

SLOVENIA

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Contents

Executive summary	3
1. Definitions	7
2. Anti-discrimination	9
2.1. Incorporation of United Nations standards	9
2.2. The anti-discrimination national framework	10
3. Specific Fundamental Rights	16
3.1. The Right to life.....	16
3.2. The right to freedom from torture or cruel, inhuman or degrading treatment or punishment	16
3.3. The right to freedom from exploitation	17
3.4. The right to liberty and security	17
3.5. The right to fair trial	18
3.6. The right to privacy, including the access to one's own confidential medical records.....	21
3.7. The right to marry, to found a family and to respect of family life 24	24
3.8. The right to have children and maintain parental rights	24
3.9. The right to property.....	25
3.10. The right to vote	25
4. Involuntary placement and Involuntary Treatment	27
4.1. Legal Framework.....	27
4.2. Criteria and Definitions	28
4.3. Assessment, Decision Procedures and Duration.....	29
5. Competence, Capacity and Guardianship.....	33
5.1. Subsection level 1	35
Annexes-Case Law	38

Executive summary

Definitions

- [1]. *Duševna motnja* [mental disorder] is defined as a temporary or permanent disorder in the functioning of brain, which is reflected in altered thinking, feeling, cognition, behaviour and perception of oneself and one's environment. Deviation from the moral, social, political or other values of the society in and of itself does not account for a mental disorder.¹ Slovenian legislation verbatim does not use the term intellectual disability. Regarding children the *Zakon o usmerjanju otrok s posebnimi potrebami* [Placement of Children with Special Needs Act] employs the notion *otroci s posebnimi potrebami* [children with special needs].² For educational purposes the disturbance in mental development is diagnosed according to five levels: borderline, mild, moderate, severe and profound.

Anti-discrimination

- [2]. Slovenia has ratified both the said UN Convention as well as its Optional Protocol. The principle of equality is one of the basic constitutional provisions. According to Article 14 of the *Ustava* [Constitution] everyone in Slovenia shall be guaranteed equal human rights and fundamental freedoms also irrespective of disability or indeed any other personal circumstance.³ The principle of equality, also within the meaning of prohibiting discrimination on the grounds of disability, is concretized and implemented in various statutory provisions, inter alia in: the *Zakon o uresničevanju načela enakosti*

¹ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 2/4. »Duševno zdravje je stanje posameznika oziroma posameznice (v nadaljnjem besedilu: posameznik), ki se kaže v njegovem mišljenju, čustvovanju, zaznavanju, vedenju ter dojemanju sebe in okolja.«

² Slovenia/Placement of Children with Special Needs Act 3/07 (12.1. 2007), Art. 2. »Otroci s posebnimi potrebami po tem zakonu so otroci z motnjami v duševnem razvoju, slepi in slabovidni otroci, gluhi in naglušni otroci, otroci z govorno-jezikovnimi motnjami, gibalno ovirani otroci, dolgotrajno bolni otroci, otroci s primanjkljaji na posameznih področjih učenja ter otroci s čustvenimi in vedenjskimi motnjami, ki potrebujejo prilagojeno izvajanje programov vzgoje in izobraževanja z dodatno strokovno pomočjo ali prilagojene programe vzgoje in izobraževanja oziroma posebne programe vzgoje in izobraževanja.«

³ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 14/1

[Principle of Equal Treatment Act],⁴ *Zakon o delovnih razmerjih* [Employment Relationship Act].⁵

- [3]. Preferential treatment, in particular of children with intellectual disability, is included in many legal provisions: *Zakon o vrtcih* [Kindergarten Act],⁶ *Zakon o osnovni šoli* [Elementary School Act]⁷, Placement of Children with Special Needs Act, *Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju* [Health Care and Health Insurance Act],⁸ *Zakon o delovnih razmerjih* [Employment Relations Act],⁹ *Zakon o spodbujanju razvoja turizma* [Promotion of Tourism Development Act], ect.¹⁰
- [4]. Rules on the reasonable accommodation of the persons with disability are contained in the Kindergarten Act¹¹ and Elementary School Act,¹² Placement of Children with Special Needs Act, Employment Relationship Act and in the *Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov* [Vocational Rehabilitation and Employment of Disabled Persons Act].¹³

Specific fundamental rights

- [5]. Article 17 of the Constitution stipulates that human life is inviolable and that there is no capital punishment in Slovenia. This right permits for no exception and belongs to everyone.¹⁴ Pursuant to Article 18 no one may be subjected to torture, inhuman or degrading punishment or treatment. The conducting of medical or other scientific experiments on any person without his free consent is prohibited.¹⁵ Article 34 of the Constitution provides that everyone has the right to personal dignity and safety.¹⁶

4 Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007).

5 Slovenia/Employment Relationship Act 42/02 and 103/07 as amended (3.5.2002).

6 Slovenia/Kindergarten Act 100/05, (10.11. 2005), Art. 19.

7 Slovenia/Elementary School Act 12/96, (15.3. 1996), Art. 11, 21.

8 Slovenia/Health Care and Health Insurance Act, (11.7. 2006).

9 Slovenia/Employment Relationship Act 42/02, (1.1. 2003), Art. 159, 190.

10 Slovenia/Promotion of Tourism Act, 2/04, (30.1. 2004), Art. 27.

11 Slovenia/Kindergarten Act 100/05, (10.11. 2005), Art. 19.

12 Slovenia/Elementary School Act 12/96, (15.3. 1996), Art. 11, 21.

13 Slovenia/Vocational Rehabilitation and Employment of Disabled Persons Act 63/04, (25.6. 2004).

14 Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 17.

15 Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 18.

16 Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 34.

- [6]. The Constitutional Court found the legal regulation of a compulsory detention in closed wards of psychiatric hospitals prior to the adoption of the present Mental Health Act was inconsistent, among other, with the constitutional right to liberty.¹⁷
- [7]. The *Zakon o zdravstveni dejavnosti* [Health Services Act]¹⁸ limits the patient's right of direct access to his health records due to the possibility of false interpretation of the diagnoses in the records.¹⁹ The said provision was unsuccessfully challenged before the Constitutional Court.
- [8]. A person who suffers from a severe mental disorder or is injudicious lacks the capacity to conclude a marriage.²⁰ The persons with mental disorders or intellectual disability can dispose with their property as far as they possess the necessary contractual capacity. If their capacity thereof is limited, they must be represented by a guardian. This is also inserted into the land registry book.²¹
- [9]. *Zakon o volitvah v državni zbor* [National Assembly Elections Act] provides that as regards the right to vote and the right to be elected, this right is not granted to a citizen of the Republic of Slovenia aged 18 and over, who does not have a legal capacity due to a mental illness, retardation or disability and for whom the parental right of parents or other persons has been prolonged after he/she was 18 and he/she is not capable of understanding the meaning, purpose and impacts of elections.

Involuntary placement and involuntary treatment

- [10]. The purpose of involuntary treatment is to prevent harm to one's or other people's life, health or property.²² The Mental Health Act provides that medical treatment shall be conducted in accordance with experienced methods and internationally recognized standards. Any medical treatment must be proportionate to its objectives. If there are more medical treatments with comparable effects available, it shall be

¹⁷ Slovenia/Constitutional Court U-I-60/03, 73/08, (3.7. 2008).

¹⁸ Slovenia/Health Services Act 45/01, (10.3. 2005).

¹⁹ Slovenia/Health Services Act 45/01, (10.3. 2005), Art. 47/6.

²⁰ Slovenia/Marriage and Family Relations Act 69/04 (24.6. 2004), Art. 19.

²¹ Slovenia/Non-Litigious Act, 30/86 (1.10. 1986), Art. 55.

²² Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 39.

chosen the treatment with the least impact on the personal integrity, freedom and with the least negative side effects.²³

- [11]. Special methods of treatment can be employed only exceptionally, under the conditions set in the Mental Health Act and exclusively in the psychiatric hospitals.²⁴ The Mental Health Act explicitly prohibits psycho-surgical treatment.²⁵ Special methods of psychiatric treatment can not be used on juveniles.²⁶ A mere mental disorder in and of itself does not present a health condition on whose grounds sterilisation or abortion can be justified.²⁷ The so-called special security measures are explicitly regulated by the Mental Health Act. The Mental Health Act requires that the person concerned must be represented by an advocate throughout the judicial phase of deciding on involuntary treatment or placement.²⁸ His/her costs are borne by the court.²⁹

Competence, capacity and guardianship

- [12]. The management of affairs of persons with mental disorders and persons with intellectual disability when they are unable to do so is in substance regulated (chiefly) by the Marriage and Family Relations Act and Social Care Act, whereas procedurally it is determined by the Non-litigious Civil Procedure Act. The decision to restrict or remove an individual's civil capacity, and appoint a guardian, including determination of the guardian's role regarding his/her management of property and other rights of a ward, can be only made by the court.³⁰ The fulfilment of the guardian's role, when appointed, is monitored by the centres of social work.

²³ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 8/1,2.

²⁴ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 9/1.

²⁵ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 9/3.

²⁶ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 9/12.

²⁷ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 10.

²⁸ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 31.

²⁹ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 68.

³⁰ Slovenia/Marriage and Family Relations Act 69/04 (24.6. 2004).

1. Definitions

- [13]. *Zakon o duševnem zdravju* [Mental Health Act] defines mental health as a state of individual expressed in his/her thinking, feeling, cognition, behaviour and perception of his/herself and of the environment.³¹ *Duševna motnja* [mental disorder] is defined as a temporary or permanent disorder in the functioning of brain, which is reflected in altered thinking, feeling, cognition, behaviour and perception of oneself and one's environment. Deviation from the moral, social, political or other values of the society in and of itself does not account for a mental disorder.³²
- [14]. Slovenian legislation verbatim does not use the term intellectual disability. Regarding children the *Zakon o usmerjanju otrok s posebnimi potrebami* [Placement of Children with Special Needs Act] employs the notion *otroci s posebnimi potrebami* [children with special needs]. These are children with disorders in mental development, blind and weak-sighted children, deaf and partly-deaf children, children with language-speaking disorders, motorically disadvantaged children, children with long-lasting diseases, children with gaps in particular fields of education as well as children with emotional and behaviour disorders who require adjusted or special programs of rearing and education also together with expert assistance.³³ The *Pravilnik o organizaciji in načinu dela komisij za usmerjanje otrok s posebnimi potrebami ter o kriterijih za opredelitev vrste in stopnje primanjkljajev, ovir oziroma motenj otrok s posebnimi potrebami* [Rules on the organisation and methods of work of

³¹ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 2/3. »Duševna motnja je začasna ali trajna motnja v delovanju možganov, ki se kaže kot spremenjeno mišljenje, čustvovanje, zaznavanje, vedenje ter dojemanje sebe in okolja. Neprilagojenost moralnim, socialnim, političnim ali drugim vrednotam družbe se sama po sebi ne šteje za duševno motnjo.«

³² Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 2/4. »Duševno zdravje je stanje posameznika oziroma posameznice (v nadaljnjem besedilu: posameznik), ki se kaže v njegovem mišljenju, čustvovanju, zaznavanju, vedenju ter dojemanju sebe in okolja.«

³³ Slovenia/Placement of Children with Special Needs Act 3/07 (12.1. 2007), Art. 2. »Otroci s posebnimi potrebami po tem zakonu so otroci z motnjami v duševnem razvoju, slepi in slabovidni otroci, gluhi in naglušni otroci, otroci z govorno-jezikovnimi motnjami, gibalno ovirani otroci, dolgotrajno bolni otroci, otroci s primanjkljaji na posameznih področjih učenja ter otroci s čustvenimi in vedenjskimi motnjami, ki potrebujejo prilagojeno izvajanje programov vzgoje in izobraževanja z dodatno strokovno pomočjo ali prilagojene programe vzgoje in izobraževanja oziroma posebne programe vzgoje in izobraževanja.«

commissions for the placement of children with special needs and on criteria for determining the type and degree of disadvantages, impairments and disabilities of children with special needs] defines a person with disturbance in mental development as a person having “poor cognitive, verbal, motor and social skills in comparison to the average skills level of a person of the same age, which reflects an unbalanced development between the mental and chronological age of the person.”

- [15]. For educational purposes the disturbance in mental development is diagnosed according to five levels:
- a. Borderline: “an unbalanced development of a child who can, if integrated in a programme of adapted implementation with additional professional help (integration in mainstream schools) achieve minimal required standard of knowledge.”
 - b. Mild: “a child has lower learning abilities. In an adapted environment he or she can acquire basic school knowledge, but not equal to the minimal required school standards. With proper treatment they can achieve lower vocational education and capacity for independent social life”.
 - c. Moderate: “specific skills are differently developed. They can learn basic reading, writing and calculation, and can develop better musical, artistic and motor skills. They are able to cooperate in simple conversation and can understand instructions. They can also use different forms of communication, and are able to communicate their needs and wishes. They can take care of themselves to a certain amount, but for rest they need assistance through all of the life. They can perform easy manual tasks”.
 - d. Severe: “the child can acquire the simplest skills. He or she often needs care, understands simple messages and responds to them, can orient themselves in a familiar environment. Usually intellectual disability is combined with physical disability or illness”.
 - e. Profound: “the child can be involved in some activities, needs constant care, protection, help and assistance. He or she has limited mobility. Often intellectual disability is combined with another condition or illness. Understanding of instruction is very limited”.³⁴

³⁴ Slovenia/Rules on the organisation and methods of work of commissions for the placement of children with special needs and on criteria for determining the type and degree

- [16]. Adults are not diagnosed with borderline disorders in mental development. This level is relevant only for educational purposes, whereas regarding employment the borderline individuals are considered fully capable of work.³⁵ Adults with more severe intellectual disabilities (*moderate, severe or profound* intellectual disabilities) can obtain a status of a disabled person.³⁶
- [17]. There is no case law which would further elucidate the presented concepts.

2. Anti-discrimination

2.1. Incorporation of United Nations standards

- [18]. With the adoption of the *Zakon o ratifikaciji Konvencije o pravicah invalidov in Izbirnega protokola h Konvenciji o pravicah invalidov* [Act ratifying the Convention on the Rights of persons with Disabilities and Optional Protocol to the Convention on the Rights of Persons with Disabilities]³⁷ Slovenia has ratified both the said UN Convention as well as its Optional Protocol. The ratification required no amendments to the pre-existing legislative framework.³⁸
- [19]. Slovenia also translated the UN Standard Rules on the Equalisation of Opportunities of Persons with Disabilities into Slovenian and published them as a booklet.³⁹ Following these Rules, the *Zakon o uporabi slovenskega znakovnega jezika* [Act on the use of Slovene

of disadvantages, impairments and disabilities of children with special needs 8/08 (25.1. 2008) as amended (criteria).

³⁵ Open Society Institute, Rights of People with Intellectual Disabilities, Access to Education and Employment, available at: http://snap.archivum.ws/dspace/bitstream/10039/3446/20/slovenia_report_translation.pdf, last visited 1.10. 2009, at 33.

³⁶ Slovenia/Vocational Rehabilitation and Employment of Disabled Persons Act 63/04 (10.6. 2004), Art. 3.

³⁷ Slovenia/Act ratifying the Convention on the Rights of persons with Disabilities and Optional Protocol to the Convention on the Rights of Persons with Disabilities 10/08 (15.4. 2008).

³⁸ Slovenia/National Assembly, <http://www.dz-rs.si/index.php?id=101&unid=PZ4%7CC12565D400354E68C12573FB0031EFCE&mandate=-1>, last visited 8.12. 2009.

³⁹ Open Society Institute, Rights of People with Intellectual Disabilities, Access to Education and Employment, available at: http://snap.archivum.ws/dspace/bitstream/10039/3446/20/slovenia_report_translation.pdf, last visited 1.10. 2009, at 25.

Sign Language]⁴⁰ and the *Zakon o invalidskih organizacijah* [Disabled Persons Organisations Act]⁴¹ were adopted and they are reported to have enabled a better dialogue between the Government, NGOs and other organisations representing people with disabilities.⁴²

2.2. The anti-discrimination national framework

- [20]. The principle of equality is one of the basic constitutional provisions. According to Article 14 of the *Ustava* [Constitution] everyone in Slovenia shall be guaranteed equal human rights and fundamental freedoms also irrespective of disability or indeed any other personal circumstance.⁴³ All persons shall be equal before the law.⁴⁴ Article 22 of the Constitution further guarantees the equal protection of rights.⁴⁵
- [21]. The principle of equality, also within the meaning of prohibiting discrimination on the grounds of disability, is concretized and implemented in various statutory provisions. The first to be mentioned is the *Zakon o uresničevanju načela enakosti* [Principle of Equal Treatment Act],⁴⁶ which is an umbrella statutory act with a general scope of application. It is prohibiting discrimination against any person in the exercise of his/her rights and duties and in the exercise of his/her fundamental freedoms in any field of social life, in particular in the fields of employment, employment relations, affiliation with unions and interest organisations, upbringing and education, social security, access to and provision of goods and services. It was adopted in May 2004 and it seeks to implement the Directive 2000/43/EC and the Directive 2000/78/EC. Its main objective is improvement of the protection in relation to

⁴⁰ Slovenia/Act on the use of Slovene Sign Language 96/02, (15.11.2002).

⁴¹ Slovenia/Disabled Persons Organisations Act 108/02 (12.12.2002).

⁴² Open Society Institute, Rights of People with Intellectual Disabilities, Access to Education and Employment, available at: http://snap.archivum.ws/dspace/bitstream/10039/3446/20/slovenia_report_translation.pdf, last visited 1.10. 2009, at 25.

⁴³ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 14/1

⁴⁴ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 14/2; also Slovenia/Ustavno sodišče/U-I-94/05 (26.10.2006): '*Pursuant to Art. 14 of the Constitution in Slovenia everyone is guaranteed equal human rights and fundamental freedoms irrespective of personal circumstances, including gender which is specifically listed by the Constitution.*'

⁴⁵ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 22, also Slovenia/Ustavno sodišče/Up-1055/05 (19.1.2006): '*A party in the procedure is entitled to fundamental procedural guarantees, which include a right to a statement and a right to equal treatment of parties in the procedure.*'

⁴⁶ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007).

discrimination based also on health condition and disability. The Act bans direct and indirect discrimination, harassment and victimization and determines the sanctions for violations. It also allows the adoption of positive action measures, if they contribute to the aim of promoting equality or compensate for existing inequalities.

- [22]. Discrimination on the basis of health or disability is also explicitly prohibited in the *Zakon o delovnih razmerjih* [Employment Relationship Act].⁴⁷ Its Article 6 provides that the employer may not discriminate either directly or indirectly between employment seekers or employees on the basis, *inter alia*, of health or disability.⁴⁸ The employer, who must discharge a burden of proof of the alleged discrimination, is liable for damages in case of occurrence of such discrimination pursuant to the general rules of the civil law.⁴⁹
- [23]. The mental disorder, while not explicitly and specifically mentioned in constitutional and legislative provisions, could be subsumed under the concept of disability or certainly under the notion of any other personal circumstance and health. Discrimination on the basis of mental disorder is therefore prohibited as well.
- [24]. The Constitution allows for preferential treatment of persons with disabilities. Article 52 of the Constitution expressly prescribes that disabled persons shall be guaranteed protection and work-training in accordance with the law. In particular, physically or mentally handicapped children and other severely disabled persons have the right to education and training for an active life in society, which shall be financed from public funds.⁵⁰
- [25]. A number of statutes prescribe certain benefits, in particular for the intellectually disabled children. *Zakon o vrtcih* [Kindergarten Act]⁵¹ and *Zakon o osnovni šoli* [Elementary School Act]⁵², for example, provide for a special form of pre-school and school training for the intellectually disabled children. The same issue, albeit more generally, is regulated by the Placement of Children with Special Needs Act. *Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju* [Health Care and Health Insurance Act]⁵³ entitles children with corporal and intellectual disorders and severely disabled adults, when they are not

⁴⁷ Slovenia/Employment Relationship Act 42/02 and 103/07 as amended (3.5.2002).

⁴⁸ Slovenia/Employment Relationship Act 42/02 and 103/07 as amended (3.5.2002), Art 6/1.

⁴⁹ Slovenia/Employment Relationship Act 42/02 and 103/07 as amended (3.5.2002), Art 6/7.

⁵⁰ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 52.

⁵¹ Slovenia/Kindergarten Act 100/05, (10.11. 2005), Art. 19.

⁵² Slovenia/Elementary School Act 12/96, (15.3. 1996), Art. 11, 21.

⁵³ Slovenia, Health Care and Health Insurance Act, (11.7. 2006).

covered by their personal insurance, to full health insurance coverage from the mandatory, i.e. public insurance scheme. They and their caretakers are also reimbursed for other expenses, such as transport costs, etc.⁵⁴ *Zakon o delovnih razmerjih* [Employment Relations Act] grants parents of intellectually disabled children special status, so that, for example, they can not be required to work overtime and are entitled to additional days of leave from the work.⁵⁵ *Zakon o spodbujanju razvoja turizma* [Promotion of Tourism Development Act] exempts children with intellectual disabilities from payment of tourist taxes when using tourist facilities.⁵⁶

[26]. In the case U-I-183/94 the Constitutional Court⁵⁷ had to rule on the constitutionality of the *Zakon o prometnem davku* [Sales Tax Act].⁵⁸ The Act introduced the duty of paying sales tax and service occupation tax. The tax was levied on any sale of products aimed for a final consumption, and on any sale of equipment. A person liable to sales taxes is a legal entity or a natural person who sells products to the final purchaser. Irrespective of that provision, a person liable to sales taxes could also be a natural person who purchases a product if thus provided by the statute. The Sales Tax Act provided also for tax exemptions that were exhaustively defined in Article 18. Item 14 of the said provision among other products also exempted from sales taxes a new car bought at most once in three years by persons who possess a driving license or who need care and help of others possessing the driving license, exclusively for their personal transport, and which was bought directly from a legal entity or a private person dealing with production or trade activities or imported directly, provided that those beneficiaries are:

- a. persons who suffered 80 percent bodily injury because of having their lower extremities or pelvis lost, damaged or paralyzed;
- b. persons who lost completely their eyesight;
- c. persons who are partially, totally or totally physically and mentally handicapped;
- d. persons - disabled granted an attendance and help allowance;
- e. persons partially, totally or totally physically and mentally handicapped who need care and help of other people and who

⁵⁴ Slovenia, Health Care and Health Insurance Act, (11.7. 2006), Art. 23, 25, 39. – 41.

⁵⁵ Slovenia/Employment Relationship Act 42/02, (1.1. 2003), Art. 159, 190.

⁵⁶ Slovenia/Promotion of Tourism Act, 2/04, (30.1. 2004), Art. 27.

⁵⁷ Slovenia/Constitutional Court, 75/96, (5.12. 1996).

⁵⁸ Slovenia/Sales Tax Act 71/93, (18.12. 1993) Art. 18.

were recognized that disability degree, as referred to in the previous subparagraphs, according to special laws.

- [27]. The Court noted that under Article 14 of the Constitution equality before the law of all is ensured. The Constitutional Court has frequently pointed out that that principle does not prevent the legislator from regulating different relations differently. It is only binding upon it to regulate equal relations equally and different differently. In addition, it is also within its power to define the criteria according to which it will manage to differentiate among similar states of facts and subject those to legal consequences. In its decisions the Court also emphasized that differentiation must not be arbitrary and that following the statute's or its individual norm's intent the legislator must choose appropriate measures that are proportionate to the objectively established (in)equality among individual subjects.
- [28]. In this case, the Court observed that the legislator in crafting an exemption for mentally disabled people strived to limit the exemption to the most severe cases of permanent physical and mental disability that are, because of affected persons' problems, directly linked with a subject of tax exemption - i.e. car. The Court stressed that merely by pursuing such a goal the legislator did not violate the principle of equality under Article 14 of the Constitution. The principle of equality before the law comes into consideration when dealing with equal states of facts, whereas different states of facts – such as the degree of physical or mental disability and the type of that disability being connected with a subject of statutory regulation - entail different application of law.
- [29]. However, since the Act besides objective, examinable and non-arbitrary conditions of physical and mental disability and a need for care and help of others bound the right to tax exemption also to an undefined and thus non-examinable condition of a "recognized degree of disability, under previous subparagraphs, according to special laws", the challenged provision did not ensure equality among the entitled persons within the framework of the tax exemption.
- [30]. The Constitutional Court found another example of unconstitutionality related to the disabled children in the case U-I-11/07.⁵⁹ The Court ruled that while the legislature acted in accordance with the Constitution by abrogating the obligation of parents to maintain their adult disabled children who do not have sufficient funds for living, it failed at the same time to comply with its constitutional duty by stipulating the obligation of the state regarding the social protection of such disabled persons as determined by Article 52 of the Constitution.

⁵⁹ Slovenia/Constitutional Court 122/07, 13.12. 2007.

In so doing, the legislature excessively interfered with the legal position of the discussed group of disabled persons. As a result, an unlawful gap in the law occurred in the legal system that the legislature is obliged to fill. The Court concluded that until the established inconsistency was remedied, it alone would determine the manner of the implementation of the decision. It decided that in the intervening time parents are obliged to maintain also their adult disabled children who are not capable of independent living due to their disability and who do not have sufficient funds for living, as applied prior to the implementation of Article 26 of the *Zakon o spremembi zakona o zakonski zvezi in družinskih razmerjih* [Act Amending the Marriage and Family Relations Act].

- [31]. Rules on the reasonable accommodation for children with intellectual disability are contained in the Kindergarten Act⁶⁰ and Elementary School Act,⁶¹ which provide for a special form of pre-school and school training for the intellectually disabled children. The same issue, albeit more generally, is regulated by the Placement of Children with Special Needs Act.
- [32]. Further rules for the adult persons are contained in the Employment Relationship Act. An employer shall provide protection of disabled workers and disabled persons who do not have the status of a disabled worker in employment, training or retraining in accordance with the regulations on training and employment of disabled persons and the regulations on pension and invalidity insurance.⁶² In accordance with the regulations on pension and invalidity insurance, an employer must ensure a worker, with whom remaining capacity for work has been ascertained, the following:
- a. another work corresponding to his remaining capacity for work,
 - b. part-time work with regard to his remaining capacity for work,
 - c. occupational rehabilitation,
 - d. wage compensation,
- [33]. The rights to vocational rehabilitation as well as the rights arising from it are more specifically determined by the *Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov* [Vocational Rehabilitation and Employment of Disabled Persons Act].⁶³ Vocational rehabilitation

⁶⁰ Slovenia/Kindergarten Act 100/05, (10.11. 2005), Art. 19.

⁶¹ Slovenia/Elementary School Act 12/96, (15.3. 1996), Art. 11, 21.

⁶² Slovenia/Employment Relationship Act 42/02, (1.1. 2003), Art. 199.

⁶³ Slovenia/Vocational Rehabilitation and Employment of Disabled Persons Act 63/04, (25.6. 2004).

services have been established in order to provide reasonable accommodation, which include *inter alia* producing a plan for required working equipment and necessary adaptations of work stations and the working environment for the disabled. These services are financed from the national budget, the Fund for Promoting the Employment of Disabled People and from other sources.

- [34]. The role of equality body, i.e. of a body which is specifically charged with ensuring the implementation of principle of equality, is exercised by the *Zagovornik načela enakosti* [Advocate of the principle of equality] (hereinafter the Advocate).⁶⁴ The post of the Advocate of the principle of equality was created in 2005. It replaced and took over the competences of the pre-existing Advocate for Equal Opportunities for Women and Men⁶⁵.
- [35]. The Advocate is foremost competent to review the cases of alleged violations of the ban on discrimination in accordance with the Principle of Equal Treatment Act.⁶⁶ The main purpose of considering cases of alleged violations of the ban on discrimination is discovery and warning. To this end, the Advocate provides general information and explanations regarding discrimination. When hearing a case he/she shall point out the discovered irregularities and recommend, how they should be eliminated. The Advocate also offers help to the discriminated persons in other procedures for exercising rights related to the protection against discrimination.⁶⁷
- [36]. The Advocate is following the Principle of Equal Treatment Act competent to address the instances of discrimination based on health condition and disability, including the persons with mental disorder (health condition) and intellectual disability (disability). The number of these cases varies on a yearly basis. In 2006 the Advocate dealt with 7 cases,⁶⁸ in 2007 there were 6,⁶⁹ whereas in 2008 there were 5

⁶⁴ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 11.

⁶⁵ http://www.uem.gov.si/en/areas_of_work/advocacy/, last visited March 2, 2009.

⁶⁶ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 11/1.

⁶⁷ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 11/2.

⁶⁸ Slovenia/Advocate of the principle of equality, 2006 Annual Report, at 6, available at <http://www.uem.gov.si/fileadmin/uem.gov.si/pageuploads/PorociloZagovornica2006.pdf>, last visited 1.10.2009.

⁶⁹ Slovenia/Advocate of the principle of equality, 2007 Annual Report, at 6, available at: <http://www.uem.gov.si/fileadmin/uem.gov.si/pageuploads/PorociloZagovornica2007.pdf>, last visited 1.10.2009.

cases.⁷⁰ However, none of the processed cases involved discrimination on the grounds of intellectual disability.

- [37]. The same approach, prohibiting discrimination on the basis of disability or indeed any other personal circumstance, already today following the Implementation of the Principle of Equal Treatment Act applies to areas other than employment, such as: social protection, including social and health care; social benefits; education; access to goods and services which are publicly available, including dwellings.⁷¹

3. Specific Fundamental Rights

3.1. The Right to life

- [38]. Article 17 of the Constitution stipulates that human life is inviolable and that there is no capital punishment in Slovenia. This right permits for no exception and belongs to everyone.⁷² There is no case law regarding the right to life applicable to the individuals with intellectual disability or mental disorder.

3.2. The right to freedom from torture or cruel, inhuman or degrading treatment or punishment

- [39]. Pursuant to Article 18 no one may be subjected to torture, inhuman or degrading punishment or treatment. The conducting of medical or other scientific experiments on any person without his free consent is prohibited.⁷³ There is no case law regarding the right to freedoms of torture or cruel, inhuman or degrading treatment or punishment applicable to the individuals with intellectual disability or mental disorder.

⁷⁰ Slovenia/Advocate of the principle of equality, 2008 Annual Report, at 5, available at: <http://www.uem.gov.si/fileadmin/uem.gov.si/pageuploads/Porocilozagovornikaza2008.doc>, last visited 1.10.2009.

⁷¹ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 2.

⁷² Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 17.

⁷³ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 18.

3.3. The right to freedom from exploitation

- [40]. Article 34 of the Constitution provides that everyone has the right to personal dignity and safety.⁷⁴ The Constitutional Court referred to this right in its case U-I-60/03 presented below.⁷⁵

3.4. The right to liberty and security

- [41]. Pursuant to Article 19 of the Constitution everyone has the right to personal liberty. No one may be deprived of his liberty except in such cases and pursuant to such procedures as are provided by law. Anyone deprived of his/her liberty must be immediately informed in his mother tongue, or in a language which he understands, of the reasons for being deprived of his liberty. Within the shortest possible time thereafter, he/she must also be informed in writing of why he/she has been deprived of his/her liberty. He/she must be instructed immediately that he/she is not obliged to make any statement, that he/she has the right to immediate legal representation of his/her own free choice and that the competent authority must, on his/her request, notify his/her relatives or those close to him/her of the deprivation of his/her liberty.⁷⁶
- [42]. The legal regulation of a compulsory detention in closed wards of psychiatric hospitals prior to the adoption of the present Mental Health Act was found inconsistent, among other, with the constitutional right to liberty. In its case U-I-60/03 the Constitutional Court stressed⁷⁷ that compulsory detention in closed wards of psychiatric hospitals presents a severe interference with human rights and fundamental freedoms of patients,⁷⁸ in particular with the right to personal liberty,⁷⁹ the right to protection of mental integrity,⁸⁰ and the right to voluntary medical treatment,⁸¹ which guarantees not only the right to medical treatment but also the right to reject medical treatment).

⁷⁴ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 34.

⁷⁵ Slovenia/Constitutional Court U-I-60/03, 73/08, (3.7. 2008).

⁷⁶ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 19.

⁷⁷ Slovenia/Constitutional Court U-I-60/03, 73/08, (3.7. 2008).

⁷⁸ Slovenia/Constitutional Court U-I-153/05, 53/05 (12.5. 2005)

⁷⁹ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 19/1.

⁸⁰ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 35.

⁸¹ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 51/3.

- [43]. The purpose of the challenged *Zakon o nepravdnem postopku* [Non-litigious Civil Procedure Act]⁸² was to regulate compulsory detention of mental patients in closed wards of psychiatric hospitals in a manner such that the effective realization of a legitimate purpose which justifies such measure would be guaranteed (i.e. averting danger which the patient due to mental illness causes either to others or to themselves, and suppressing reasons which cause such danger), and simultaneously to guarantee the respect for human rights and fundamental freedoms of patients in accordance with international standards of the protection of human rights and regarding the adequate solutions in comparable European legislations.
- [44]. The Constitutional Court argued that compulsory detention in closed wards of psychiatric hospitals is a measure which should be used only in cases in which danger cannot be suppressed with other measures outside (of the closed ward) of a psychiatric hospital. As the legislature, beside the possibility of passing compulsory detention in a closed ward of a psychiatric hospital, did not provide courts with other measures, it thereby interfered contrary to Art. 2 of the Constitution with personal liberty which is guaranteed by the provision of Art. 19.1 of the Constitution.

3.5. The right to fair trial

- [45]. The access to justice is enshrined in *Ustava* [Constitution]. Article 22 guarantees to each person equal protection of rights in any proceeding before a court, as well as before any government body, local government body or statutory authority which determines rights, obligations or legal entitlements.⁸³ Article 23 explicitly lays down the right to judicial protection. Each person is entitled to have all issues relating to their rights and obligations and any criminal charges laid against them decided without undue delay by an independent, impartial court constituted according to statute.⁸⁴ Only a judge duly appointed pursuant to principles established by statute and in accordance with normal judicial practices is empowered to try any such person.⁸⁵ The right to access to justice is thus a basic constitutional right which belongs to everyone irrespective of his/her financial or social status, and requires a positive obligation of the state

⁸² Slovenia/Non-Litigious Act, 30/86 (1.10. 1986).

⁸³ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 22.

⁸⁴ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 23/1.

⁸⁵ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 23/2.

to ensure its efficient exercise.⁸⁶ Fair, public and efficient judicial procedures without undue delays but with all the requisite procedural guarantees constitute the right to a fair trial as a corollary to the right to judicial protection.⁸⁷

- [46]. The party incapable to litigate shall be represented by their statutory representative. The statutory representative shall be appointed by the statute or by an act issued by a body competent for social affairs pursuant to the statute.⁸⁸ At all times during the proceedings the court shall be bound to examine whether the persons acting as parties to the litigation have the capacity to sue and to litigate, whether the incapacitated party is represented by their statutory representative, whether the statutory representative is in possession of a special permit when such permit is required, and whether the party is appropriately represented by an attorney.⁸⁹
- [47]. Pursuant to Constitutional Court one of the fundamental rights which must be guaranteed to every mental patient who is compulsory detained is the right to judicial protection regarding the lawfulness of detention.⁹⁰ Ruling on the constitutionality of the Non-litigious Civil Procedure Act the Constitutional Court argued that the legislature should, for proceedings of deciding on the lawfulness of detention in closed wards of psychiatric hospitals, determine short time-limits, as only prompt judicial supervision regarding the lawfulness of detention can ensure the effective protection of the rights of patients. A notice of detention must contain data on a person detained, on their medical condition, and on the fact who had brought them to the health institution. The challenged Act did not explicitly determine that the notice should also contain reasons which caused passing of a measure of compulsory detention of a patient. However, only on the basis of these reasons the court can judge whether in an individual case compulsory detention was necessary (*ultima ratio*). Regarding the above-stated, the Constitutional Court found that the challenged Act was inconsistent with the right to (effective) judicial protection which is guaranteed by the provision of Art. 23.1 of the Constitution.
- [48]. Moreover, a patient who is not capable of understanding and asserting their rights in proceedings must be guaranteed adequate representation by which it will be provided for the effective protection of rights and interests of the patient in proceedings. A mental patient detained must be also in a suitable manner, taking into account his/her health condition, informed about the reasons for which he/she is detained in a

⁸⁶ Slovenia/Constitutional Court U-I-65/05, 22.09. 2005,

⁸⁷ Slovenia/Constitutional Court U-I-175/05, 8.9. 2005, and Up-364/4, 11.10. 2006.

⁸⁸ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 78.

⁸⁹ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 80.

⁹⁰ Slovenia/Constitutional Court U-I-60/03, 73/08, 3.7. 2008.

psychiatric hospital. Furthermore, he/she must be informed that they have the right to legal assistance of a legal representative of their own free choice. As the challenged provisions of the Non-litigious Civil Procedure Act did not allow the above-mentioned they were inconsistent with the provisions of Arts. 22 and 25 of the Constitution.

- [49]. *Zakon o pravdnem postopku* [Civil Procedure Act] regulates the capacity to act in all civil legal proceedings. A party with full legal capacity may perform procedural acts by themselves (capacity to litigate). A person of legal age whose legal capacity is limited shall be capable to litigate within the limits of his/her legal capacity. A minor who has not yet gained full legal capacity shall be capable to litigate to the extent to which his legal capacity is recognized.⁹¹ The party incapable to litigate shall be represented by their statutory representative. The statutory representative shall be appointed by the statute or by an act issued by a body competent for social affairs pursuant to the statute.⁹²
- [50]. A statutory representative may perform all procedural acts on behalf of the represented party either by himself or, when so provided for by the present Code, through agency of an attorney; if special regulations provide that a special permit is required for the representative to bring or withdraw the action, to acknowledge or relinquish the claim, to conclude a court settlement, or to execute any other act of procedure, he shall be allowed to carry out these acts only when in possession of such a permit. Whoever purports to be a statutory representative shall have to prove upon a court order that his power is that of a statutory representative. If a special permit is required for the performance of certain acts of procedure, the statutory representative shall have to prove that he is in possession of such a permit. Should the court find that the statutory representative of a person under guardianship fails to exhibit due care in the representation of such person, it shall advise thereof the body competent for social affairs. If the recall of the representative might cause damage to the person put under guardianship, the court shall stay the proceedings and request the appointment of a new statutory representative.⁹³
- [51]. At all times during the proceedings the court shall be bound to examine whether the persons acting as parties to the litigation have the capacity to sue and to litigate, whether the incapacitated party is represented by their statutory representative, whether the statutory representative is in possession of a special permit when such permit is required, and whether the party is represented by a person referred to

⁹¹ Slovenia/Civil Procedure Act 26/99 (14.7. 1999), Art. 77.

⁹² Slovenia/Civil Procedure Act 26/99 (14.7. 1999), Art. 78.

⁹³ Slovenia/Civil Procedure Act 26/99 (14.7. 1999), Art. 79.

in the third paragraph of Article 86 and/or in the third paragraph of Article 87 of the present Code.⁹⁴

- [52]. Should it become apparent during the first instance proceedings, that the regular procedure for appointment of a statutory representative to the defendant would be too lengthy and capable of causing detrimental consequences to one or both parties, the court shall appoint to the defendant, upon a motion by the plaintiff, a representative ad litem. Of the appointment of a representative ad litem, the court shall immediately advise the body competent for social affairs and, if possible, the parties. The court shall appoint a representative ad litem from among notaries, practicing lawyers and other qualified persons.⁹⁵ In the proceedings to which he has been appointed, the representative ad litem shall have the same rights and duties as are vested in the statutory representative.⁹⁶

3.6. The right to privacy, including the access to one's own confidential medical records

- [53]. Constitution in Article 35 requires that inviolability of the physical and mental integrity of every person, his privacy and personality rights shall be guaranteed.⁹⁷
- [54]. The protection of personal data shall be guaranteed. The use of personal data contrary to the purpose for which it was collected is prohibited. The collection, processing, designated use, supervision and protection of the confidentiality of personal data shall be provided by law. Everyone has the right of access to the collected personal data that relates to him and the right to judicial protection in the event of any abuse of such data.
- [55]. Article 8 of the *Zakon o zbirkah podaktov s področja zdravstvenega varstva* [Healthcare Databases Act]⁹⁸ stipulates that the procedures determining how an individual can exercise his right to access personal health data are prescribed by the Minister of Health. As this Act does not contain special provisions regarding the right to access personal health data, it is necessary to take into account the provisions

⁹⁴ Slovenia/Civil Procedure Act 26/99 (14.7. 1999), Art. 80.

⁹⁵ Slovenia/Civil Procedure Act 26/99 (14.7. 1999), Art. 82.

⁹⁶ Slovenia/Civil Procedure Act 26/99 (14.7. 1999), Art. 83.

⁹⁷ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 35.

⁹⁸ Slovenia/Healthcare Databases Act 65/00, (21.7. 2000), Art. 8.

of the *Zakon o varstvu osebnih podatkov* [Personal Data Protection Act]⁹⁹ which regulate this right. Article 18 of the Personal Data Protection Act¹⁰⁰ determines that the manager of a database of personal data must grant an individual at his request access to the catalogue of data, access to personal data in the database that refer to him, and grant him copying permission, as well as provide the individual a copy of the personal data contained in the database which refers to him. The manager of the database must grant the individual access and allow the copying of personal data in accordance with this article within a period of 15 days after the receipt of the request, or inform the individual in the same period in writing of the reasons why access and copying will not be allowed.¹⁰¹ Under the said provision, the patient thus has the right to access and copy data from his health records. In the event of a dispute with the doctor, however, the patient can demand access to his entire medical records through a court. This possibility is provided to the patient by the provision of Art. 20 of Personal Data Protection Act, on the basis of which an individual who establishes that the rights provided in this Act are being violated, may request by means of a lawsuit judicial protection for the entire duration of the violation. If the violation has ceased, the individual may still file a lawsuit to determine whether a violation had occurred. The lawsuits are handled by the Administrative Court under the provisions of the law that regulates the procedure in an administrative dispute, unless otherwise determined by law. The lawsuit is treated as an urgent procedure.

- [56]. The *Zakon o zdravstveni dejavnosti* [Health Services Act]¹⁰² limits the patient's right of direct access to his health records due to the possibility of false interpretation of the diagnoses in the records.¹⁰³ The said provision was unsuccessfully challenged before the Constitutional Court.¹⁰⁴ The Court observed that the goal of this legislation is to prevent the potential detrimental effects on the patient's health and is as such in consonance with the patient's right to treatment provided for by Art. 51.1 of the Constitution. However, the limitation of a patient's right to access his medical records constituted an interference with other constitutional rights, which is provided by Art. 38.3 of the Constitution, namely the patient's right of access to the collected personal data that relates to him¹⁰⁵ and the right to judicial protection in the event of any abuse of such data. The

⁹⁹ Slovenia/Personal Data Protection Act 86/04, (1.1. 2005).

¹⁰⁰ Slovenia/Personal Data Protection Act 86/04, (1.1. 2005), Art. 18.

¹⁰¹ Slovenia/Personal Data Protection Act 86/04, (1.1. 2005), Art. 18/3.

¹⁰² Slovenia/Health Services Act 45/01, (10.3. 2005).

¹⁰³ Slovenia/Health Services Act 45/01, (10.3. 2005), Art. 47/6.

¹⁰⁴ Slovenia/Constitutional Court U-I-6/08 and Up-1198/05, (3.7. 2008).

¹⁰⁵ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 38/3.

Constitutional Court evaluated the said interference pursuant to the so-called strict test of proportionality.

- [57]. In evaluating whether the interference with a patient's constitutional right of access to his medical data is necessary for the achievement of the desired, constitutionally admissible goal of preventing the occurrence of detrimental consequences to the patient's medical condition, the Constitutional Court established that the legislature could indeed not have achieved this goal with a milder measure. The very provision of Article 47 of the Health Services Act¹⁰⁶ has a built-in criterion of urgency, as the limitation of the patient's right of access to medical records is admissible only when it is urgent so as to avoid detrimental consequences to the patient's health. The appropriateness of the measure which the legislature selected for the achievement of its legitimate goal was also not questionable, for it is undoubtedly possible to achieve such a goal with the limitation of the access to medical records. In the framework of proportionality in the narrower sense, the Constitutional Court weighed the importance of the right affected by the interference against the right to be safeguarded by the interference, and determines the weight of the interference in proportion to the weight of the affected rights. It follows from Article 51 of the Constitution that the state must provide – with respect to the given conditions – appropriate treatment possibilities directed towards safeguarding the individual's health. The Constitutional Court noted that health care may be understood in a broader sense (with a variety of measures, including preventive ones, that have a direct or indirect positive impact on the preservation or improvement of health), or in a narrower sense, as treatment in the case of an individual's direct need for health care. The constitutional right to health care includes both aspects.
- [58]. The limitation of the right to access health records represents the broader aspect of the right to health care. This is a preventive measure whose purpose is to prevent detrimental consequences to individual's health. The Constitutional Court emphasised that the limitation of the right to access medical records did not interfere with the patient's right to learn of the diagnosis of his illness and the scope, manner, quality, and presumed duration of treatment.¹⁰⁷ Moreover, the limitation of the right to access medical records must be considered to be an exception to be used only in urgent (extraordinary) cases.
- [59]. The exemption determined by Article 47 of the Health Services Act must be interpreted restrictively and used only in exceptional cases, when such access to health data could actually harm the patient's health condition. The Constitutional Court noted that in comparative

¹⁰⁶ Slovenia/Health Services Act 45/01, (10.3. 2005), Art. 47/6.

¹⁰⁷ Slovenia/Health Services Act 45/01, (10.3. 2005), Art. 47/3.

legal systems, it is precisely in association with psychiatric documentation that this limitation has been used. In its ruling the Court also referred to the special recommendation adopted by the Council of Ministers of the Council of Europe¹⁰⁸ on the protection of medical data.

3.7. The right to marry, to found a family and to respect of family life

- [60]. Article 53 of the Constitution provides that the marriage is based on the equality of spouses. Marriages shall be solemnised before an empowered state authority. Marriage and the legal relations within it and the family, as well as those within an extramarital union, shall be regulated by law. The state shall protect the family, motherhood, fatherhood, children and young people and shall create the necessary conditions for such protection.¹⁰⁹
- [61]. A person who suffers from a severe mental disorder or is injudicious lacks the capacity to conclude a marriage.¹¹⁰ There is no available case law applicable to the people with intellectual disability and mental disorders on this issue.

3.8. The right to have children and maintain parental rights

- [62]. Constitution provides that parents have the right and duty to maintain, educate and raise their children. This right and duty may be revoked or restricted only for such reasons as are provided by law in order to protect the child's interests. Children born out of wedlock have the same rights as children born within it.¹¹¹

¹⁰⁸ Council of Ministers of the Council of Europe/ Recommendation No. R/97/5. The Recommendation includes provisions on the right to access data, which determine that a person whom the medical data refer to should have the right to access this data, that is, direct access, not access with the mediation of the doctor or another person employed at the health institution. Access may be limited only if so determined by law and only in explicitly defined cases, including in the event that access to medical data would harm the health condition of the person to whom the data refer and who requests access.

¹⁰⁹ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 53.

¹¹⁰ Slovenia/Marriage and Family Relations Act 69/04 (24.6. 2004), Art. 19.

¹¹¹ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 54.

- [63]. Everyone shall be free to decide whether to bear children. The state shall guarantee the opportunities for exercising this freedom and shall create such conditions as will enable parents to decide to bear children.¹¹² There is no available case law applicable to the people with intellectual disability and mental disorders on this issue.

3.9. The right to property

- [64]. The manner in which property is acquired and enjoyed shall be established by law so as to ensure its economic, social and environmental function. The manner and conditions of inheritance shall be established by law.¹¹³
- [65]. The persons with mental disorders or intellectual disability can dispose with their property as far as they possess the necessary contractual capacity. If their capacity thereof is limited, they must be represented by a guardian. This is also inserted into the land registry book.¹¹⁴

3.10. The right to vote

- [66]. The right to vote shall be universal and equal. Every citizen who has attained the age of eighteen years has the right to vote and be elected. The law may provide in which cases and under what conditions aliens have the right to vote. The law shall provide measures for encouraging the equal opportunity of men and women in standing for election to state authorities and local community authorities.¹¹⁵
- [67]. *Zakon o volitvah v državni zbor* [National Assembly Elections Act] provides that as regards the right to vote and the right to be elected, this right is not granted to a citizen of the Republic of Slovenia aged 18 and over, who does not have a legal capacity due to a mental illness, retardation or disability and for whom the parental right of parents or other persons has been prolonged after he/she was 18 and he/she is not capable of understanding the meaning, purpose and impacts of

¹¹² Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 55.

¹¹³ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 67.

¹¹⁴ Slovenia/Non-Litigious Act, 30/86 (1.10. 1986), Art. 55.

¹¹⁵ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 43

elections. The prolongation of the parental right and the ensuing restriction of the right to vote is decided by the court.

4. Involuntary placement and Involuntary Treatment

- [68]. The Report on Compulsory Admission and Involuntary Treatment of Mental Ill Patients does not cover Slovenia.
- [69]. The UN Committee against Torture in its 2002 report pointed out that Slovenian psychiatry does not encounter problems of torture and is »professionally offended« if questions are posed on the issue of torture in Slovenian psychiatry.¹¹⁶
- [70]. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment focused its attention mostly on the elderly persons with mental and/or behavioural disorders. It recommended that steps should be taken to ensure that such persons placed in closed sections of social care homes in Slovenia have an effective right to bring proceedings to have the lawfulness of their placement decided and regularly reviewed by a court.¹¹⁷

4.1. Legal Framework

- [71]. The Mental Health Act was adopted on July 15 2008 and it entered into force on August 12, 2009. It distinguishes between the involuntary treatment and involuntary placement, also without treatment, and regulates:
- a. The procedure of involuntary treatment in a psychiatric hospital in a department under special surveillance following the authorization by the court.
 - b. The procedure of involuntary treatment in a psychiatric hospital in a department under special surveillance in emergency cases and therefore without the authorization of the court.

¹¹⁶ UN/Committee Against Torture, Consideration of Reports Submitted by State Parties under Article 19 of the Convention, (8.10. 2002).

¹¹⁷ CPT, Report to the Slovenian Government on the visit to Slovenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 31 January to 8 February 2006, (15.2.2008).

- c. The procedure of involuntary placement in the secured department of the social care centre following the authorization by the court.
- d. The procedure of involuntary treatment under surveillance following the authorization by the court.¹¹⁸

- [72]. The purpose of involuntary treatment is to prevent harm to one's or other people's life, health or property.¹¹⁹
- [73]. The Mental Health Act does not contain any provision on the aftercare following involuntary placement or treatment.
- [74]. The Mental Health Act stresses that in the treatment of juveniles they should have the right to special care and protection of rights. A juvenile is in principle not treated in the same department of a hospital as adults unless this would prove advantageous for him/her.¹²⁰ A statutory representative of a juvenile must be kept informed throughout the process of treatment. Also, a juvenile is not permitted to undergo special methods of psychiatric treatment.¹²¹
- [75]. There is no specific legislation in Slovenia that would address involuntary placement for certain group of patients.

4.2. Criteria and Definitions

- [76]. Pursuant to article 39 of the Mental Health Act a person with a mental disorder can be treated in a psychiatric hospital's department under special surveillance without his/her agreement, when the following conditions are met:
- a. if a person presents a threat to his/her life or to the life of third persons, as well as if he/she presents a grave threat to his/her health or the health of third persons or when he/she causes grave damage either to his/her property or to the property of others.
 - b. if a threat described above is a consequence of a mental disorder due to which a person has a gravely distorted perception of reality and capacity to control his/her acts.

¹¹⁸ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 30.

¹¹⁹ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 39.

¹²⁰ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 15.

¹²¹ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 9/12.

- c. if the described threats can not be prevented by using other less intrusive means, such as: treatment in an open department of a psychiatric hospital, ambulant treatment or treatment under a medical surveillance.¹²²
- d. Pursuant to the Mental Health Act a person can be subject to involuntary treatment only if the same objectives can not be achieved by other less intrusive means.

[77]. As the court receives the proposal for an involuntary treatment it notifies the person affected. He/she has three days to respond.¹²³ Moreover, before making a decision the person, shall its health condition permit so, appears before the court which decides on the basis of a direct contact with the person affected.¹²⁴ The person is also heard by the court in a hearing prior to the final decision.¹²⁵

[78]. Slovenian legislation does not mention specific thresholds of the risk level of danger for subjecting the person to involuntary treatment. The risk level is to be determined by the medical expert in psychiatry appointed by the court.¹²⁶

4.3. Assessment, Decision Procedures and Duration

[79]. The proposal for an involuntary treatment has to be received by the court together with an opinion by a personal doctor of an affected person or by a psychiatrist.¹²⁷ Before making a decision on the involuntary treatment the court has to receive a written opinion by a medical expert in psychiatry appointed by the court.¹²⁸ The said expert is also required to present his opinion orally in the court during the hearing on which the final decision is taken.¹²⁹

[80]. Two medical experts will thus normally take part in the proceeding: a personal doctor or psychiatrist as well as a medical expert in psychiatry appointed by the court. However, Article 47 of the Mental Health Act authorizes the court to hear any other person, including

¹²² Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 39.

¹²³ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 42/1.

¹²⁴ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 46/2.

¹²⁵ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 47/1.

¹²⁶ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 43/1.

¹²⁷ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 41/3.

¹²⁸ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 43/1.

¹²⁹ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 47/1.

medical experts, who could provide useful data on the health condition of a person affected.¹³⁰

- [81]. The decision on involuntary placement is made by the court,¹³¹ which also decides on the termination of the involuntary placement and/or treatment.¹³² In cases in which the hospital determines that involuntary treatment or placement in the time frame decided by the court is no longer necessary due to the person's earlier recovery, it releases the person and notifies the court thereof.¹³³
- [82]. Shall the case arise in which a voluntary placement becomes involuntary, essentially the same court procedure on the involuntary treatment applies. The only difference is in the initiation of the procedure. The person whose treatment becomes involuntary must be informed thereof as well as about his/her right to an advocate. The competent doctor notifies the director of the hospital in writing within four hours of his/her decision. The director of the hospital then brings the matter to the court.¹³⁴
- [83]. The maximum duration of time between the psychiatric assessment and the beginning of the compulsory treatment or placement is two days, in which the person is already placed in the psychiatric hospital.¹³⁵ In case of an emergency situation in which the health condition of a person requires her immediate placement or treatment, the latter exceptionally takes place without a prior decision by the court. The court, however, seizes the matter within one day, also by appointing a competent medical expert. In such a situation he/she gives an opinion immediately after having examined the person affected.¹³⁶
- [84]. The involuntary placement in a social care facility can last for a maximum duration of one year.¹³⁷ If a director of a social care facility establishes that the placement would need to be extended, it shall file a request in the court fourteen days prior to deadline set in the court's initial decision.¹³⁸
- [85]. The Mental Health Act provides that medical treatment shall be conducted in accordance with experienced methods and

¹³⁰ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 47/1.

¹³¹ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 75/1.

¹³² Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 75.

¹³³ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 75/1.

¹³⁴ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 38.

¹³⁵ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 44.

¹³⁶ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 62.

¹³⁷ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 77.

¹³⁸ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 77.

internationally recognized standards. Any medical treatment must be proportionate to its objectives. If there are more medical treatments with comparable effects available, it shall be chosen the treatment with the least impact on the personal integrity, freedom and with the least negative side effects.¹³⁹

[86]. Special methods of treatment can be employed only exceptionally, under the conditions set in the Mental Health Act and exclusively in the psychiatric hospitals.¹⁴⁰ Special methods include:

- a. Electro-convulsive therapy
- b. Hormones treatment
- c. Use of psychotropic drugs exceeding those normally permitted.¹⁴¹

[87]. Electro-convulsive therapy and hormones treatment can be employed

- a. on the basis of a written agreement by the person affected or his/her guardian
- b. on the basis of a positive independent opinion on the necessity and consequences of such treatment prepared by a psychiatrist who does not treat the person and is not a member of a medical counsel
- c. if there are no other effective methods of treatment available
- d. if the expected benefits justify the predictable risk and burdens entailed by the applied method of treatment.¹⁴²

[88]. The treatment by psychotropic drugs in doses exceeding those normally permitted can be conducted

- a. on the basis of a written agreement by the person affected or his/her guardian
- b. if there are no other effective methods of treatment available
- c. if it is indispensable for treatment.¹⁴³

¹³⁹ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 8/1,2.

¹⁴⁰ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 9/1.

¹⁴¹ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 9/2.

¹⁴² Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 9/5.

¹⁴³ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 9/6.

- [89]. The Mental Health Act explicitly prohibits psycho-surgical treatment.¹⁴⁴ Special methods of psychiatric treatment can not be used on juveniles.¹⁴⁵ Article 10 of the Mental Health Act states that a mere mental disorder in and of itself does not present a health condition on whose grounds sterilisation or abortion can be justified.¹⁴⁶
- [90]. The so-called special security measures are explicitly regulated by the Mental Health Act. A special security measure is a measure which is used in order to enable the treatment of a person or in order to prevent and control a dangerous conduct of a person when his/her life or a life of another person is threatened; if his/her health or health of another person is under grave threat; and when he/she causes major damage to his/her property or to the property of another person, provided that the measure can not be replaced by a less intrusive one.¹⁴⁷
- [91]. Special security measures are employed in the special surveillance departments and in secured wards.¹⁴⁸ They include two measures: belt-binding and limiting movement to a single space.¹⁴⁹ They can be used only in the exceptional cases and may last no longer than required by the reason mandating their use. However, belt-binding can not exceed four hours, whereas the limit of movement is restricted to 12 hours. After the expiration of this time limit the doctor shall check whether another use of a security measure is justified.¹⁵⁰
- [92]. A person subjected to the special security measures must be constantly monitored throughout the use of the measure. The use of the measure, its type, reasons, duration and control must be entered into medical documentation.¹⁵¹
- [93]. The use of a special security measure must be within 12 hours reported to the director of the psychiatric hospital or the social care centre, the closest relative, advocate and representative. If a doctor is not present, the special security measure can be authorized by any other medical or expert member of a staff, who must notify the doctor at once. The doctor shall then decide whether the special security measure is justified or not.¹⁵²

¹⁴⁴ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 9/3.

¹⁴⁵ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 9/12.

¹⁴⁶ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 10.

¹⁴⁷ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 91/1.

¹⁴⁸ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 91/2.

¹⁴⁹ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 91/3.

¹⁵⁰ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 91/4.

¹⁵¹ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 91/5.

¹⁵² Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 91/7.

- [94]. The affected person, his/her statutory representative, the closest relative and advocate can initiate the procedure of administrative control over the permission and execution of a special security measure.¹⁵³
- [95]. The decision of the court on the involuntary treatment or placement can be appealed within three days of the receipt of the decision by the proponent of treatment or placement, affected person, advocate, psychiatric hospital or centre of social care, coordinator of the treatment under surveillance, statutory representative, the closest relative and the centre for social work if it has dealt with the person affected. The appeal is decided by the high court within three days of its lodging. The decision of the high court can be further subject to the legal remedy of revision, which is ruled upon by the Supreme Court.¹⁵⁴ This procedure is in complete accordance with Article 25 of the Council of Europe's Committee of Ministers Recommendation Rec(2004)10).
- [96]. The Mental Health Act requires that the person concerned must be represented by an advocate throughout the judicial phase of deciding on involuntary treatment or placement.¹⁵⁵ His/her costs are borne by the court.¹⁵⁶

5. Competence, Capacity and Guardianship

- [97]. The management of affairs of persons with mental disorders and persons with intellectual disability when they are unable to do so is in substance regulated (chiefly) by the Marriage and Family Relations Act and Social Care Act, whereas procedurally it is determined by the Non-litigious Civil Procedure Act.
- [98]. The civil capacity is defined in a negative way, i.e. by defining its lack. An order restricting or removing individual's civil capacity depends on the establishment that an individual is "incapable of taking care of himself of his interests" due to "mental illness, intellectual disabilities, addiction to alcohol or illegal drugs or other reason influencing his/her physical or psychological state".¹⁵⁷

¹⁵³ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 91/8.

¹⁵⁴ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 50.

¹⁵⁵ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 31.

¹⁵⁶ Slovenia/Mental Health Act 77/08 (28.7. 2008), Art. 68.

¹⁵⁷ Slovenia/Non-Litigious Act, 30/86 (1.10. 1986), 44.

- [99]. The decision to restrict or remove an individual's civil capacity, and appoint a guardian, including determination of the guardian's role regarding his/her management of property and other rights of a ward, can be only made by the court.¹⁵⁸ The fulfilment of the guardians role, when appointed, is monitored by the centres of social work.
- [100]. Pursuant to the Social Care Act the court determines a full or partial civil incapacity status after the age of 18 years old depending on the severity of the mental illness of the affected person, which is either moderate, severe or profound.
- [101]. The non-litigious civil procedure before the court can be initiated with a petition from a centre for social work; a public attorney; a spouse or other person who lives with the person in question for a long time; or a relative or close family member (partner, mother, father, sibling, grandparent, uncle or aunt).¹⁵⁹ The procedure can be also initiated by the affected person if the court finds him/her to be able to understand the meaning and consequences of the procedure.¹⁶⁰ Following the initiation of the procedure, a medical specialist first examines the person, then the court makes its decision on the basis of findings, evidence, diagnosis and expert opinions.
- [102]. If the conditions for ordering guardianship are fulfilled, the court will then determine either partial restriction (partial guardianship) or full removal (plenary guardianship) of civil capacity. It is reported that in the past, there were more cases of full removal of civil capacity than this is the case at present. Over the last few years, there have been more cases of *partial* guardianship and prolongation of parental rights. which is another form of guardianship.
- [103]. The prolongation of parental rights is another form of guardianship.¹⁶¹ It is most often used in cases where a person is diagnosed with intellectual disability before the age of 18, and the parents' rights are prolonged after the child attains this age. In most cases a family member is appointed as the guardian. If the person does not have parents or they refuse to prolong their parental rights, social welfare institutions, usually the centres for social work, adopt this role. In such cases, the institution represents the ward under law and decides on financial issues in his/her name.

¹⁵⁸ Slovenia/Marriage and Family Relations Act 69/04 (24.6. 2004).

¹⁵⁹ Slovenia/Non-Litigious Act, 30/86 (1.10. 1986), Art. 45.

¹⁶⁰ Slovenia/Non-Litigious Act, 30/86 (1.10. 1986), Art. 45.

¹⁶¹ Open Society Institute, Rights of People with Intellectual Disabilities, Access to Education and Employment, available at: http://snap.archivum.ws/dspace/bitstream/10039/3446/20/slovenia_report_translation.pdf, last visited 1.10. 2009

- [104]. The decision on the partial or complete restriction of civil capacity can be subject to the appeal, using the legal remedies of renewal of the procedure or revision.¹⁶²
- [105]. The role and responsibilities of guardians as well as limits to their powers are determined by the Marriage and Family Relations Act.¹⁶³ The obligations of the guardian are the same as in the case of an underaged person, their scope, however, depends on the type of guardianship. In case of a plenary guardianship the will of a person whose legal capacity is completely removed is entirely replaced by the guardian. In the opposite case of a partial guardianship, the guardian only supplements the will of a person whose legal capacity has been partially restricted.¹⁶⁴ In this case the ward can decide upon their personal affairs, but the guardian has to give his/her consent.¹⁶⁵ In case of people with intellectual disabilities, the prolongation of parental rights is equivalent to plenary guardianship.
- [106]. Guardians are obliged to act on behalf of their ward, including representing them under law and manage his/her property, however, the latter only with the prior consent of the centre for social work.¹⁶⁶ The guardian is not obliged to live with the ward, to financially support them, or to take care of them in any other way. Even if parents do not (or cannot) financially maintain their adult child, they can still be their child's guardians, if their parental rights are extended. Parents as guardians are also obliged to report to the centres for social work about their activities on behalf of the ward and about any expenditure connected his/her property.¹⁶⁷
- [107]. The centres of social work are therefore authorized in the manner described above to implement the measures placing an adult under a system of protection.

5.1. Subsection level 1

- [108]. In its decision Up-752/07 the Constitutional Court found the courts of lower instance in the breach of an individual's right to equal protection before the laws and the right to judicial protection for not having established his actual procedural capacity despite that there existed data which begged a question regarding his capacity to act and therefore his procedural capacity.

¹⁶² Slovenia/Non-Litigious Act, 30/86 (1.10. 1986), Art. 52.

¹⁶³ Slovenia/Marriage and Family Relations Act 69/04 (24.6. 2004), Art. 187 to 193.

¹⁶⁴ Slovenia/Non-Litigious Act, 30/86 (1.10. 1986), Art. 203, 208.

¹⁶⁵ Slovenia/Marriage and Family Relations Act 69/04 (24.6. 2004), Art. 203, 208.

¹⁶⁶ Slovenia/Marriage and Family Relations Act 69/04 (24.6. 2004), Art. 191.

¹⁶⁷ Slovenia/Marriage and Family Relations Act 69/04 (24.6. 2004), Art. 194.

- [109]. In the Slovenian legal order the capacity to act and on its basis the procedural capacity as well are presumed. This entails that parties before the court are not obliged to prove their capacity and neither is the court required to check it in the absence of any doubt thereof. In the opposite case, when this doubt is established, in particular following the medical data furnished by a psychiatrist and when the party is undergoing medical treatment because of a mental disorder, the court is obliged to examine on its own motion the party's actual capacity to act.¹⁶⁸
- [110]. The Constitutional Court held that in the probate proceedings of this particular case the courts had enough information which raised doubt about the complainant's capacity to sue or be sued and about the possibility that the complainant might not be capable of effectively protecting his rights and benefits in proceedings. Taking into consideration the position in legal doctrine and also in the case law, the courts were obliged to clarify the doubt about the complainant's capacity to sue or be sued. It is true that the complainant's contractual capacity had not been limited in any way, this fact, however, did not relieve the court of the duty to determine the (non)existence of the complainant's capacity to sue or be sued with certainty.¹⁶⁹
- [111]. The Constitutional Court emphasized that in the succession procedure the duty to ensure the right representation of the parties who are unable to dispose of their rights is even more important. On the basis of Article 166 of the *Zakon o dedovanju* [Inheritance Act] the court must namely take particular care that rights are ensured to persons who are underage, mentally ill, or who because of other circumstances are not at all or not entirely capable of taking care of their affairs themselves. The court must thus act with particular caution if it also establishes that such persons are to take part in proceedings. First, it must provide for correct legal representation; with reference to such it is obliged to notify the competent authority that a guardian must be appointed. The above-mentioned duty to take special care exists even if such persons have correct legal representation and those who are representing them have appropriate legal knowledge. The court must furthermore ensure that legal representatives, guardians, or authorized representatives of persons who are under the special protection of the law have indeed done everything necessary in order to implement the rights of persons they represent.¹⁷⁰
- [112]. The placing of adults under the protective system is not subject to minimum or maximum time limits, rather it depends on the existence

¹⁶⁸ Slovenia/Constitutional Court Up-752/07, 118/07, 6.12. 2007.

¹⁶⁹ Slovenia/Constitutional Court Up-752/07, 118/07, 6.12. 2007.

¹⁷⁰ Slovenia/Constitutional Court Up-752/07, 118/07, 6.12. 2007.

of the personal circumstances requiring the placement. The decisions restricting the civil capacity of an individual are, however, periodically reviewed. The same subjects who are entitled to initiate the procedure leading to the restriction of civil capacity can also file a motion to re-establish it, either partially or completely, if the reasons for the restriction of the capacity cease to exist.¹⁷¹ The court can, however, order that the motion for the reestablishment of the civil capacity can not be lodged in a period of time no longer than one year, if it has already refused the motion and there are no grounds pointing to earlier recovery.¹⁷²

- [113]. As far as guardians are considered, it has been reported that regarding their responsibilities there are no official complaints procedures available, so that generally the complaints are referred to the centres of social work and eventually to the Ministry of Labour Family and Social Affairs.¹⁷³

¹⁷¹ Slovenia/Non-Litigious Act, 30/86 (1.10. 1986), Art. 54.

¹⁷² Slovenia/Non-Litigious Act, 30/86 (1.10. 1986), Art. 55.

¹⁷³ Open Society Institute, Rights of People with Intellectual Disabilities, Access to Education and Employment, available at: http://snap.archivum.ws/dspace/bitstream/10039/3446/20/slovenia_report_translation.pdf, last visited 1.10. 2009, Art. 36.

Annexes-Case Law

In different Sections of the Guidelines, experts have been asked to refer to case law. Please present the case law reference in the format below

Case title	U-I-183/93
Decision date	5.12. 1996
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Constitutional Court
Key facts of the case (max. 500 chars)	The Act introduced the duty of paying sales tax and service occupation tax. The tax was levied on any sale of products aimed for a final consumption, and on any sale of equipment. A person liable to sales taxes is a legal entity or a natural person who sells products to the final purchaser. Irrespective of that provision, a person liable to sales taxes could also be a natural person who purchases a product if thus provided by the statute. The Sales Tax Act provided also for tax exemptions that were exhaustively defined in Article 18. Item 14 of the said provision among other products also exempted from sales taxes a new car bought at most once in three years by persons who possess a driving license or who need care and help of others possessing the driving license, exclusively for their personal transport, and which was bought directly from a legal entity or a private person dealing with production or trade activities or imported directly.

<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The Court observed that the legislator in crafting an exemption for mentally disabled people strived to limit the exemption to the most severe cases of permanent physical and mental disability that are, because of affected persons' problems, directly linked with a subject of tax exemption - i.e. car. The Court stressed that merely by pursuing such a goal the legislator did not violate the principle of equality under Article 14 of the Constitution. The principle of equality before the law comes into consideration when dealing with equal states of facts, whereas different states of facts – such as the degree of physical or mental disability and the type of that disability being connected with a subject of statutory regulation - entail different application of law.</p> <p>However, since the Act besides objective, examinable and non-arbitrary conditions of physical and mental disability and a need for care and help of others bound the right to tax exemption also to an undefined and thus non-examinable condition of a "recognized degree of disability, under previous subparagraphs, according to special laws", the challenged provision did not ensure equality among the entitled persons within the framework of the tax exemption.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Preferential treatment of disabled individuals does not run against the requirement of equality before the law, if it is based on objective, examinable and non-arbitrary criteria.</p>

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Invalidation of the challenged provision of the Sales Tax Act.
Proposal of key words for data base	Preferential treatment, mentally ill, disabled, equality

Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

Case title	U-I-11/07
Decision date	
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Constitutional Court
Key facts of the case (max. 500 chars)	The legislature acted in accordance with the Constitution by abrogating the obligation of parents to maintain their adult disabled children who do not have sufficient funds for living, it failed at the same time to comply with its constitutional duty by stipulating the obligation of the state regarding the social protection of such disabled persons as determined by Article 52 of the Constitution.

<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>However, in so doing, the legislature excessively interfered with the legal position of the discussed group of disabled persons. As a result, an unlawful gap in the law occurred in the legal system that the legislature is obliged to fill.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The state has a duty to provide for the social protection of such disabled persons as determined by Article 52 of the Constitution.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The Court concluded that until the established inconsistency was remedied, it alone would determine the manner of the implementation of the decision. It decided that in the intervening time parents are obliged to maintain also their adult disabled children who are not capable of independent living due to their disability and who do not have sufficient funds for living, as applied prior to the implementation of Article 26 of the <i>Zakon o spremembi zakona o zakonski zvezi in družinskih razmerjih</i> [Act Amending the Marriage and Family Relations Act].</p>

Proposal of key words for data base	Intellectually disabled children, prolongation of parental rights, duty to sustain
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Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

Case title	U-I-60/03
Decision date	3.7. 2008
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Constitutional Court
Key facts of the case (max. 500 chars)	The legislature, beside the possibility of passing compulsory detention in a closed ward of a psychiatric hospital, did not provide courts with other measures.

<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The Constitutional Court argued that compulsory detention in closed wards of psychiatric hospitals is a measure which should be used only in cases in which danger cannot be suppressed with other measures outside (of the closed ward) of a psychiatric hospital. As the legislature, beside the possibility of passing compulsory detention in a closed ward of a psychiatric hospital, did not provide courts with other measures, it interfered contrary to Art. 2 of the Constitution with personal liberty which is guaranteed by the provision of Art. 19.1 of the Constitution</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Compulsory detention in closed wards of psychiatric hospitals presents a severe interference with human rights and fundamental freedoms of patients, in particular with the right to personal liberty, the right to protection of mental integrity, and the right to voluntary medical treatment, which guarantees not only the right to medical treatment but also the right to reject medical treatment.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>Ruling on the constitutionality of the Non-litigious Civil Procedure Act the Constitutional Court argued that the legislature should, for proceedings of deciding on the lawfulness of detention in closed wards of psychiatric hospitals, determine short time-limits, as only prompt judicial supervision regarding the lawfulness of detention can ensure the effective protection of the rights of patients. A notice of detention must contain data on a person detained, on their medical condition, and on the fact who had brought them to the health institution. The challenged Act did not explicitly determine that the notice should also contain reasons which caused passing of a measure of compulsory detention of a patient. However, only on the basis of these reasons the court can judge whether in an individual case compulsory detention was necessary (ultima ratio). Regarding the above-stated, the Constitutional Court found that the challenged Act was inconsistent with the right to (effective) judicial protection which is guaranteed by the provision of Art. 23.1 of the Constitution. The identified unconstitutionality led to the adoption of the new Mental Health Act.</p>

Proposal of key words for data base	Involuntary treatment, judicial authorization
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Please attach the text of the original decisions in electronic format (including scanned versions as pdf).

Case title	U-I-60/03
Decision date	3.7. 2008
Reference details (reference number; type and title of court/body; in original language and English [official translation, if available])	Constitutional Court
Key facts of the case (max. 500 chars)	The petitioner challenged Article 47 of the Health Services Act which limits the patient's right of direct access to his health records due to the possibility of false interpretation of the diagnoses in the records.

<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The limitation of the right to access health records represents the broader aspect of the right to health care. This is a preventive measure whose purpose is to prevent detrimental consequences to individual's health. The Constitutional Court emphasised that the limitation of the right to access medical records did not interfere with the patient's right to learn of the diagnosis of his illness and the scope, manner, quality, and presumed duration of treatment. Moreover, the limitation of the right to access medical records must be considered to be an exception to be used only in urgent (extraordinary) cases.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Limitation of the right to access health care records, the right to health care.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>Limitation of the right to access health records is under conditions specified above in accordance with the Constitution.</p>

Proposal of key words for data base	Limitation of the right to health records.
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Please attach the text of the original decisions in electronic format (including scanned versions as pdf).