

SLOVAKIA

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Foreword

- [1]. The needs and corresponding rights of persons who suffer from mental disorder or intellectual disability are not sufficiently recognized in the Slovak Republic.
- [2]. Due to low awareness in Slovak society of the needs of these persons there is insufficient public pressure for the establishment of a better legal, social and technical environment for this social group of our society.
- [3]. The regulations of the rights of persons with mental disorder and persons with intellectual disability in the Slovak Republic could be considered at medium level in the European Union.
- [4]. In Slovak psychiatric hospitals and social welfare facilities there is a strong tradition of old practices in the treatment of patients without taking into consideration new scientific research in alternative methods of treatment. One of the concrete results of such approach is the use of net-beds as one of the restraining means in Slovak facilities.

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I. Executive Summary

- [5]. The rights guaranteed by the Convention on the Rights of Persons with Disabilities have not yet been incorporated into the Slovak legal order. The Slovak Republic has not ratified the Convention, however the Treaty and the Optional Protocol have been signed on 26 June 2007.
- [6]. The Constitution of the Slovak Republic contains a fundamental legal regulation of the rights of mentally disabled persons and the rights of persons with mental disorder. Besides the Constitution the Anti-discrimination Act is the main legal tool for granting equal rights to mentally disabled persons and to persons with mental disorder.
- [7]. The Civil Code, the Civil Procedure Code and the Health Care Act are the main laws regulating concrete aspects of social life of mentally disabled persons and persons with mental disorder. There is no special legal regulation regarding the rights of mentally ill persons.
- [8]. With regard to the protection of fundamental rights the main deficiencies exist in cases of involuntary placement or treatment. Further there are insufficient guarantees with regard to the prohibition of inhuman and degrading treatment (use of net-beds), access to free legal aid, freedom of liberty (particularly concerning cases of voluntary placements becoming involuntary placements), and the right to privacy (crowded rooms, unlocked cases).
- [9]. Insufficient access to free legal aid of persons being involuntarily treated or placed in psychiatric hospitals has to be considered as a principle barrier to access to justice. The model of the patients' advocate or patients' council established in the facilities for mentally ill patients could be a tool to increase the patients' awareness about their rights. Moreover, it could be a tool for the effective defence of their legitimate will and interests.
- [10]. There is also a need of supervision and monitoring of the mentally ill patients' rights observance in facilities where voluntary or involuntary patients are placed. According to the conclusions of the CPT's report from 2006 the prosecutors' supervision of the involuntary placement and treatment conditions is rather formal. A more active role of the prosecutor in this respect, e.g. speaking with patients under protective treatment, and hearing their complaints, could be a tool of the improvement of their rights observance.
- [11]. There is no definition of the risk level of danger (to the health or safety of the patient and/or to the public) for involuntarily placing a person in health facilities in the national law. The Health Care Act defines the aims and criteria for

involuntary placement rather vague, requiring the danger to the health of the person concerned be “serious”.¹

- [12]. The legal regulation of involuntary placement and involuntary treatment in the Health Care Act does not presume the situation that the involuntarily placed patient decides on the alternatives of his/her treatment. It can be concluded that the involuntary placement automatically presumes the involuntary treatment.
- [13]. The legal regulation of health care introduced the informed consent of the patient as the key principle of the health care in 2004. However, there is a lack of sensitivity to the needs and will of mentally ill patients who may be treated involuntarily without taking their opinion into consideration. At this point the model of the predefined psychiatric will, determined by the mentally ill patient in advance, could be a part of the next legislative changes in this field.
- [14]. The main deficiency of the legal capacity regulation is the fact that the law does not stress the necessity to take into account the will of the person concerned. The principles of subsidiarity and proportionality in the legal framework of the protective measures for persons with mental disorder and persons with intellectual disability is not clearly implemented. In addition there is no mechanism for periodical re-examination of the orders on deprivation or on restriction of the legal capacity. At this point the model of the lasting or ending powers of the attorney, created before the onset of mental difficulties, could be an inspiration for the next legislative changes in this field.
- [15]. In general, it can be concluded that the Slovak legal system has a good base for the next legislative changes focused on the improvement of mentally ill persons' rights.

¹ Article 6 paragraph 9 (d), Slovakia/zákon 576/2004 (21.10.2004).

II. Definitions

- [16]. The notion “disability” corresponds to the notion “*zdravotné postihnutie*” in the Slovak legal order. It means psychic, mental, physical, ocular, aural disability or chronic illness or disability, as well as a combination of health disability.²
- [17]. The notion “persons with mental disorder” corresponds to the notion “*osoby s duševnou poruchou*”. It covers a broad spectrum of mental and emotional stages of a human being. The type, intensity and duration of symptoms may be manifested differently by different persons, however it may be the same illness or diagnosis.³ The legal provisions use the notion “persons with mental disorder” which may cover mental illnesses.
- [18]. The notion “persons with intellectual disability” corresponds to the notion “*osoby s mentálnym postihnutím*” in the Slovak legal order. This term is mainly used in the laws regulating education in schools and other educational facilities.⁴
- [19]. There is no legal definition of the two terms referring to the individuals under study.
- [20]. Applying the linguistic interpretation, “disability” means the deficiency of physical, sensual or intellectual abilities of a human being, where there is the expectation of a long-term duration of such deficiency. There is no general legal definition of this term, not either in the Anti-discrimination Act. There only is a definition used in the Employment Services Act, which is the following: *„For the purposes of this law, the disabled citizen is the citizen recognized as handicapped according to the special law.*⁵ This special law is the Social Insurance Act which provides the definition for „handicapped persons“ in relation with social insurance payment. The definition is the following: *„The insured person is handicapped if she/he can not perform an income occupation*

² http://www.diskriminacia.sk/?q=s_disabled/sm_terms (03.11.2009), an unofficial site provided by the civic association „*Občan a demokracia*“ (Citizen and democracy), which is a Slovak NGO aiming at supporting projects in the field of promotion of human rights and democracy. The definition of the term is unofficial

³ <http://www.nrozp.sk/index.php/soc-rehabilitacia/psychicke-postihnutie/98-socialna-rehabilitacia-ludi-s-duševnymi-poruchami> (03.11.2009), an unofficial site provided by the civic association „*Narodna rada občanov so zdravotným postihnutím v SR*“ (National Council of Disabled Citizens) which is a federation of nationwide organisations of people with disabilities established in 2003. The definition of the term is unofficial.

⁴ Article 99 paragraph 9 and Article 100 paragraph 5, Slovakia/zákon 2485/2008 (22.05.2008).

⁵ Article 9 paragraph 1, Slovakia/zákon 5/2004 (04.12.2003).

*for more than 40 per cent in comparison with a healthy person, because of a long-term existing unfavourable health condition.*⁶

- [21]. The Slovak legal order recognises the expression “serious disability”, in Slovak “*ťažké zdravotné postihnutie*”. It is defined in the Act on Financial Compensation for Serious Disability as follows: „*Serious disability is the disability of the functional disorder higher than 50 per cent. Functional disorder is the deficiency of physical, sensual or intellectual abilities of a human being, where there is the expectation of a more than 12 months duration of such a deficiency.*”⁷
- [22]. Applying the linguistic interpretation, the expression “mental disorder” covers the health condition of a person when his/her mental condition markedly negatively interferes with thinking, communication or learning abilities, or sleeping. These are the problems of mental health, which cover a broad scope of mental and emotional conditions and diagnoses such as anxiety, stress, depression, schizophrenia, etc.⁸
- [23]. Applying the linguistic interpretation, the expression “intellectual disability” means the disability of cognitive functions as the consequence of an organic brain damage.⁹
- [24]. There is no case law developed by the national courts referring to the definition of the above mentioned expressions available.

⁶ Article 71 paragraph 4, Slovakia/zákon 461/2003 (30.10.2003).

⁷ Article 2 paragraphs 3 and 4, Slovakia/zákon 447/2008 (29. 10. 2008).

⁸ http://www.dusevnezdravie.sk/info_slovník.html (03.11.2009), an unofficial website of the civic association „*Liga za duševne zdravie*“ (League for Mental Health) which is a Slovak NGO aiming at actively supporting mental health associations and other organisations and persons. The definition of the term is unofficial

⁹ http://www.zpmpvrs.sk/index.php?option=com_content&task=view&id=138&Itemid=177 (03.11.2009), an unofficial website of the civic association „*Združenie na pomoc ľuďom s mentálnym postihnutím v SR*“ (Association of Aid to Persons with Intellectual Disability in SR). This organization associates 59 local organizations and 10 thousands persons. The definition of term is unofficial.

III. Anti-discrimination

A. Incorporation of United Nations standards

- [25]. The Convention on the Rights of Persons with Disabilities is one of the core human rights treaties with United Nations standards. It was adopted on 13 December 2006 as the unique legally binding instrument prohibiting discrimination of persons with disabilities. The convention sets out many steps that States must take to create an enabling environment so that persons with disabilities can enjoy real equality in society. The Optional Protocol to the Convention establishes two procedures. The first is the procedure allowing individuals to bring petitions to the Committee on the Rights of Persons with Disabilities claiming breaches of their rights. The second one is the inquiry procedure giving the Committee authority to undertake inquiries of serious or systematic violations of the Convention.¹⁰
- [26]. The President of the Slovak Republic signed the Convention and its Optional Protocol on 26 September 2007. The ratification procedure was not yet performed. However the Council of the Government of the Slovak Republic for Persons with Disabilities as advisory body of the Government was established on 1 June 2008. The Deputy Prime Minister for Knowledge Society, European Affairs, and Human Rights is the head of this council.
- [27]. The Ministry of Labour, Social Affairs and Family informed that the elaboration of the analysis of the existing legislature and its compliance with the Convention are the reason of the ratification postponement. The deadline for the elaboration of the analysis is 31 December 2009. Later the analysis should be submitted to other ministries for their suggestions according to the legislative procedure. The important fact is that already since 5 September 2007¹¹ the Minister of Labour, Social Affairs and Family is the responsible body for the development of the analysis concerned, which should be the background for the commencing of the ratification procedure.¹²
- [28]. The postponement of the ratification procedure of the Convention may relate to the rights of persons with mental disorders and persons with intellectual disability, but it was not clearly stated as a reason.¹³ The absence of respect for

¹⁰ See Convention on the Rights of Persons with Disabilities, Questions and Answers: http://www2.ohchr.org/english/issues/disability/frequently_ask_questions.htm (03.11.2009).

¹¹ Resolution No. 737 of the Government of the Slovak Republic (07.09.2007).

¹² Written response of the Council of the Government of the Slovak Republic for Persons with Disabilities (01.10.2009).

¹³ Written response of the Council of the Government of the Slovak Republic for Persons with Disabilities (01.10.2009).

the will of mentally ill persons in the Slovak legal order and certain practices in social welfare facilities and psychiatric facilities are in conflict with the prohibition of inhuman or degrading treatment (e.g. use of net-beds).¹⁴ In addition there are no-guarantees for effective access to qualified legal aid in proceedings on their rights restriction. Furthermore there is no clear implementation of the principle of subsidiarity and proportionality in adopting restraint or protective measures.

B. Anti- Discrimination National Framework

- [29]. The Constitution of the Slovak Republic guarantees the fundamental rights and freedoms on the territory of the Slovak Republic „*regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. No one shall be aggrieved, discriminated against or favoured on any of these grounds.*”¹⁵
- [30]. Despite the fact that the Constitution does not specifically recognise the need to protect against discrimination on the grounds of „disability” or “mental disorder” or “intellectual disability”, the quoted constitutional provision is understood to refer to disability as a ground of discrimination. This interpretation of the constitutional text, namely using the words “*or any other status*” is based on the demonstrative enumeration of the grounds of discrimination in the quoted constitutional provision.
- [31]. The national law, contrary to the Constitution, specifically recognises “disability” as a ground of prohibited discrimination. The relevant laws are the Anti-discrimination Act,¹⁶ the Health Care Act¹⁷ and the Labour Code.¹⁸ These laws do not specifically recognise “mental disorder” or “intellectual disability” as grounds of prohibited discrimination. “Disability” is understood to refer to “mental disorder” or “intellectual disability” as a ground of prohibited discrimination.
- [32]. There is no relevant case law developed by the national courts referring to the anti-discrimination/equality rules in the Slovak Republic with respect to persons with disability or specifically to persons with mental disorders or intellectual disability.¹⁹

¹⁴ <http://www.cpt.coe.int/documents/svk/2006-05-inf-eng.pdf> (06.11.2009), pages 44-45.

¹⁵ Article 12 Slovakia/ústava 460/1992 (01.09.1992).

¹⁶ Article 2 paragraph 1, Slovakia/zákon 365/2004 (20.05.2004).

¹⁷ Article 11 paragraph 1, Slovakia/zákon 576/2004 (21.10.2004).

¹⁸ Article 1 Slovakia/ zákon 311/2001 (02.07.2001).

¹⁹ http://www.snslp.sk/rs/snslp_rs.nsf/0/F29052117EB78171C12570770042CF11?OpenDocument (03.11.2009). This is the official website of the Slovak National Centre for Human Rights, an

- [33]. The preferential treatment arrangements in respect of persons with disability are regulated at the constitutional level specifically in relation to the right to work and material welfare. According to the Constitution „*disabled persons shall enjoy more extensive health protection at work and special working conditions. (...) disabled persons shall enjoy special protection in employment relations and special assistance in training*“.²⁰ If a person cannot enjoy his/her right to work without his/her own fault, „*the State shall guarantee, within appropriate extent, the material welfare*“.²¹ The law may provide different regulations of these rights with regard to foreigners.²²
- [34]. At the legislative level the preferential treatment arrangements in respect of persons with disability is regulated basically by the Anti-discrimination Act. This act presumes the adoption of „*temporary compensatory measures by state administrative bodies targeted to eliminate forms of social and economic disadvantages and disadvantages arising due to age or disability, with the aim to ensure equality of opportunities in practice*“.²³
- [35]. These measures should mainly consist „*of the promotion of the interests of members of disadvantaged groups in employment, education, culture, healthcare and services*“; or they should ensure „*equality in access to employment and education especially through targeted preparation programs for members of disadvantaged groups or through dissemination of information on these programs or on possibilities to apply for jobs or places in the system of education*“.²⁴
- [36]. The measures may be performed only in the following fields: „*in the field of employment and similar legal relations, social security, and healthcare, the provision of goods and services and education*“.²⁵ These fields are defined more specifically, including housing provided to the public by legal entities and natural persons – entrepreneurs.²⁶
- [37]. The bodies which adopt the compensation measures, are obliged to continuously monitor, assess and publish the measures „*with the aim of re-evaluating the eligibility of their further continuation and to submit reports to the Slovak National Centre for Human Rights*“.²⁷

independent body established by law to promote human rights in the Slovak Republic. The Centre is co-financed by the state.

²⁰ Article 38 paragraphs 1 and 2, Slovakia/ústava 460/1992 (01.09.1992).

²¹ Article 35 paragraph 3, Slovakia/ústava 460/1992 (01.09.1992).

²² Article 35 paragraph 4, Slovakia/ústava 460/1992 (01.09.1992).

²³ Article 8a paragraph 1, Slovakia/zákon 365/2004 (20.05.2004).

²⁴ Article 8a paragraph 1, Slovakia/zákon 365/2004 (20.05.2004).

²⁵ Article 3 paragraph 1, Slovakia/zákon 365/2004 (20.05.2004).

²⁶ Article 3 paragraph 2 letter d), Slovakia/zákon 365/2004 (20.05.2004).

²⁷ Article 8a paragraph 4, Slovakia/zákon 365/2004 (20.05.2004).

- [38]. The Anti-discrimination Act and the Labour Code implemented the Employment Equality Directive (Directive 2000/78/EC of 27 November 2000 OJ L 303) which specifically recognises “disability” as one of the grounds of prohibited discrimination in the field of employment and occupation. As mentioned above, the national legislation does not specifically recognise “mental disorder” or “intellectual disability” as grounds of prohibited discrimination. However these terms can be understood as subordinated terms to the term of “disability” which is one of the specific grounds of prohibited discrimination stipulated both in the Anti-discrimination Act and in the Labour Code. Currently, there is no reference to national case law which may support this legal interpretation.
- [39]. The municipalities shall provide financial support for the adequate accommodation of disabled persons if the person concerned is dependent on the aid of another person and if he/she needs supervision for living his/her life independently.²⁸
- [40]. The Slovak National Centre for Human Rights is the national equality body. The Centre is an independent legal entity established by law²⁹ with competences in the field of human rights and basic freedoms and specifically with competences in the domain of prohibition of discrimination.³⁰ All grounds of discrimination recognised in the Slovak legislation are relevant for the formulation of the scope of the competence of the Centre.
- [41]. The Slovak National Centre for Human Rights has the following legal mandate in the domain relevant for the purposes of this study, i.e. to monitor and review compliance with the principle of equal treatment, to arrange legal aid to victims of discrimination and to victims of expressions of intolerance, to provide expert opinions concerning compliance with the principle of equal treatment upon request or ex proprio motu, to perform independent inquiries related to discrimination, to prepare and publish reports and recommendations on issues related to discrimination.³¹ In the area of providing legal aid to the victims of discrimination the Centre has the competence to represent such a victim in the proceedings including judicial proceedings.³² There is no available data about any case of discrimination on the ground of mental disability dealt with by the Centre.

²⁸ Article 34 paragraph 1, Slovakia/zákon (30.10.2008).

²⁹ Article 1 paragraph 1, Slovakia/zákon 308/1993 (15.12.1993).

³⁰ Article 1 paragraph 2, Slovakia/zákon 308/1993 (15.12.1993).

³¹ Article 1 paragraph 2, Slovakia/zákon 308/1993 (15.12.1993).

³² Article 1 paragraph 3, Slovakia/zákon 308/1993 (15.12.1993).

IV. Specific Fundamental Rights

- [42]. The Slovak Constitution guarantees fundamental rights to everyone and prohibits any discrimination, including discrimination on the ground of disability. However „disability“ is not specifically mentioned in the Constitution as one of the grounds of potential discrimination; the Constitution protects disabled persons against discrimination according to the semantic interpretation of the relevant provision, see above, Part B.
- [43]. The list of the fundamental rights guaranteed in the Slovak Republic is provided by the Constitution in its second chapter entitled “Fundamental rights and freedoms”. Besides the fundamental rights guaranteed by the Constitution the full list of the fundamental rights guaranteed in the Slovak Republic includes all the ratified international treaties on human rights and fundamental freedoms. According to the Constitution these treaties shall have precedence over laws.³³
- [44]. The right to life is guaranteed in the Slovak Constitution to everyone as a basic part of the human rights catalogue.³⁴ The death penalty is inadmissible in the Slovak legal order.³⁵ The Slovak legislation does not tolerate euthanasia either. From the health care point of view everyone has the right to health care in compliance with the principle of equal treatment.³⁶ There is no relevant case law developed by the national courts referring to the right of life with respect to disabled persons, namely to persons with mental disorder or intellectual disability.
- [45]. The prohibition of torture or cruel, inhuman or degrading treatment or punishment is incorporated in the constitutional list of human rights.³⁷ There are some objections, e.g. by the CPT, regarding treatment in the facilities providing care to persons with mental disorder or with intellectual disability, claiming that the treatment of patients was inhuman or degrading; e.g. the use of net-beds in rooms with other patients in psychiatric facilities.³⁸ In addition, currently there was a case of an in-patient placed in a psychiatric facility, who was fixed to the bed by wristbands which were fixed to the bed by a chain. The director of the facility stated that there was no alternative, more appropriate method available. The fact is that there is no special facility in the Slovak Republic being

³³ Article 7 paragraph 5 Slovakia/ústava 460/1992 (01.09.1992).

³⁴ Article 15 paragraph 1 Slovakia/ústava 460/1992 (01.09.1992).

³⁵ Article 15 paragraph 3 Slovakia/ústava 460/1992 (01.09.1992).

³⁶ Article 11 paragraph 1 and 2 Slovakia/ zákon 576/2004 (21.10.2004).

³⁷ Article 16 paragraph 2 Slovakia/ústava 460/1992 (01.09.1992).

³⁸ <http://www.cpt.coe.int/documents/svk/2006-05-inf-eng.pdf> (03.11.2009),

<http://www.annwin.sk/news.php?extend.4> (03.11.2009), website of the Slovak civic association „Anwinn“, which has a broad range of activities in social and human rights fields. One of its aims is the defence of the rights of mentally disabled persons.

specifically built and equipped for patients with aggressive behavior.³⁹ There is no relevant case law developed by national courts referring to the right to freedom from torture or cruel, inhuman, or degrading treatment or punishment with respect to persons with disability, namely with mental disorders or intellectual disability.

- [46]. According to the Constitution no one shall be sent to perform forced labour or forced services.⁴⁰ There is a potential risk that this prohibition is being violated in facilities where persons with mental disorder or intellectual disability are placed. There are no available data, including relevant case law, about provided monitoring in these facilities by public officials or independent organisations, which could confirm or disprove such concerns.⁴¹
- [47]. According to the Constitution the personal liberty of every individual shall be guaranteed and no one shall be prosecuted or deprived of his/her liberty save for the reasons and by means laid down by law.⁴² „A law shall stipulate in which cases a person may be put to a health care institution or may be held in a health care institution without his/her consent. Such cases shall be reported to the court within 24 hours and the court shall make a decision on such a placement within five days.“⁴³ „Examination of the mental condition of a person charged with a criminal offence is permissible only upon a written court order.“⁴⁴
- [48]. The patients (clients) of certain social welfare facilities have a limited possibility to leave the facility with the aim of having a walk due to strict rules for leaving the facilities. Moreover, leaving the facility may be conditioned by the presence of a guard. The legitimacy and legality of such a treatment is questionable; however, concrete data, or relevant case law of national courts about the misuse of the power in these facilities are missing because of the current non-existing appropriate monitoring of human rights protection in these facilities.⁴⁵

³⁹ Statement of the Ethical Commission of the Ministry of Health on a case of a fixed patient, titled in Slovak as „Uznesenie č. 27/26, Stanovisko ku prípadu priputaneho psychiatrickeho pacienta A.R. na podnet Generalnej prokuratúry SR č. IV/2 Gn 32/09-8“. This statement was delivered upon request of the General Prosecutor Office. The statement is available on the following website:

<http://www.health.gov.sk/redsys/rsi.nsf/0/A2B3AE9CB0477A50C125760200405A8B?OpenDocument&ID=&TYPE=U&LANGUAGE=S&LENGTH=S> (06.11.2009).

⁴⁰ Article 18 paragraph 1 Slovakia/ústava 460/1992 (01.09.1992).

⁴¹ <http://www.annwin.sk/news.php?extend.4.1> (03.11.2009), Report of the civic association „Annwin“ on the observance of human rights in social care institutions in Slovakia, prepared in 2005 for the International Helsinki Federation for Human Rights in Vienna.

⁴² Article 17 paragraphs 1 and 2 Slovakia/ústava 460/1992 (01.09.1992).

⁴³ Article 17 paragraph 6 Slovakia/ústava 460/1992 (01.09.1992).

⁴⁴ Article 17 paragraph 7 Slovakia/ústava 460/1992 (01.09.1992).

⁴⁵ <http://www.annwin.sk/news.php?extend.4.1> (03.11.2009). Report of the civic association „Annwin“ on the observance of human rights in social care institutions in Slovakia, prepared in 2005 for the International Helsinki Federation for Human Rights in Vienna.

- [49]. The right to a fair trial is guaranteed by the Constitution.⁴⁶ This constitutional provision is performed for persons with mental disorder and intellectual disability in relation to their legal capacity. If the legal capacity of the person is restricted or even if the person is fully deprived of his/her legal capacity, the right to access to the court may be applied with the power of the guardian (curator). According to the legal regulation, there is no clear legal answer for the situation when a person deprived of his/her legal capacity or a person with restricted capacity would request a change of the guardian, or would refuse the actions of the guardian with regard to the disposal of his/her property. However there is decision of the Constitutional Court of the Slovak Republic, which affirms that a natural person who was deprived of his/her legal capacity, has the right to submit a petition to the Constitutional Court in order to protect his/her fundamental rights and freedoms.⁴⁷
- [50]. There is clear legal answer to the situation of a person deprived of his/her legal capacity or a person with restricted legal capacity requesting to restore his/her legal capacity. In such a case there is no need for the guardian to start the court proceedings.⁴⁸ The legal regulation is supported by the national jurisdiction contained in a judgment of the Supreme Court of the Slovak Republic.⁴⁹ The Court confirmed that in proceedings about the restoration of the legal capacity the person in question is entitled not only to start such a proceeding even without the consent of his/her guardian, but to make an appeal against the judgment concerning his/her legal capacity as well. However, this right may be withdrawn for the maximum period of one year if the court concludes that an improvement of the health condition is not to be expected.⁵⁰
- [51]. The constitutional guarantee of the right to privacy⁵¹ for persons with intellectual disability or with mental disorder is not in conflict with national laws, but may be in conflict with the above mentioned treatment performed for these persons in social welfare facilities and psychiatric facilities.
- [52]. Persons with intellectual disability may be placed in social welfare facilities according to the conditions of the new Social Services Act adopted in 2008.⁵² These facilities often do not offer enough privacy for the clients as there are several persons accommodated in one room,⁵³ there is no possibility to provide an individual arrangement of the room, and the furniture just provides basic standard (bed, cabinet with ununlockable cases). The clients may have a limited possibility to establish, develop and maintain personal relations with other

⁴⁶ Article 46 paragraph 1 Slovakia/ústava 460/1992 (01.09.1992).

⁴⁷ Slovakia/Ústavný súd Slovenskej republiky III. ÚS 45/00 (23.08.2000).

⁴⁸ Article 186 paragraph 3 Slovakia/zákon 99/1963 (04.12.1963).

⁴⁹ Slovakia/Najvyšší súd Slovenskej republiky 2 Cdo 50/2005

⁵⁰ Article 186 paragraph 3 Slovakia/zákon 99/1963 (04.12.1963).

⁵¹ Article 16 paragraph 1 and Article 19 paragraph 2 Slovakia/ústava 460/1992 (01.09.1992).

⁵² Article 38 Slovakia/zákon 448/2008 (30.10.2008).

⁵³ <http://www.sspr.gov.sk/texty/File/vyskum/2008/Bednarik/Bednarik.pdf> (03.11.2009).

people without interference of the facility staff. Moreover, at the same time the facility may be appointed to be the guardian of the placed person. However, there are facilities which provide an improved environment for the placed persons and provide for rehabilitation and leisure time activities (cinema, theatre, hippotherapy, etc).⁵⁴

- [53]. The medical records of the persons with mental disorder or intellectual disability are protected against unjustified collection, disclosure and other misuse according to the Constitution.⁵⁵ The Health Care Act regulates possible forms of the disclosure of the medical records and stipulates who may be authorised for obtaining the medical records. Generally, everybody is entitled to inspect his/her own medical records, and to make excerpts or copies of the medical records.⁵⁶ However, the disclosure of the medical records may be refused in certain circumstances to person who is provided with health care in the field of psychiatry or clinical psychology. This situation should reflect the fact that the disclosure of the medical records may have negative impact on the therapy of this person.⁵⁷ In cases of unlawful refusal of the inspection of the medical records it is possible to file a remedy addressed to the court.⁵⁸ However, a person deprived of his/her legal capacity actually has no possibility to access the court in such cases without consent of his/her guardian.
- [54]. There is no relevant case law developed by the national courts referring to the right to privacy in respect of persons with disability, or specifically of persons with mental disorders or intellectual disability.
- [55]. The Constitution guarantees the respect of family life,⁵⁹ protects matrimony, parenthood and family.⁶⁰ Nevertheless, persons with mental disorder or with intellectual disability who are fully deprived of their legal capacity are not allowed to marry.⁶¹ Persons with restricted legal capacity may marry only with prior court approval.⁶² Persons with a mental disorder which might be the reason for restriction of his/her legal capacity may marry only with the approval of the court. In such a case the court would examine if his/her health conditions are compatible with the purpose of the marriage.⁶³ In case of refusal of the approval the person concerned may submit an appeal in accordance with the general provisions of the Civil Procedure Code. There is no relevant case law available.

⁵⁴ <http://www.dsshrabiny.sk/denne-centrum/> (03.11.2009); <http://www.symbia.sk/> (03.11.2009).

⁵⁵ Article 19 paragraph 3, Slovakia/ústava 460/1992 (01.09.1992).

⁵⁶ Article 25 paragraphs 1 and 2, Slovakia/ zákon 576/2004 (21.10.2004).

⁵⁷ Article 25 paragraph 3, Slovakia/ zákon 576/2004 (21.10.2004).

⁵⁸ Article 25 paragraph 4, Slovakia/ zákon 576/2004 (21.10.2004).

⁵⁹ Article 19 paragraph 2, Slovakia/ústava 460/1992 (01.09.1992).

⁶⁰ Article 41 paragraph 1, Slovakia/ústava 460/1992 (01.09.1992).

⁶¹ Article 12 paragraph 1, Slovakia/zákon 36/2005 (19.01.2005).

⁶² Article 12 paragraph 1, Slovakia/zákon 36/2005 (19.01.2005).

⁶³ Article 12 paragraph 3, Slovakia/zákon 36/2005 (19.01.2005).

- [56]. Persons with deprived or restricted legal capacity cannot even perform their parental rights. If both parents have deprived or restricted legal capacity, the court appoints a guardian for the child.⁶⁴ If parents lose their full legal capacity, the court shall appoint a guardian to the child *ex officio*. There is no legal guarantee that the parents would be heard in the relevant court proceedings. The parents do not have a right to appeal against the decision of the appointment of the guardian in such a case. There is no relevant case law available.
- [57]. The right to property is protected by the Constitution.⁶⁵ Persons with mental disorder or with intellectual disability maintain their property but they may have limited access to dispose of their property as a result of the restriction of their legal capacity. In such cases the guardian appointed by the court is responsible for the exercising of the right to dispose of one's property. The legal actions of the guardian may need the approval of the court depending on the extent of his/her powers determined by the court.⁶⁶ There is no relevant case law available.
- [58]. The Constitution guarantees the right to participate in the administration of public affairs,⁶⁷ the right to vote⁶⁸ and access to the elected bodies and public offices under equal conditions.⁶⁹ However persons with deprived or restricted capacity cannot perform their right to vote in some of the elections: The restriction of the legal capacity would generally result in the obstruction to perform the right to vote in elections of the members of the National Council of the Slovak Republic (Parliament), of the European Parliament,⁷⁰ of municipal parliaments⁷¹ or of county parliament. Contrariwise persons with restricted or deprived legal capacity may vote in presidential elections.⁷² There is no relevant case law available.

⁶⁴ Article 28 paragraph 3 and Article 56 paragraph 1, Slovakia/zákon 36/2005 (19.01.2005).

⁶⁵ Article 20 paragraph 1, Slovakia/ústava 460/1992 (01.09.1992).

⁶⁶ Articles 192-193, Slovakia/zákon 99/1963 (04.12.1963).

⁶⁷ Article 30 paragraph 1, Slovakia/ústava 460/1992 (01.09.1992).

⁶⁸ Article 30 paragraph 3, Slovakia/ústava 460/1992 (01.09.1992).

⁶⁹ Article 30 paragraph 4, Slovakia/ústava 460/1992 (01.09.1992).

⁷⁰ Article 2 paragraph 2 (c) Slovakia/zákon 333/2004 (13.05.2004), Article 2 paragraph 2 (c) Slovakia/zákon 303/2001 (04.07.2001), Article 2 paragraph 3 (c) Slovakia/zákon 331/2003 (10.07.2003).

⁷¹ Article 2 paragraph 2 (d), Slovakia/zákon 346/1990 (28.08.1990).

⁷² Article 1 paragraph 2 Slovakia/zákon 46/1999 (18.03.1999).

V. Involuntary placement and involuntary treatment

- [59]. The Committee against Torture (CAT) addressed to the Slovak Republic its concluding observations A/56/44 on 11 May 2001, where it requested statistical data on detention of persons in state institutions for purposes of psychiatric health.⁷³ The Slovak Republic submitted these data in the framework of the second periodical country report which covered the period from 1 January 2001 to 31 December 2006.
- [60]. According to the data provided by the Ministry of Health, there have been 39.039 patients placed in psychiatric health facilities in 2004, among them 22.282 men and 16.757 women.
- [61]. According to the data from the so called Bed Fund of Psychiatric Hospitals there were 200 patients placed in psychiatric health facilities per 100.000 inhabitants of the population in 2004. The overall number of the placed patients was 11.455, the average duration of the placement/treatment was 48,3 days per patient, the rate of the placed patients per physicians was 128,1 patients per physician. There is no data differentiating the number of voluntary and involuntary placements.⁷⁴
- [62]. The Governmental report to the Committee contains an affirmation of the Ministry of Health's Directive on the use of the restraint measures in psychiatric facilities.⁷⁵ The ministry further explains forms and main criteria of the use of such measures according to the directive. The ministry has defined the use of net-beds and the seclusion as legitimate restraint measures.
- [63]. The Report to the Government of the Slovak Republic on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 February 2006 contains findings about the situation of persons with mental disorder placed in psychiatric facilities. The CPT recommended that the Slovak Republic should develop and implement a strategy preventing inter-patient violence.⁷⁶ This recommendation was adopted after the CPT had witnessed a case of a 65-year old patient who was apparently assaulted by a legally incompetent learning-disabled patient (a term used by the CAT report) placed on the same ward. The information at the CPT delegation's disposal indicated that a frail patient had

⁷³ <http://www2.ohchr.org/english/bodies/cat/reports.htm> (03.11.2009).

⁷⁴ <http://www.mensiny.vlada.gov.sk/data/files/4163.pdf> (03.11.2009).

⁷⁵ <http://www.mensiny.vlada.gov.sk/data/files/4163.pdf> (03.11.2009).

⁷⁶ <http://www.cpt.coe.int/documents/svk/2006-05-inf-eng.pdf> (06.11.2009), page 42.

been placed in the closed male unit with the most demanding patients, one of whom subsequently assaulted him.

- [64]. CPT recommended to decrease the occupancy rates in the supervised psychiatric facility Velke Zaluzie and to improve the visual supervision in the closed section within this facility. CPT recommended for both supervised facilities (Velke Zaluzie and Sokolovce) to offer an appropriate range of therapeutic activities during the day and meaningful activities at weekends and in the afternoons, mainly for those who are placed in closed wards.⁷⁷
- [65]. CPT further pointed out the insufficient number of qualified staff in both facilities (psychiatrists, nurses, qualified personnel to conduct social therapy).⁷⁸
- [66]. CPT noticed one cage-bed (bed surrounded by metal bars) during their visit in the facility Sokolovce, which was occupied by a female patient. The Ministry of Health later informed the CPT, that Slovak psychiatric facilities do not use cage-beds at all and the observed situation had been an absolutely exceptional one.
- [67]. CPT was informed that the use of net-beds is widespread in the Slovak Republic and that there were 312 net-beds in psychiatric facilities throughout the country. CPT expressed the opinion (as done in the report on its 2000 visit) that net-beds are no acceptable means of taking care of the patients in a state of agitation and it recommended them being ceased using. In case of necessity to separate some of the patients, they should be placed in suitably equipped rooms of adequate size and they should benefit from adequate human contact. CPT recommended providing complex scientific research on the use of net-beds and on possible alternative methods. For as long as net-beds remain in use, CPT recommended that such beds shall not be exposed to the view of other patients and shall be subject to appropriate supervision of the staff.⁷⁹
- [68]. CPT expressed its doubts that there were cases of voluntary patients who continued to be in the psychiatric facilities without their consent, and the involuntary placement procedure provided by the law did not apply.⁸⁰
- [69]. CPT recommended establishing a more reliable system for informing the patients of their rights, such as an introductory brochure with patients' rights and facility's routine.⁸¹
- [70]. CPT stressed the importance of the existence of an independent body (e.g. a judge or supervisory committee) responsible for the inspection of patients care.

⁷⁷ <http://www.cpt.coe.int/documents/svk/2006-05-inf-eng.pdf> (06.11.2009), page 43.

⁷⁸ <http://www.cpt.coe.int/documents/svk/2006-05-inf-eng.pdf> (06.11.2009), page 42.

⁷⁹ <http://www.cpt.coe.int/documents/svk/2006-05-inf-eng.pdf> (06.11.2009), pages 44-45.

⁸⁰ <http://www.cpt.coe.int/documents/svk/2006-05-inf-eng.pdf> (06.11.2009), page 48.

⁸¹ <http://www.cpt.coe.int/documents/svk/2006-05-inf-eng.pdf> (06.11.2009), page 48.

Such body should be authorized to communicate with patients in private, to directly receive all complaints and to make any necessary recommendations. In addition, CPT criticised the formalistic activities of prosecutors in supervision of the conditions of the facilities with involuntary mentally ill patients. CPT recommended that the prosecutors' actions should be more vigorous, including talking to the patients and taking into account their complaints.⁸²

A. Legal Framework

- [71]. The compulsory admission and involuntary placement in psychiatric facilities is regulated principally by the Constitution. The Constitution stipulates the obligation to notify the court within 24 hours from the moment of the compulsory admission or involuntary placement. According to the Constitution the court has a five days limit for delivering the assessment order.⁸³ The detailed regulation is encompassed in the Civil Procedure Code.⁸⁴ The criteria for performing involuntary placement or involuntary treatment are defined in the Health Care Act.⁸⁵ There is no information available regarding planned legislative changes concerning this issue.
- [72]. The Slovak legal framework does not clearly distinguish between involuntary treatment and involuntary placement. There is no legal definition of any of these terms. Involuntary treatment may be interpreted in compliance with the Health Care Act as the situation, when there is no need to request the patient's informed consent as a precondition of the health care treatment. If the person is placed involuntarily in a psychiatric facility, he/she may automatically receive involuntary treatment.⁸⁶
- [73]. The involuntary placement is the consequence of a situation when there is no need to request the patient's informed consent for the treatment. Such involuntary treatment should be provided on a constant base for more than 24 hours. Otherwise the person shall be treated as an out-patient.⁸⁷ The Slovak legal framework does not provide for involuntary placements without providing the adequate health treatment.
- [74]. The following aims are pursued by the involuntary treatment or placement of mentally ill patients according to the Health Care Act:

⁸² <http://www.cpt.coe.int/documents/svk/2006-05-inf-eng.pdf> (06.11.2009), page 49.

⁸³ Article 17 paragraph 6, Slovakia/ústava 460/1992 (01.09.1992).

⁸⁴ Articles 191a – 191g, Slovakia/zákon 99/1963 (04.12.1963).

⁸⁵ Article 6 paragraph 9 (d), Slovakia/zákon 576/2004 (21.10.2004).

⁸⁶ Article 6 paragraph 9 (d), Slovakia/zákon 576/2004 (21.10.2004).

⁸⁷ Article 8 paragraph 1, Slovakia/zákon 576/2004 (21.10.2004).

- Prevention of risk of danger to the person concerned and his/her vicinity,⁸⁸
- Improvement of the mental health of the person concerned.⁸⁹

[75]. The main aim pursued by involuntary treatment and placement of offenders who committed a crime according to the Criminal Code is the protection of the society from the offender and the rehabilitation of the offender.⁹⁰

[76]. The legal framework does not stipulate any adequate aftercare following involuntary placement or treatment.

[77]. The legal regulation of involuntary treatment and placement of a child or a young person less than 18 years old is generally the same as for adults. The parents legally represent the interests and will of the minors and express the informed consent on behalf of the young person in question.⁹¹ The order of the court on compulsory admission of the minor shall be delivered to the parents who may submit an appeal. There are no special provisions regulating mental health conditions of minors which would require proceedings for involuntary placement or treatment. Nevertheless, there are special social welfare facilities suited for minors and pursuant to the law such facilities shall provide appropriate education for minors.⁹²

[78]. The Slovak legislation addresses some specific groups of patients, namely as follows:

- The legal situation of a person under guardianship is regulated by the Civil Code and by the Civil Procedure Code,⁹³
- the Criminal Code and the Criminal Procedure Code⁹⁴ regulate the situation of mentally ill offenders,
- the Act on Protection against the Misuse of Alcohol Beverages⁹⁵ provides legislation concerning persons with addictive behaviour.

⁸⁸ Article 6 paragraph 9 (d), Slovakia/ zákon 576/2004 (21. 10.2004).

⁸⁹ Article 6 paragraph 9 (d), Slovakia/ zákon 576/2004 (21.10.2004).

⁹⁰ Article 39 paragraph 2 (c) and Article 40 paragraph 1 (c) /zákon 300/2005 (20.05.2005).

⁹¹ Article 6 paragraph 1 (b), Slovakia/zákon 576/2004 (21.10.2004).

⁹² Article 38 paragraph 2 (c), Slovakia/zákon 448/2008 (30.10.2008).

⁹³ Article 10, Slovakia/zákon 40/1964 (26.02.1964)

Article 10, Slovakia/zákon 99/1963 (04.12.1963)

⁹⁴ Articles 39-41 and Article 73, Slovakia/zákon 300/2005 (20.05.2005).

⁹⁵ Article 8 paragraph 1 and 2 Slovakia/ zákon 219/1996 (01.07.1996)

B. Criteria and Definitions

- [79]. There are two combinations of criteria to be fulfilled by law to order an involuntary placement or involuntary treatment according to the legal provisions of the Health Care Act:⁹⁶
- Mental disorder, or symptoms of mental disorder plus a risk of danger to the person concerned and his/her vicinity,
 - Mental disorder, or symptoms of mental disorder plus a danger of serious deterioration of the mental health status of the person concerned.
- [80]. There is no legal regulation suggesting that less intrusive alternatives should be adopted before deciding on involuntary placement or involuntary treatment.
- [81]. The opinion of the patient (informed consent) is required for voluntary treatment. However, there is no legal regulation requiring taking into account the opinion of the patient in cases of involuntary treatment.
- [82]. A definition of the risk level of danger (to the health or safety of the patient and/or to the public) for involuntarily placing a person is not included in the national law. The Health Care Act defines the aims and criteria for involuntary placement rather vague requiring that the danger to the health of the person concerned shall be “serious”.⁹⁷

C. Assessment, Decision Procedure and Duration

- [83]. According to the semantic interpretation of the Health Care Act and the Civil Procedure Code a physician shall make the initial assessment for compulsory admissions. There is no specific expertise of the physician explicitly required by the law. However the law explicitly stipulates the obligation of the facility, where the involuntary patient is placed, to notify the court about the placement within 24 hours from the beginning of the involuntary placement.⁹⁸
- [84]. There is a distinction in the proceedings for the assessment of the compulsory admission and for the assessment of the continuation of the involuntary placement. The assessment of the lawfulness of the continuation of the

⁹⁶ Article 6 paragraph 9 (d), Slovakia/zákon 576/2004 (21.10.2004).

⁹⁷ Article 6 paragraph 9 (d), Slovakia/zákon 576/2004 (21.10.2004).

⁹⁸ Article 9 paragraph 4, Slovakia/zákon 576/2004 (21.10.2004) and Article 191a paragraph 1, Slovakia/zákon 99/1963 (04.12.1963).

involuntary placement takes place only in cases when the lawfulness of the compulsory admission was approved. As far as the compulsory admission is concerned, there is no explicit number of physicians and no explicit field of medical expertise required for the purposes of the assessment of the psychiatric condition of the involuntary admitted patient. However, according to the practice there is usually the physician in charge at the reception ward of the facility concerned who decides about compulsory admission of the patient. If the admitting facility is a psychiatric hospital, the physician in charge shall be a psychiatrist. The law explicitly determines the obligation of the court to interrogate the physician who takes care of the involuntarily placed patient.⁹⁹ It may be the same physician who decided about the involuntary placement. After the approval of the compulsory admission, another expert shall assess the psychiatric condition of the involuntary patient.¹⁰⁰

- [85]. The final decision on an involuntary placement is made by the judge. The judge shall decide on the lawfulness of the compulsory admission¹⁰¹ as well as on the lawfulness of the continuation of the involuntary placement.¹⁰²
- [86]. The termination of the involuntary placement is decided by the facility concerned or by the judge.¹⁰³ The facility shall release the involuntarily placed patient at the moment when the reasons for the involuntary placement cease to exist.¹⁰⁴ The facility shall also release the patient if the court decides so.
- [87]. When the voluntary placement becomes an involuntary placement the initial procedure shall apply. The facility concerned has to notify the court about such a fact within 24 hours from the moment of the involuntary restrictions and the court shall decide.¹⁰⁵
- [88]. According to the law the court shall decide on the lawfulness of the compulsory admission within five days from the moment of involuntary restrictions to the patient.¹⁰⁶ There is no other specific legal regulation applied in emergency situations (e.g. nights, weekends or urgent cases) in comparison with the regulation stated above.
- [89]. The judge shall make his/her decision within five days from the beginning of the involuntary placement. If the judge confirms the lawfulness of the compulsory admission, it is again the judge who decides about the lawfulness of the continuation of the involuntary placement.¹⁰⁷ The judge shall make his/her

⁹⁹ Article 191b paragraph 3, Slovakia/zákon 99/1963 (04.12.1963).

¹⁰⁰ Article 191d paragraph 2, Slovakia/zákon 99/1963 (04.12.1963).

¹⁰¹ Article 191b paragraph 4, Slovakia/zákon 99/1963 (04.12.1963).

¹⁰² Article 191d paragraph 4, Slovakia/zákon 99/1963 (04.12.1963).

¹⁰³ Article 191c paragraph 3, Slovakia/zákon 99/1963 (04.12.1963).

¹⁰⁴ Article 9 paragraph 6, Slovakia/zákon 576/2004 (21.10.2004).

¹⁰⁵ Article 191a paragraph 2, Slovakia/zákon 99/1963 (04.12.1963).

¹⁰⁶ Article 191b paragraph 4, Slovakia/zákon 99/1963 (04.12.1963).

¹⁰⁷ Article 191d paragraph 1, Slovakia/zákon 99/1963 (04.12.1963).

decision within three months from the day of delivering the decision on the lawfulness of the compulsory admission.¹⁰⁸ This decision may prolong the involuntary placement for a maximum of one year. After the period of the involuntary placement has expired, the involuntary patient should be released when there is no new court order on the involuntary placement. The new order has to be taken in the framework of the regular proceeding for the continuation of the involuntary placement.¹⁰⁹

[90]. There is no specific regulation of mental health care interventions in psychiatric hospitals. However, there is a fractional regulation in the Social Services Act, which permits the use of pharmaceutical intervention in cases of danger of harm to life or health of the client placed in a social welfare facility. In any case there has to be a psychiatrist instruction¹¹⁰ and the intervention may be applied only within the necessary time period (which is not defined by the law and depends on the respective circumstances).¹¹¹

[91]. Other coercive measures are regulated by the Ministry of Health's *Directive on the use of restraint measures to patients placed in psychiatric facilities*.¹¹² The directive is part of the Slovak legal order, applied nationwide. The directive recognises the following legitimate forms of coercive measures:

- Net-beds;
- Seclusion;
- Fixation to the bed;
- Use of barriers;
- Use of force.

[92]. These coercive and restraint measures may be used only in exceptional cases and under specific conditions:

- Necessary duration;
- Risk of danger to the patient and/or his/her vicinity;
- Necessity for the protection of the patient concerned, other patients, objects and persons surrounding the patient concerned and the personnel of the psychiatric facility;
- Use of the most moderate and appropriate restraint measure;

¹⁰⁸ Article 191d paragraph 4, Slovakia/zákon 99/1963 (04.12.1963).

¹⁰⁹ Article 191e paragraph 1, Slovakia/zákon 99/1963 (04.12.1963).

¹¹⁰ Article 10 paragraph 3, Slovakia/zákon 448/2008 (30.10.2008).

¹¹¹ Article 10 paragraph 1, Slovakia/zákon 448/2008 (30.10.2008).

¹¹² [http://www.health.gov.sk/redsys/rsi.nsf/0/298af39beb3c4a18c12575d2003305d6/\\$FILE/vestnik_25_2009.pdf](http://www.health.gov.sk/redsys/rsi.nsf/0/298af39beb3c4a18c12575d2003305d6/$FILE/vestnik_25_2009.pdf) (03.11.2009).

- Other alternative methods do not exist;
- The decision shall be taken by the patient's physician. However, also the nurse is authorized to decide on the use of restraint measures in exceptional cases of risk of danger to the patient or his/her vicinity.
- Each use of coercive measures shall be recorded as a part of the medical records of the patient.

[93]. The involuntary patients have the right to appeal against the decision on the lawfulness of the compulsory admission¹¹³ as well as against the order on continuation of the involuntary placement and treatment.¹¹⁴ They may file an appeal when they receive such an order, or when their guardians play an active role in the defense of their rights, or when they have qualified legal representation. However, it is not rare that the order is not delivered to the patient, not even to the guardian (if he/she acts rather formalistically) or to the lawyer representing the patient. In addition, the patient's right to an oral judicial hearing might be violated and the court may conclude the case based only on the arguments presented by the facility psychiatrist's statement.

[94]. The patient concerned may receive free legal aid if he/she applies for a free representative at the Legal Aid Centre¹¹⁵ or at the court during the proceedings. The free lawyer may be appointed in case of the patient's insufficient income and property for covering the legal aid expenses.¹¹⁶

¹¹³ Article 191c paragraph 2, Slovakia/zákon 99/1963 (04.12.1963).

¹¹⁴ Article 191d paragraph 4 and Article 191c paragraph 2, Slovakia/zákon 99/1963 (04.12.1963).

¹¹⁵ Slovakia/ zákon 327/2005 (23.06.2005).

¹¹⁶ Articles 30 and 140, Slovakia/zákon 99/1963 (04.12.1963).

VI. Competence, capacity and guardianship

- [95]. The Slovak legal framework provides provisions for the management of affairs of persons with mental disorders and persons with intellectual disability in the Civil Code and the Civil Procedure Code.¹¹⁷ These provisions regulate the conditions, criteria and procedure of the legal capacity restriction. At this point there is specifically no distinction between persons with mental disorders and persons with intellectual disabilities in the law. The law only uses the term “mental disorders” which also covers persons with intellectual disabilities according to the semantic interpretation of the legal provisions as mentioned above.
- [96]. The Civil Code explicitly contains a definition of “legal capacity” of an individual as the “*capacity of an individual to acquire rights and assume duties on the basis of his or her own legal acts.*”¹¹⁸
- [97]. According to the Civil Code¹¹⁹ there are two causes for the restraint of the legal capacity:
- Permanent mental disorder (There is no detailed determination of this cause by law.);
 - Over-consumption of alcohol or drugs.
- [98]. There are two degrees of legal incapacity recognised by the Civil Code¹²⁰ and the Civil Procedure Code:¹²¹
- Restriction of the legal capacity (with the result that the person is not capable of carrying out certain legal acts);
 - Full deprivation of legal capacity (with the result that the person is entirely incapable of carrying out legal acts).
- [99]. Guardianship¹²² is the only system of protection of adults lacking capacity established in Slovakia. This single protective mechanism is imposed in varying degrees based on the severity of the individual’s case.

¹¹⁷ Articles 186-191, 192-193, Slovakia/zákon 99/1963 (04.12.1963); Articles 10 and 27, Slovakia/zákon 40/1964 (26.02.1964).

¹¹⁸ Articles 8 paragraph 1, Slovakia/zákon 40/1964 (26.02.1964).

¹¹⁹ Articles 10 paragraph 1-2, Slovakia/zákon 40/1964 (26.02.1964).

¹²⁰ Articles 10 paragraph 1-2, Slovakia/zákon 40/1964 (26.02.1964).

¹²¹ Articles 186 paragraph 1, Slovakia/zákon 99/1963 (04.12.1963).

¹²² Article 27 paragraph 3, zákon 40/1964 (26. 02.1964).

- [100]. The full loss of capacity entails the placement under full guardianship. The partial deprivation of legal capacity only leads to partial guardianship. The guardian is appointed by the court in a court proceeding on guardianship following the court proceeding on the declaration of the deprivation/restriction of the legal capacity. The court order on restriction/deprivation of legal capacity already contains the appointment of the guardian.¹²³
- [101]. The following conditions have to be met for placing adults under the protective system:¹²⁴
- Permanent mental disorder and non-capability to carry out certain legal acts (as conditions for the restriction of the legal capacity);
 - Over-consumption of alcohol or drugs and non-capability to carry out certain legal acts (as conditions for the restriction of the legal capacity);
 - Permanent mental disorder and non-capability to carry out any legal acts (as conditions for full deprivation of the legal capacity). The law does not specify the non-capability to carry out any legal acts, but it shall be understood as a situation when the person concerned must be represented by another person (natural person or legal entity) in carrying out activities in the name of the person concerned; such a person cannot be held responsible for his/her actions and his/her acts do not have binding effect.¹²⁵
- [102]. The court shall change or cancel restrictions of the legal capacity when the reasons for the restriction have changed or no longer exist.¹²⁶ There is neither a minimum nor a maximum time limit for the duration of the protective measure.
- [103]. The proceeding on declaration of incapacity (either restriction or full deprivation) may commence *ex officio* or upon the motion of the person concerned, a state body, health facility or anybody who is capable to start a proceeding before the court (e.g. relatives, friends). If the proceeding starts upon the petition of state body or health facility, the court may request the submission of a medical report from these bodies. The medical report should review the mental health condition of the person concerned. If such court request is not accomplished, the court shall dismiss the proceeding.¹²⁷

¹²³ Article 189a paragraph 1, Slovakia/zákon 99/1963 (04.12.1963).

¹²⁴ Article 10 paragraphs 1-2, Slovakia/zákon 40/1964 (26.02.1964).

¹²⁵ Article 10 paragraph 1, Slovakia/zákon 40/1964 (26.02.1964).

¹²⁶ Articles 10 paragraph 3, Slovakia/zákon 40/1964 (26.02.1964).

¹²⁷ Article 186, Slovakia/zákon 99/1963 (04.12.1963).

- [104]. The court is the national authority having power to declare the legal incapacity of an adult by issuing a court order on restriction of the legal capacity or on full deprivation of the legal capacity. The court order on restriction of legal capacity determines the scope of the legal capacity limitation.¹²⁸ The limitation may be determined either by a negative or by a positive statement. The negative statement may be considered as rather in compliance with the interests of the person concerned, because it gives a more clear answer to the question which legal acts the person concerned cannot realise.
- [105]. At the same time the court is the national authority appointing the guardian who will have the duty to protect the person with restricted or deprived legal capacity. Besides the guardianship, there is no other protection mechanism to protect the persons concerned. Therefore the appointed guardian shall protect the person concerned in the full scope of the restricted capacity – protection of the person as well as protection of his/her property.
- [106]. If there is a conflict of interests between the person placed under guardianship and the guardian, the court shall appoint a special guardian to deal with the conflict.¹²⁹
- [107]. In the field of ensuring and monitoring the implementation and follow-up of the guardianship measures, the court, in cooperation with the local self-government, is the national authority. The competences of a guardianship authority with the focus on children are executed by the state body for labour, social affairs and family.¹³⁰ According to the law there should be two evaluations of the guardianship per year performed by the court.¹³¹
- [108]. The person concerned has the right to appeal against the court order on declaration of incapacity. An appeal may be submitted by other persons with the status of a participant to the proceeding on declaration of incapacity, i.e. a person appointed by the guardian to protect the interests of the person concerned, and the health facility which submitted the petition for starting the proceedings. The quality of the protection by the guardian during the proceeding is rather formalistic, often it is a social welfare worker from the local self-government body appointed as guardian.
- [109]. However, if the person concerned has no awareness about the ongoing proceedings, it may be a barrier for access to justice through the appeal proceedings on the legal incapacity. Moreover, as stated above, the appointed guardian for the proceeding of incapacity often acts in a rather formalistic way. Another problem is that there is no guarantee that the person concerned will be heard, neither by the first instance court, nor by the second instance. The person

¹²⁸ Article 10 paragraphs 1-2, Slovakia/zákon 40/1964 (26.02.1964).

¹²⁹ Article 30, Slovakia/zákon 40/1964 (26.02.1964).

¹³⁰ Article 73, Slovakia/zákon 305/2005 (25.05.2005).

¹³¹ Articles 193 and 180 paragraph 3, Slovakia/zákon 99/1963 (04.12.1963).

concerned does not have to be heard if the interrogation might cause harm to the health condition, or if the interrogation cannot be performed at all.¹³² In addition, the order on incapacity is not always delivered to the person concerned due to his/her health state, e.g. if such a delivery may cause harm to him/her, or if he/she cannot understand the purpose and the meaning of the proceedings.¹³³

- [110]. The quality of the guardianship depends on the quality of the person appointed as guardian. The court shall appoint a relative of the person under guardianship or another person who meets the requirements for being appointed as guardian. However, the quality requirements for guardians are not specifically defined by the law. There are only criteria of the relation to the person concerned: a guardian shall be part of the family, work, cultural or other environment which is akin to the person concerned.¹³⁴ If the court is not able to appoint such a person, it shall appoint the local public authority (or a facility which is a legal entity established by the local public authority, e.g. the social welfare facility established by the municipality where the person concerned is placed) as a guardian.¹³⁵
- [111]. The scope and extent of the powers of the guardian are determined by the court order in each individual case. As mentioned above, the appointed guardian shall protect the person concerned in the full scope of his/her restricted capacity, i.e. to protect the person him/herself as well as to protect his/her property. Moreover, in certain situations the guardian shall request a court approval for some exceptional dispositions of the property, such as selling real estate.¹³⁶
- [112]. The person concerned as well as the appointed guardian have the right to appeal against the appointment of the guardian. Usually, the order on appointment of a guardian and the order on restriction of capacity may be decided in the same decision and the appellate procedure may cover both issues.¹³⁷ There is no legal provision prohibiting the situation that neither the first instance court nor the appellate court would interrogate the person placed under guardianship for the reasons mentioned above (see par. 108 and 109). This is one of the main barriers for access to justice because the person concerned may not be aware of the ongoing proceedings. In addition, there is no legal guarantee of access to qualified legal assistance and representation.
- [113]. There is no legal requirement to periodically review the court order on the restriction or deprivation of legal capacity of a person. The same applies for the review of the appointment of the guardian. According to the Slovak regulation described above, the appointment of the guardian and scope of his/her powers

¹³² Article 187 paragraph 2, Slovakia/zákon 99/1963 (04.12.1963).

¹³³ Article 189, Slovakia/zákon 99/1963 (04.12.1963).

¹³⁴ Article 29 paragraph 6, Slovakia/zákon 40/1964 (26.02.1964).

¹³⁵ Article 27 paragraph 3, Slovakia/zákon 40/1964 (26.02.1964).

¹³⁶ Article 28, Slovakia/zákon 40/1964 (26.02.1964).

¹³⁷ Article 189a paragraph 1, Slovakia/zákon 99/1963 (04.12.1963).

depends on the scope of the legal capacity restriction in each individual case. Therefore, when the status of the legal incapacity changes, automatically the court should change the scope and the extent of the guardian's powers. There is no data available to evaluate the changes made by the courts relating to the scope and extent of the guardian's powers in practice.

VII. Miscellaneous

- [114]. The overall situation of the rights maintenance of mentally ill patients in Slovakia is at the average level within the framework of the situation in the Member States of EU.
- [115]. In the field of legislative changes it is recommended to amend the Health Care Act provisions with the aim to distinguish the criteria of involuntary treatment and involuntary placement. Further, the Health Care Act should be amended by the provision of more specified criteria for involuntary placement since the current definition of involuntary placement criteria is rather vague. The respect of the will of the mentally ill patient in treatment performance should be taken into account, which is not guaranteed by current legislation. An introduction of the predefined psychiatric will, determined by the mentally ill patient in advance, may be the part of the next legislative changes in this field.
- [116]. The prosecutors should perform a more active role in supervising the conditions of the facilities with involuntarily placed mentally ill patients. The prosecutor is allowed to spend time and speak to the patient privately and without the presence of any other persons (including facility staff), and is also allowed to visit all spaces of the facilities. However, according to the CPT observation report from 2006, the prosecutors never spoke to the patients and never heard any patients' complaints.
- [117]. There is a need of an institutionalization of an independent outside body which would be responsible for the inspection of the patients' care. This could be implemented by a relevant increase of powers and competences of the Slovak National Centre of Human Rights or of the Public Defender Office (the Slovak Ombudsman) to monitor the mentally ill patients' rights on a regular basis. This body should be authorised to privately talk with the patients, directly receive all the complaints and take any necessary steps.
- [118]. There is also a need to amend the national legislation in the field of access to legal aid to ensure that the mentally ill involuntarily placed patients have adequate access to justice. The legislative changes may be performed by extending the existing competences of the Legal Aid Centre and/or by introducing the model of the patients' advocate or patients' council in the facilities for mentally ill patients.
- [119]. In the field of protective measures for mentally ill persons, there is a need for legislative changes regarding the introduction of respect of the will of the person concerned. In addition, the principle of subsidiarity and proportionality of the protective measures is not clearly implemented. Further, there is a need to establish a mechanism for periodical re-examination of the orders on deprivation or restriction of the legal capacity. The model of the lasting or

ending powers of the attorney, created before the onset of mental difficulties, may be an inspiration for the next legislative changes, as well.

Annex

Case title	Tkáčik vs. Slovakia (ECHR_Tkacik v Slovakia)
Decision date	14 October 2003
Reference details	Application No. 42472/98, The European Court of Human Rights
Key facts of the case	The applicant was involuntarily placed in a health facility. On 9 December 1996 the Court delivered a decision by which it found that the applicant's detention in the psychiatric facility was lawful. On 10 December 1996 the applicant was released from the facility. On 13 May 1998 the applicant received the District Court's decision from 9 December 1996. On 25 September 1998 the Regional Court dismissed the appeal.
Main reasoning/ argumentation	The Court observed that the domestic authorities failed to comply "with the procedure prescribed by law". The decision on the lawfulness of the applicant's detention was not served on the applicant within five days from the moment when his liberty had been restricted.
Key issue clarified by the case	Any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness.
Results (sanctions) and key	The Court held that there had been a violation of Article 5 paragraph 1 of the Convention and that was not necessary to examine whether there had been a violation of Article 8 of the Convention. The Court held

consequences or implications of the case	that Slovakia shall pay to the applicant EUR 1.000 in respect of non-pecuniary damage.
Proposal of key words for data base	Duration of involuntary placement assessment, compulsory admission.

Case title	Tám vs. Slovakia (ECHR_Tam v Slovakia)
Decision date	22 June 2004
Reference details	Application No. 50213/99, The European Court of Human Rights
Key facts of the case	The applicant was placed into a psychiatric hospital without his consent. On 19 August 1993 the Court delivered a decision by which it found that the applicant's detention in the psychiatric facility was lawful. The decision was served to the applicant on 20 September 1996. On 26 August 1996 the applicant was released from the psychiatric facility. On 30 April 1998 the Bratislava Regional Court dismissed the decision. On 6 July 1999 the District Court discontinued the proceedings.
Main reasoning/ argumentation	The law requires that the court takes its decision within five days after the applicant was involuntarily placed in the psychiatric facility. The applicant was brought to the psychiatric facility on 11 August 1993 and the District Court decided on this issue on 19 August 1993, which was after the expiration of the five-days-limit. In these circumstances, the applicant's deprivation of liberty could not be considered as "in

	accordance with the procedure prescribed by law” and “lawful”. The applicant claimed the unlawfulness of his detention, but he did not have access to an effective remedy at the Slovak Courts because of the procedural court decision on the discontinuation of the proceedings. The main reason for this decision was the fact that the applicant in the meanwhile had been released from the psychiatric facility.
Key issue clarified by the case	Despite of the fact that the applicant was released, he had the right to examine the lawfulness of his previous detention. The existence of remedies must be sufficiently certain, in theory as well as in practice.
Results (sanctions) and key consequences or implications of the case	The Court held that there had been a violation of Article 5 paragraph 1 and paragraph 4 of the Convention. The Court held that Slovakia shall pay to the applicant 2.500 EUR in respect of non-pecuniary damage.
Proposal of key words for data base	Compulsory admission, access to remedy.

Case title	Berková vs. Slovakia (ECHR_Berkova v Slovakia)
Decision date	24 March 2009

Reference details	Application No. 67149/01, The European Court of Human Rights
Key facts of the case	The Court restricted the applicant's legal capacity in scope and extent so that she could not act on her own before public authorities. Hereby the Court tried to find a person who could act as the applicant's curator. Proceedings concerning the appointment of a curator continued from 1 August 1994 until 14 April 1998. On October 1998 the appointed curator submitted a petition to the Court to restore her legal capacity. The Court decided not to restore the full legal capacity of person concerned and to prohibit the submission of a new proposal on the restoration of the legal capacity during a three-year period.
Main reasoning/ argumentation	The restriction not to re-apply for restoration of legal capacity for three years) constituted a serious interference with the applicant's right to respect for her private life. It failed to see any social need sufficiently justifying such interference as being proportionate to the aim pursued and necessary in a democratic society within the meaning of Article 8 paragraph 2 of the Convention.
Key issue clarified by the case	Prohibiting the applicant to submit a petition on the restoration of her legal capacity for three years interfered with her right to respect for private life.
Results (sanctions) and key consequences or implications of the case	The Court ruled that there had been a violation of Article 8 of the Convention. The Court dismissed the applicant's claim for just satisfaction.
Proposal of key words for data	Restriction of legal capacity, restoration of legal capacity, right to private life.

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Case title	Matter vs. Slovakia (ECHR_Matter v Slovakia)
Decision date	5 July 1999
Reference details	Application No. 31534/96, The European Court of Human Rights
Key facts of the case	In 1983 the Court fully restricted the legal capacity of the applicant. The applicant submitted a petition to the Court in 1987 to review the decision on the restriction of his legal capacity. The applicant refused to be examined as an outpatient; the expert informed the Court that an objective assessment required an in-patient examination. On 19 August 1993 the applicant was involuntarily brought to the hospital for examination. On 2 September 1993 he was released. The expert concluded that the legal capacity could partially be restored and the District Court, following the expert's opinion, partly restored his capacity. Nevertheless, the applicant requested full restoration of his legal capacity and filed an appeal. On 5 February 1996 the Court decided to request a second expert's opinion on the health state of the applicant. In a report of the applicant's doctor from 1999, the doctor stated that the applicant was immobile and not able to undergo an examination in Bratislava. The applicant demurred the length of the Court proceedings and the involuntary placement in the hospital for examination.
Main reasoning/ argumentation	Domestic Courts failed to act with special diligence required by Article 6 paragraph 1 of the Convention and within "reasonable" time. However, because of the complexity of the mental health examination it was certainly justified to request and obtain the expert's opinion.

Key issue clarified by the case	In cases relating to civil status and capacity, consideration and special diligence is required in view of the possible consequences such as the excessive length of proceedings. However, the involuntary examination was not disproportionate to the legitimate aims pursued, therefore such examination was “necessary in a democratic society”.
Results (sanctions) and key consequences or implications of the case	The Court held that there had been a violation of Article 6 paragraph 1 of the Convention and no violation of Article 8 of the Convention.
Proposal of key words for data base	Restoration of legal capacity, length of proceedings, involuntary examination of the mental health condition.

Case title	V.D. vs. Psychiatric facility in B. (08_02_28_SCSR_COMPULSORY_ADMISSION)
Decision date	28 February 2008
Reference details	Judgment No. 3 Cdo 228/2007, The Supreme Court of the Slovak republic
Key facts of the	The applicant was involuntarily placed in a psychiatric facility on 7 February 2005. The Court decision

case	dated 11 February 2005 was not delivered to the applicant. The Court decided on the involuntary placement without interrogation of the applicant. Such proceeding was based on the statement of the attending physician who did not recommend the interrogation of the applicant, however, without any explanation of the reasons. The Court order was delivered to the appointed guardian of the applicant. On 14 February 2005 the applicant was released from the facility. She filed an appeal against the Court's decision on involuntary placement (compulsory admission to the psychiatric facility). The appeal was not successful and the applicant filed a petition to the Supreme Court to review the case.
Main reasoning/ argumentation	It is necessary and prescribed by law to interrogate the involuntarily placed person. It is also in accordance with the law to deliver the Court's decision on the involuntary placement to the person concerned. The law recognises some exceptions for not delivering the Court's order (such as the fact that the physician does not recommend delivering the Court's decision because the placed person could not understand the meaning of such a decision); however, the Court should always try to hear the involuntarily placed person. The fact that a person is involuntarily placed does not automatically mean that he/she is restricted in his/her legal capacity. Therefore the person should be heard and the Court's order on involuntary placement (compulsory admission) should be delivered to him/her.
Key issue clarified by the case	It is necessary to hear the person placed into a psychiatric facility without his or her consent before the Court decides on the lawfulness of his/her compulsory admission. If the Court's decision is not delivered to the involuntarily placed person, it shall comply with a procedure prescribed by law.
Results (sanctions) and key consequences or implications of the case	The Supreme Court cancelled the decision of the Court of Appeal. The Appellate Court had to deal with the case again and decide on the involuntary placement of the person concerned. The Court was bound by the conclusions of the Supreme Court.

Proposal of key words or data base	Compulsory admission, assessment of the involuntary placement.
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Case title	T.V. vs. Social welfare facility in K. (ConstCourt_III US 45_00)
Decision date	23 August 2000
Reference details	Procedural decision No. III. ÚS 45/00, Constitutional Court of the Slovak Republic
Key facts of the case	The applicant's legal capacity was restricted and he was involuntarily placed in a social welfare facility. The applicant (besides others claims) claimed the unlawfulness of his placement. The Constitutional Court accepted the claim on the unlawfulness of the involuntary placement for further examination. However, the Court accepted the applicant as the legitimate person (contrary to the restriction of his legal capacity) to submit the claim to the Constitutional Court; the Court requested the power of attorney, because the law prescribes the duty to be obligatorily represented by an attorney before the Constitutional Court.
Main reasoning/ argumentation	The fulfilment of the procedural conditions to access the Court in human rights violation cases should be proportionate to the specific situation and personal abilities of the applicant, so that the applicant is able to defend his fundamental rights and freedoms. There is no special regulation on the examination of the lawfulness of involuntary placements in social welfare facilities in Slovak legislation. Therefore the legal regulation of the involuntary placement in health facilities should be applied for the examination of the involuntary placement in social welfare facilities as

	well.
Key issue clarified by the case	The applicant was unsuccessful because he did not submit the power of attorney; however, the Constitutional Court expressed its opinions on two important issues in the framework of its decision reasoning. The Court concluded that a person with restricted legal capacity has access to the Constitutional Court if claiming a human rights violation. Further the Court concluded that the involuntary placement in social welfare facilities should be examined according to the specific legal regulations of involuntary placement in health facilities.
Results (sanctions) and key consequences or implications of the case	The Constitutional Court did not examine the merits of the claim because the applicant did not submit the power of attorney for his representation before the Constitutional Court.
Proposal of key words for data base	Legal capacity, access to court, involuntary placement in social welfare facilities.

Case title	K. vs. Psychiatric facility in B. (SupremeCourt_5 Cdo 17_09)
Decision date	25 February 2009

Reference details	Decision No. 5 Cdo 17/2009, The Supreme Court of the Slovak Republic
Key facts of the case	On 11 April 2008 the applicant was involuntarily placed in a psychiatric facility. The court assessed the compulsory admission as lawful without any interrogation of the applicant. In addition, the Court's order on the lawfulness of the involuntary placement (compulsory admission) was not delivered to the applicant. The Court interrogated only the attending physician in charge who did not recommend the interrogation of the applicant without explanation of any reasons. However the Court appointed a guardian for the applicant for representation during the proceedings of the involuntary placement, who never visited the applicant and never delivered the Court's decision to her. The applicant, with assistance of her family members, submitted an appeal against the Court's order on involuntary placement. As the appeal was dismissed the applicant claimed its review at the Supreme Court with representation of an attorney.
Main reasoning/ argumentation	It is necessary and in accordance with the law that the Court interrogates the involuntarily placed person. The interrogation of the involuntarily placed person guarantees the direct contact of the placed person with the Court. It is one of the procedural guarantees to protect the right to personal freedom. In addition, the Court should find out through its direct contact with the placed person whether the person may understand the meaning of the Court proceedings. This examination is important to conclude whether the Court shall or shall not deliver a decision to the involuntarily placed person.
Key issue clarified by the case	The Court shall not make an assessment of the involuntary placement without an interrogation of the involuntarily placed person. In addition, the statement of the physician in charge has to be examined by the Court as a proof. If the interrogated physician does not give any reasons for conclusions that it is not recommended to interrogate the placed person nor to deliver the Court's decisions to him/her, the Court can not take such a statement as a basis for any further conclusions.
Results (sanctions) and	The Supreme Court dismissed both the appellate Court's decision and the first instance Court's decision on

key consequences or implications of the case	the lawfulness of the involuntary placement.
Proposal of key words for data base	Compulsory admission, assessment of the involuntary placement.

Case title	J.G. petition to restore the legal capacity (Supreme Court 2 Cdo 50/2005)
Decision date	1 November 2005
Reference details	Decision No. 2 Cdo 50/2005, Supreme Court of the Slovak Republic
Key facts of the case	The District Court dismissed the petition of the applicant to restore his legal capacity. The applicant, represented by his attorney, submitted an appeal. The appeal was dismissed as a petition filed by an unauthorised person due to the fact that the applicant did not have legal capacity to give the power to his attorney. The applicant represented by his attorney filed a petition to the Supreme Court to review the appellate decision.
Main reasoning/ argumentation	The principle of access to justice shall cover the situation of the person with restricted legal capacity or the person fully deprived of his/her legal capacity to request the restoration of his/her legal capacity. Therefore it is necessary for the person concerned to be able to commence the Court proceedings to restore his/her

	legal capacity, including the right to file an appeal against the first instance Court decision. In addition, such a person shall be authorised to give power to the attorney to represent him/her at the Court proceedings.
Key issue clarified by the case	The person with restricted capacity or fully deprived of his/her legal capacity has the right to submit a petition to the Court to restore his/her legal capacity, including the right to file an appeal against the first instance Court decision. The person concerned has the right to be represented by a lawyer during Court proceedings at all levels, including the Supreme Court.
Results (sanctions) and key consequences or implications of the case	The Supreme Court cancelled the appellate Court's decision and returned the case back to the appellate Court.
Proposal of key words for data base	Restoration of legal capacity, legal aid, access to the court / access to justice.