suspicion that the protection and care necessary for the interest of a child is not provided, the director of a school is obligated to notify the responsible organ about the violation of the rights of the child. This document clearly incites the employees of the school inspection and the directors of schools to initiate court proceedings against parents who are not willing to accept recommendations of a psychologist from the assessment centre and wish to place their child with intellectual disabilities into a mainstream school.

5. Although the legislation foresees the possibility of integration of children with disabilities into mainstream schools, **several provisions impose limitations that make the access of the children with special educational needs to mainstream schools more difficult.** The Regulation of the Ministry of Education No. 320/2008 imposes a limit of three children with disabilities in a mainstream class.²⁹ Further, the director of the school or the assessment centre may decide that an integrated education is not in the interest of the child³⁰ or that the exercise of the right of a child with special educational needs to an integrated education restricts the rights of other children.³¹
6. The education of children with disabilities in Slovakia is currently mainly provided in special schools which are segregated from mainstream educational systems and facilities, and the educational attainment of these scholars is lower: thus children with disabilities are denied the right to education on an equal basis with others. In their report submitted to the Committee the government admitted that *education received at special schools except the education from special schools for mentally handicapped pupils, is equal to the education received at primary and secondary schools.*³² As Slovakia failed to submit any statistical data concerning the numbers of children with psycho-social and intellectual disabilities in special schools and in mainstream schools, MDAC provides the Committee with relevant data.
7. As seen in **Table 4**, only about 35% of children and pupils with disabilities were individually integrated in mainstream primary schools or kindergartens in 2009. The number of individually integrated children has slightly risen since 2005; however, there is no significant growth that would suggest that individual integration is preferred by the practice. Further, as seen in **Table 5**, only about 25% of children with special educational needs attend secondary schools, which is a gross disproportion compared to the fact that almost 50% of children without special educational needs continue to secondary education. The lack of further education for people with disabilities lowers their chances on the open labour market, which results in low employment rates of people with disabilities, and increases the likelihood that they will live in poverty.

²⁹ Art. 13(2) of the Regulation of the Ministry of Education No. 320/2008

³⁰ Art. 29(10) of the Act No. 245/2008 Col.

³¹ Art. 29(13) of the Act No. 245/2008 Col.

³² see paragraph 463 of the report submitted by the Slovakian government; emphasis added.

Table No. 4: Number of children with special educational needs (SEN) in special and in mainstream kindergartens, primary schools and secondary schools³³

	Kindergartens and primary schools			Secondary schools		
	all	special	mainstream	All	special	mainstream
2005	40,193	27,579	12,614	6,572	5,456	1,116
2006	42,750	28,280	14,470	7,512	5,470	2,042
2007	46,895	31,030	15,865	8,268	5,438	2,830
2008	47,664	31,421	16,243	9,478	5,889	3,589
2009	49,575	31,832	17,743	10,254	5,946	4,308

Table No. 5: Number of children with and without special educational needs in primary and secondary schools³⁴

	Children with SEN in primary schools		Children without SEN in primary schools	Children with SEN in secondary schools		Children without SEN in secondary schools
	All	Individually integrated		All	Individually integrated	
2005	24,349	N/A	639,720	7,925	N/A	309,889
2006	38,180	13,074	627,596	9,604	1,774	304,667
2007	42,347	14,287	607,296	10,004	2,449	295,910
2008	44,073	15,745	590,566	11,682	3,589	297,347
2009	45,784	17,241	582,477	12,583	4,308	287,277

Table No. 6: Number of children with special educational needs in public schools with the emphasis on children intellectual disabilities.³⁵

School/ Year	2005	2006	2007	2008	2009	2010
All Children with special educational needs	30,015	30,733	33,527	34,132	34,277	34,689
Children with intellectual disabilities in special schools	19,101	19,226	19,155	18,777	18,741	18,734
Children with intellectual disabilities in special integrated classes	4,343	4,706	5,179	5,797	6,088	6,350

8. There are around 25,000 children with intellectual disabilities in Slovakia. As seen in **Table 6**, only about 25% of all children with intellectual disabilities are integrated in public mainstream schools. Further, according to Table 3, compared to 17,950 children with

³³ Data from the Replies from the government of Slovakia to the list of issues to be taken up in the connection with the consideration of the third periodic report of Slovakia. Human Rights Committee.

³⁴ Data from the Statistical Yearbook of the Institute on Information and Prognosis in Education.

³⁵ Data from the Statistical Yearbook of the Institute on Information and Prognosis in Education.

intellectual disabilities in primary schools in 2010, only 4,153 children attend some form of secondary school, which means that less than 25% of children with intellectual disabilities receive secondary education. Moreover, as seen in **Table 7**, none of the pupils with intellectual disabilities attend higher schools, such as Grammar schools (“Gymnázium”) or Higher Technical School (“Vyššia odborná škola”).

Table No. 7: Children with intellectual disabilities in public schools³⁶

Number of children/ Year	2005	2006	2007	2008	2009	2010
Kindergartens	176	188	156	172	229	236
Primary schools (Individually integrated)	0	3,631	3,754	3,673	3,633	3,632
Special primary schools	15,118	15,126	15,140	14,684	14,449	14,318
Technical and training schools	3,492	3,539	3,418	3,347	3,376	3,411
Practical schools	315	373	441	574	687	742
Grammar schools	0	0	0	0	0	0
Higher technical school	0	0	0	0	0	0
Higher training school	0	0	0	N/A	N/A	N/A

9. The concept of reasonable accommodation is not explicitly expressed in the law. The legislation sets forth the obligation for schools with children with special educational needs to create special conditions through “individual education programme or education programmes for schools educating children with special educational needs.”³⁷ These programmes should also consist of personal and material requirements that the school must meet in order to ensure a full development of the abilities of the child. There is no obligation for a school to reasonably accommodate a child who wants to attend it; the requirement for creating the specific conditions according to the education programme applies only for schools that already educate children with disabilities.³⁸ Thus, if a school does not meet these requirements (which is the case of most of the mainstream schools), the director may refuse to accept the child with special educational needs. As the legislation does not impose any obligations for mainstream schools to adopt measures for providing reasonable

³⁶ Data from the Statistical Yearbook of the Institute on Information and Prognosis in Education

³⁷ Art. 7(5) of the Act No. 245/2008 Col.

³⁸ Art. 7(5) of the Act No. 245/2008 Col.

accommodation, the two-track system continues to segregate children with disabilities from the majority. Moreover, there is no action (in terms of policies or proposed changes to legislation) that would challenge the system.

10. As already noted (see point A above, p. 3-4), the only area of law where reasonable accommodation applies is in employment. **In so far as the area of education is concerned, the failure to provide children with disabilities with reasonable accommodation constitutes unlawful discrimination on the ground of disability.**

SUGGESTED QUESTIONS FOR THE SLOVAK GOVERNMENT:

- How will the government fulfill its commitment to introduce in law and to operationalise an enforceable right to inclusive education?
- How will the government ensure that the legal concept of “reasonable accommodation” applies to the area of education?