

## **ETHICAL ANALYSIS OF THE RIGHT OF PERSONS WITH INTELLECTUAL DISABILITIES TO SEXUALITY EDUCATION IN SLOVAKIA**

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### **ABSTRACT**

The present study focuses on sexuality education as an integral part of the fundamental right to education. It analyses relevant provisions of the Convention on the Rights of Persons with Disabilities and highlights related ethical issues. Study also shows that sexuality education is ideologically saturated and morally charged topic in Slovakia. In this paper we analyse context between social constructions of intellectual disability and sexuality and their implication for sexuality education. We outline some aspects of the right to sexuality education for persons with intellectual disabilities and discuss cultural challenges and related ethical dilemmas from the liberal point of view.

### **KEYWORDS:**

*intellectual disability, ethics, sexuality education, human rights, morals*

### **INTRODUCTION<sup>1</sup>**

As the international community moves towards more robust recognition of human rights of persons with disabilities<sup>2</sup>, parents, legal guardians and professionals must work together to ensure that it is delivered safely and effectively. There is no doubt that by constant development of human rights through international legal and political agenda we are on the path to greater justice and equality. Because of recent progress in the international human rights legislation persons with intellectual disabilities are much more likely to accomplish personal dreams and goals.

However, rather than resolving all the ethical issues at once, application of human rights can sometimes just as readily create or reveal hidden, long time ignored, difficult ethical and cultural dilemmas. Socially constructed myths infused by the ideological approach to sexuality often keep people with intellectual disabilities in a lonely and isolated world. Without proper education in place these myths are likely to reproduce and harm the possibility of real change on the ground for many people. Education is therefore most basic human right. It had been shaped by different legal instruments, and there are many sources of this law. United Nations Universal Declaration of Human Rights, Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities all recognize this right. We will focus on the provisions of the Convention on the Rights of Persons with Disabilities because it deals precisely with disabilities. Declared purpose of this agreement is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. (Article 1)

### **THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES**

The text was originally adopted by the United Nations General Assembly on 13 December 2006, and opened for signature on 30 March 2007. Optional Protocol has established a committee of experts to monitor implementation of the treaty provisions by its States parties. Slovakia signed treaty on 26 September 2007. National Council of the Slovak Republic agreed to it in resolution nr. 2048 on 9 March 2010. Head of state ratified treaty on 28 April 2010. It came into force on 25th of Jun 2010 (Stavrovská, 2014, p. 32).

### **EQUALITY, NON-DISCRIMINATION AND CHANGING CONSTRUCTIONS OF DISABILITY (ARTICLE 5)**

States Parties in the treaty recognize that: “all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.” (Article 5)

That is an important statement because people with disabilities were traditionally viewed as powerless objects of charity, medical treatment and necessary social protection. For decades, around the world, especially in the Central and Eastern Europe, they have often lived their lives in

gigantic state run institutions, usually away from their families. In recent years, important changes in public policies affected much of the world and resulted in improved opportunities for people with intellectual disabilities. New policies further developed human rights based approach to education, employment, and equal access to sexual health and social care in general. During the last 10-20 years many persons with intellectual disabilities have developed their abilities further on a larger scale, so their influence has increased and they become little more visible. They are less likely to be treated as members of an inferior category today. People living with intellectual disabilities begin to assume new place in society. Unfortunately, societal attitudes have changed a lot less in regard to their sexuality.

### **PREJUDICES AND HARMFUL PRACTICES (ARTICLE 8)**

States Parties undertake to adopt immediate, effective and appropriate measures: “To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life”. (Article 8)

Even today, some professionals in care homes and parents sometimes refuse to acknowledge that people have sexual feelings, needs, and desires, regardless of their intellectual abilities. As a result, many young people who live with intellectual disabilities often do not receive suitable sexuality education. We can assert that to this day, persons with intellectual disabilities are often viewed as asexual, unsuitable for life in a relationship and at the same time their sexual needs are sometimes firmly controlled. Many of them are still unable to enjoy basic sexual and reproductive rights today (Náravaez, 2013, p. 264). According to Herrath (2009) denial and suppression of sexual needs of clients in state run or private institutions is overrated in scientific journals and there is a real progress on the ground. Legislation has partially changed the attitudes of staff and professionals. However, absence of suitable sexuality education on the ground is a real problem in Slovakia. We are behind the European standard for various economic, ideological and cultural reasons. Persisting deeply rooted humiliating myths may still harm ambitions and intimate aspirations of many people. Many of these socially constructed myths are probably the legacy of single-sex institutions with little or no stimulation of any kind; social isolation and complete absence of sexuality education and may have in fact very complex discursive sources. These constructions

may have a number of functions. They could legitimise sexual abuse by staff or approve the involuntary sterilisation as a means of social control. We identified just a few of them: 1. The holy innocent – eternal children, 2. Over-sexed, 3. Unsuitable for life in a relationship, 4. True purpose of sexuality (Wood, 2004).

### **THE HOLY INNOCENT – ETERNAL CHILDREN**

According to this myth, persons with disabilities are not sexual beings and therefore do not require any education in such matters. Some people still regard persons with intellectual disability as 'holy innocents' believing that they remain child-like forever (Wood, 2004, p. 43) The perception of women with disabilities as asexual beings is a curious one, because at the same time, a very high percentage of women with disabilities are victims of sexual abuse and rape perpetrated by those close to them in their family and social environments (Juste et al, 2013. p. 168). Construction of innocents is also closely associated to the religious concept of guilt and sin associated with extramarital non procreative sex. Nevertheless, there is a wide spread consensus among professionals that sexual interests and desires are common for persons with intellectual disabilities. There are some modifications, that reflect the health condition of the individual, but in general we can say that most of them express sexual needs of some kind and want them to be satisfied in one way or another (Marková et al., 2009). They are often attracted to sexual partners and engage in sexual activities, providing they have an opportunity and physical ability to do so. Denying sexuality is directly linked to violence. Human development cannot be conceived without sexuality and denying sexuality, an aberration which is widespread and tolerated by the system, constitutes one of the most invisible and harmful forms of all the types of violence women with disabilities suffer (Juste et al, 2013. p. 172). Regardless of the fact that persons with intellectual and cognitive disabilities often have a problem in recognizing, expressing and balancing their emotions, they need:

- to have privacy;
- to love and be loved;
- to develop friendships and emotional relationships;
- to learn about sex, sexual intercourse, safe sex and other issues related to sexuality (to protect themselves from sexual abuse);
- to implement their rights and responsibilities regarding privacy and sexual expression;

- to enter marriage and become parents;
  - to develop personal sexual identity in accordance with age, social development, cultural values and social responsibility
- (Dorsey et al. 1998, Štifanić & Dobi-Babić 2000, Walsh et al. 2000, Katalinić, et al, 2011, Marková, Mandžáková 2011) There is widespread agreement among professionals on this issue.

### **OVER-SEXED**

Some people on the other hand believe that people with intellectual disabilities are over-sexed; (dangerous sexual predators); that they have somehow increased sexual drive and may not be able to control themselves in an intimate situation (Wood, 2004). Belief in this myth can produce reluctance to provide comprehensible sexuality education. It is a curious result, because good quality education and training are necessary for promoting healthy and mutually respectful sexual behaviour regardless of the person's intellectual abilities.

### **UNSUITABLE FOR LIFE IN A RELATIONSHIP**

Persons with intellectual disabilities generally exhibit a lower level of intelligence and impaired adaptive behavior; these deficiencies usually become apparent during childhood (Marková, Mandžáková, 2011). Persons with mild disability are usually capable of adaptive sexual behavior. Their sexuality is sometimes developing at slower pace compare to average person but they can be very advanced and expressive too, often due to specific social and cultural conditions in disadvantaged families. They can usually learn academic skills up to about the sixth-grade level, although at a slower pace than other children. They have about the same sexual needs as average population. As adults they can usually support themselves if given some help. In most cases no medical or physical signs are involved. They have sexual intercourse as often as an intact population (Marková, Mandžáková, 2011, p. 39). Hingsburger has concluded that disabled people can develop sexual relationships with others if they live in a healthy environment surrounded by people with adequate habits (Hingsburger, 1991).

Situation of persons with moderate or severe disability is much more difficult. 10% of retarded individuals are moderately retarded, 3–4% severely retarded, and 1-2% profoundly retarded (Dorsey et al. 1998, p. 6).

The cause of occurrence may be genetic (congenital metabolic failures, chromosomal aberrations), psychosocial (chronic lack of intellectual stimulation) and secondary as the sequel of disease or trauma (Kaplan & Sadock 1998, Durkin et al. 2000, Katalinić, et al, 2011). As children, the moderately retarded progress to about the second-grade level in academic subjects, the severely retarded develop only minimal speech and communication skills, and the profoundly retarded have little capacity to move about or profit from sensory information (Dorsey et al. 1998, p. 6). Their situation regarding sexual life and partnership is difficult. Only very few ever reach the level of independence, which allows them to live an average life with chosen partner without supervision of their parents or legal guardian (Marková, Mandžáková, 2011, p. 39). It is never easy and there are additional risks involved. Experts claim that persons with severe and some with moderate mental retardation should not enter marriage or have children, while persons with a mild type of mental retardation should have a limited right to enter marriage and have children in specific and very restricted cases. It has been proved that women with mild retardation often have a partner without intellectual deficit, while men with mild retardation very rarely enter marriage (Gallagher 2002). Slovak legislation reflects this opinion and allows people with intellectual disabilities to enter marriage and have children in specific and restricted cases. Court has to approve the decision to marry if one of the parties has no legal capacity. It is important to have some protective measures in place. Persons with intellectual disability are often victims of sexual violence. But regardless of whether they are in fact fit to consent with marriage or not, they have right to privacy; to love and be loved; to develop friendships and emotional relationships and learn about sex, sexual intercourse, safe sex and other issues related to sexuality in order to establish possibility of consent to sexual relationship and to protect themselves from sexual abuse.

### **TRUE PURPOSE OF SEXUALITY**

There is no universal agreement on what is considered moral or immoral sexual behaviour. Sexual acts have no meaning in themselves – it is a particular culture that gives exact meaning to sexual practice or people who engage in it. What is after all given the definition of moral or immoral depends on culture (Marková, 2006, p. 59). According to traditional religious approach to sexuality in Slovakia, true purpose of

sexuality is procreation. We have even renamed “Sexuality education” to “Education to Marriage and Parenthood” in order to stress marriage and parenthood to be central goal of the education. Because persons with intellectual disabilities are, often unjustly, seen as unsuitable for parenthood and marriage, celibacy is therefore presented to them by religious staff members and professionals as the only moral option. In line with Judeo-Christian tradition religious authorities continue to declare any sexual activity outside marriage as sin in Slovakia. Sexual acts seeking the orgasm of one or more of the parties unless marital are officially declared by church unreasonable, unhealthy and wrong. To engage in a sex act of a non-marital kind—e.g. adultery, fornication, intentionally sterilized intercourse, solitary masturbation or mutual masturbation (e.g. sodomy), and so forth is plainly declared a sin. According to this religious tradition any intercourse, even with spouse, if solely for pleasure, or if solely for the sake of health, or if solely as a relief from temptations to masturbation or extra-marital sex is in principle seriously wrong (Finnis, 1997). To regard any of such types of sexual conduct as morally acceptable might is therefore sometimes a serious problem for religious professionals working in social and health services. It often plainly contradicts their beliefs. Therefore we are witnessing that sexuality education is furthermost a political issue in Slovakia. To those, deeply rooted in Christian tradition of thinking, any such right as, to learn about sex, sexual intercourse, safe sex, masturbation and other issues related to sexuality in a liberal manner is itself morally problematic regardless of the student’s health condition. Intellectual and cognitive disability may be just an additional stigma.

### **FREEDOM FROM EXPLOITATION, VIOLENCE AND ABUSE (ARTICLE 16)**

States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects. (Article 16)

Persons with intellectual disabilities are particularly vulnerable and subject to social invisibilisation, exclusion, dependence and isolation, circumstances which contribute to their being more likely to suffer abuse. Of all women with disabilities, women with intellectual disabilities suffer most (Juste et al, 2013. p. 168). Girls are more prone to become victims of incest and rape (Marková 2011). Therefore the paragraph q of the preamble to the United Nations Convention on the Rights of Persons with

Disabilities recognize that women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation and that they suffer different types of discrimination. The Convention also acknowledges the need to include the gender perspective in all efforts towards promoting the full enjoyment of rights and liberties. The perception of persons with severe disabilities as imperfect, dependent beings leads the perpetrator to believe that abusing a person with disabilities is less important and less serious and that there is greater impunity. This, in turn, paves the way for people with disabilities to suffer even greater violence (Juste et al, 2013. p. 168). Also in the case of possible marriage it must be kept in mind that they can thus become victims of physical, mental and financial abuse by their partners, so the community must provide adequate protective measures (Disability Rights Commission 2007). “It turned out that more severely disabled individuals were more prone to abuse. They become victims of sexual abuse twice as often as the healthy population and five times more frequently than other forms of abuse (physical, mental)” (Katalinić, et al, 2011 p. 38). Slovak republic is obliged to take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. (Article 16)

### **SEXUALITY EDUCATION AND PREVENTION OF VIOLENCE**

“States Parties recognize the right of persons with disabilities to education.” (Article 24) Sexuality education is not a new subject in Slovakia. It is clear that the issue of sexuality is very important for mental welfare and social wellbeing. Sexuality education’s compulsory curriculum was developed after 1989. This was later, without any change of its content, for the political reasons only, renamed to Curriculum for Education to Marriage and Parenthood for Elementary and Secondary Schools. Curriculum is elaborated to be used within other elementary and secondary subjects – officially included in other subjects such as Ethics, Religion and Biology. Officially approved concept was adopted by the decision of the Slovak government Nr. 390 in 4. 6. 1996. Curriculum Nr. 2493/1998 – 41, is officially binding since 29 Jun 1998, Law Nr. 245/2008. It is supposed

to be realized within the framework of other subjects by professionals or school psychologists but the subject largely failed to be implemented. Curriculum for Education to Marriage and Parenthood for Elementary and Secondary Schools was again approved by Ministry of Education of SR Nr. 4560/2010-916 on 15. March 2010. Accordingly, decision about implementation of the curriculum is to be made by head teacher, and teachers in cooperation with professionals, students, parents and other employees. Room for implementation of Education to Marriage and Parenthood in individual school program is 0.5 hour per week, in form of voluntary – non compulsory subject, and is otherwise officially included inside of subjects such as Ethics, Religion and Biology (Marková, Mandzáková, 2011. p. 81). Lukšík et al. 2003, Marková, Mandzáková, 2011, claim that in spite of Education to Marriage and Parenthood is officially a compulsory subject it is after all realized by minority of teachers on voluntary basis. To get proper information in time is a matter of luck for all children in Slovakia.

Situation of persons with intellectual disability is even more difficult. Suitable sexuality education might be completely out of reach for many. They are more often educated at home. Even when educated in school, people with severe or even mild disablement are very often considered not apt enough for any useful information on sexuality. Expressing themselves as persons with their own legitimate sexual needs and rights is not a real option if they live in isolation without any access to suitable sexuality education. Intact persons often mutually exchange information on this topic and get educated in this way. They have access to some kind of information through the media and sometimes family. “Young disabled people cannot talk about sexuality with their peers because they attend special schools or classes for disabled persons. In these special school programs there is usually no talk about sexuality, although they are also individuals with sexual needs. Adolescents with mental retardation experience through puberty the same hormonal storms as their healthy peers. Their parents are daily confronted with numerous problems and thus simply do not have either time or strength to introduce conversation on the topic of sexuality” (Katalinić, et al, 2011 p. 40). It is sometimes proclaimed that persons with intellectual disabilities should be protected against sexuality. Such statement is usually nothing else but cover up for generally very negative attitude towards sexuality of persons with intellectual disabilities (Marková, Mandzáková, 2011. p.8). Exclusion of sex education as a part of the educational cycle for this group means discrimination and

depreciation of their essential human rights. It must be mentioned that due to all these facts such persons are more prone to sexual abuse than the non-retarded, while unwanted pregnancies and sexually transmitted diseases are very frequent (Walsh et al 2000, Gust et al. 2003, Murphy & Elias 2006, Carpenter 2002, in: Katalinić, et al, 2011 p. 40).

## CONCLUSION

The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for sexual and reproductive rights, fundamental freedoms and sexual diversity, require good quality education. Sexuality education clearly shapes a real life options for people with intellectual disabilities but issues related to sexuality always carry a moral dimension as well. Political Catholicism does not support individual's right to get comprehensive information on sexuality at school. Disability may be just an additional stigma. Further discrimination may be the result of constructions of sexuality based on various prejudice and myths. Religious construct, that sexuality has the only true and moral purpose in procreation within marriage, if imposed on disabled persons, results in painful sexual deprivation or feelings of guilt. Convention on the Rights of Persons with Disabilities legally bound Slovak republic to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities. They have an equal right to privacy; to love and be loved; to develop friendships and emotional relationships and learn everything about sex, sexual intercourse, safe sex and other issues related to sexuality. They are sexual beings. Responsible sexual behaviour requires access to information and acceptance of individual sexuality. Sexuality education is extremely important in order to protect people from sexual abuse. Right to suitable and effective sexuality education is therefore truly a fundamental human right. It opens a real possibility to enjoy other human rights to the full possible extent. (Right to freedom from exploitation, violence and abuse; freedom of expression and opinion, respect for privacy, respect for home and the family; health) Slovak republic is legally bound to ensure and promote full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.

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2. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. (Article 1. Convention on the Rights of Persons with Disabilities).