

28 July 2020

Written observations in applications nos. 34591/19 and 42545/19 *Franc TOPLAK v. Slovenia and Iztok MRAK v. Slovenia*

I. Introduction

1. The European Network of Equality Bodies (Equinet) is an association registered in Belgium representing national equality bodies (NEBs) across Europe. Equinet membership comprises 49 member organisations from 36 Council of Europe Member States (including all EU Member States) and Kosovoⁱ. Our mission involves promoting equality in Europe by supporting and enabling the work of NEBs, as well as supporting them to be independent and effective catalysts for more equal societies.

2. NEBs are public institutions set up across Europe to promote equality and tackle discrimination on grounds of sex, race, age, sexual orientation, religion and belief, disability or other grounds. NEBs play a fundamental role in the non-discrimination architecture of their countries. Their role is defined in accordance with EU equal treatment legislation requiring Member States (and EU accession countries) to set up NEBs to combat discrimination based on race and ethnic origin, as well as sex. Many Member States have gone beyond these requirements and ensured that NEBs can also deal with discrimination based on other grounds. These bodies have a distinct role from national governments and civil society organisations. Many NEBs have, as part of their statutory functions, the ability to intervene in equality and human rights cases before national courts, or indeed before international and regional courts and tribunals.

3. On 7 July 2020, the European Court of Human Rights (ECtHR) granted Equinet leave to intervene in the above mentioned Applications by way of written submissions in accordance with Article 36(2) of the European Convention on Human Rights (ECHR) and Rule 44(3) of the Rules of the Court.

4. The merits of the case concern the accessibility of polling stations to persons with disabilities using wheelchairs and raise complaints under Article 3 of Protocol No. 1 to the ECHR read alone and in conjunction with Article 14, Article 1 of Protocol No. 12 and Article 13 as well as under Article 1 of Protocol No. 12 and Article 13 of the ECHR. The cases raise critical questions concerning the nature and extent of the obligations of Contracting States to the ECHR to secure the rights of persons with disabilities (PWDs) to vote without discrimination.

5. This submission will provide the ECtHR with information on the following issues of relevance to securing the rights of persons with disabilities to vote without discrimination:

- a. International human rights standards and trends regarding the right to vote for PWDs.
- b. Legislation and practice across the Contracting States. Equinet will provide information on the current national legislation, jurisprudence and practice on the right to vote for persons with disabilities relevant to the case.

II. International human rights standards

6. The ECtHR will, in interpreting the ECHR, look “for any consensus and common values emerging from the practices of the European States and specialised international instruments... as well as giving heed to the evolution of norms and principles in international law.”ⁱⁱ

7. In *Hirst v the United Kingdom (no. 2)*, the Grand Chamber of the **ECtHR** stressed that the elections are "crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law".ⁱⁱⁱ In *Scoppola v Italy (no. 3)* the Grand Chamber stated "the right to vote is not a privilege. In the twenty-first century, the presumption in a democratic State must be in favour of inclusion and universal suffrage has become the basic principle."^{iv}

8. **The Venice Commission** outlined that "Universal suffrage is a fundamental principle of the European Electoral Heritage. People with disabilities may not be discriminated against in this regard, in conformity with Article 29 of the Convention of the United Nations on the Rights of Persons with Disabilities and the caselaw of the European Court of Human Rights". Likewise it has affirmed that "The application of Universal Design principles and direct and/or indirect participation of the user in all design stages are effective means for improving the accessibility of polling stations and election procedures to cast one's vote and for getting access to information on elections."^v Additionally, in 2003 it said that "voters should always be able to vote at the polling station"^{vi}.

9. The **Council of Europe Committee of Ministers** reaffirmed that all persons with disabilities have the right to participate in political and public life on an equal basis with others. It also underlines that accessible ballot papers and facilities should be available at the time of voting and calls on member States to "ensure that their legislation overall does not discriminate against persons with disabilities in political and public life".^{vii}

10. The **Parliamentary Assembly of the Council of Europe (PACE)** noted that "in practice, the access of people with physical or mental disabilities to their rights on an equal basis with those of people without disabilities frequently remains wishful thinking and proves inadequate".^{viii} Likewise, it has stated that "Persons with disabilities are scarcely visible on the political stage and are still too often considered and treated as second-class citizens in most Council of Europe member States. The Parliamentary Assembly expresses concern about the fact that persons with disabilities face multiple challenges when trying to exercise their political rights, related to accessibility, inadequate support for the diversity of disabilities, an unjustified link between legal capacity and the right to vote and the frequent reluctance of political parties." PACE emphasised that "Political rights, such as the right to vote, stand for election and be elected, are fundamental human rights. Ensuring respect for the exercise of these rights by persons with disabilities does not mean creating a set of new rights or special rights for a specific category. Guaranteeing the respect of the political rights of persons with disabilities is a democratic issue relevant to the whole population, raising questions about the inclusiveness and efficiency of democratic systems."^{ix}

11. Article 15 of the **European Social Charter (revised)** explicitly guarantees PWDs "the effective exercise of their right to independence, social integration and participation in the life of the community".^x

12. The **Council of Europe Disability Strategy 2017-2023** establishes accessibility as a priority, as defined in Article 9 of the UNCRPD, stating that "[a]ccessibility is, in other words, an enabler for persons with disabilities in all areas of life".^{xi}

13. The **Committee on the Rights of Persons with Disabilities (CRPD Committee)** in its General Comment No 2 on Article 9 "Accessibility", noted that "[p]ersons with disabilities would be unable to exercise [rights to participation to public and political life] equally and effectively if States parties failed to ensure that voting procedures, facilities and materials were appropriate, accessible and easy to understand and use. It is also important that political meetings and materials used and produced by political parties or individual candidates participating in public elections are accessible. If not, persons with disabilities are deprived of their right to participate in the political process in an equal manner."^{xii}

14. The **CRPD Committee** has established that *“article 29 of the [Convention on the Rights of Persons with Disabilities] requires State parties to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, including by guaranteeing their right to vote. The Committee further recalls that, under article 29 of the Convention, the State party is required to adapt its voting procedures, by ensuring that they are appropriate, accessible and easy to understand and use. As concerns the accessibility of voting procedures, the Committee recalls that accessibility is related to groups, whereas reasonable accommodation is related to individuals. This means that the duty to provide accessibility is an ex ante duty. States parties therefore have the duty to provide accessibility before receiving an individual request to enter or use a place or service.”^{xiii}*

15. The **CRPD Committee** has clarified that *“[a]s to the argument of the State party that barriers to accessing existing objects and services should be removed gradually, taking into account limited resources, and that significant increase in cost can constitute a disproportionate burden, the Committee recalls that the obligation to implement accessibility is unconditional. The entity obliged to provide accessibility may not therefore excuse the omission to do so by referring to the burden of providing access for persons with disabilities.”^{xiv}*

16. The **CRPD committee** in its report “Political participation and equal recognition before the law” outlined political participation as *“integral part of universal human rights”*, while affirming that *“Effective participation in political and public spheres is crucial to democracy and good governance. The political participation of persons with disabilities allows for them to make positive contributions to disability-inclusive policies and to experience full citizenship. This is critical to the full implementation of both the Convention on the Rights of Persons with Disabilities and the 2030 Agenda for Sustainable Development”*. It affirmed that article 29 encompasses a broad notion of political participation, including promoting *“actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs” (article 29 (b)).* In this sense it clarified that *“[s]imply extending formal voting rights to persons with disabilities is not sufficient; States must ensure in practice the rights under article 29 by, for instance, ensuring full access to information and to polling stations; facilitating the use of assistive voting devices for persons with sensory impairments so that they can vote independently; and actively promoting the participation of persons with disabilities in political parties. Participation in political and public life has important links with, and indeed depends on, other provisions in the Convention, including on accessibility (article 9), equal recognition before the law (article 12), liberty and security (article 14), independent living and inclusion in the community (article 19), freedom of expression and opinion and access to information (article 21) and the right to inclusive education (article 24).”^{xv}*

17. In the same sense, the **CRPD committee** affirmed that the right to vote *“must be respected if the full citizenship of persons with disabilities and their effective participation and inclusion in society are to be ensured. By exercising that right, persons with disabilities assert their individual autonomy, including the freedom to make their own choices, and their right to be recognized as persons before the law. Under article 29, persons with disabilities must have not only the right, but also the opportunity, to vote and be elected.”^{xvi}* The CRPD Committee also concluded that *“the available evidence -scarce as it is- suggests that there is a clear gap in voter turnout between persons with disabilities and others”^{xvii}*.

18. Furthermore, the **CRPD Committee** has recommended that *“all relevant legislation be reviewed to ensure that all persons with disabilities, regardless of their impairment, legal status or place of residence, have the right to vote and participate in public life on an equal basis with others”* and has called for the removal of *“any restrictions on the exercise of political rights, in law or in practice”^{xviii}*.

19. Likewise, the **CRPD committee** has asked States to promote the participation in political life of persons with disabilities, including by adopting specific measures and affirmative action to achieve de facto equality.^{xix}

20. The **UN Human Rights Committee** has affirmed that “[p]ositive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty or impediments to freedom of movements which prevent persons entitled to vote from exercising their rights effectively.”^{xx}

21. The **European Economic and Social Committee** in its Information Report on “The real right to vote of persons with disabilities” found that: “In some countries, public authorities assume that since there is a legal obligation to make all polling stations accessible, then every station does actually have to be fully adapted to the needs of persons with disabilities.”^{xxi} While stating that “[o]ther legal and organisational solutions enabling [voters with disabilities] to participate (e.g. postal voting, voting using a mobile ballot box, voting by proxy, early voting in some polling stations) may be regarded as complementary options for persons with disabilities, but not as substitutes for their right to vote in person at a polling station on election day.”^{xxii} The report also found that “eleven EU countries apply the general principle that all polling stations must be adapted”.

22. The **European Foundation Centre** reported that “even though most Member States have adopted legislative provisions in order to ensure that persons with disabilities can participate in voting procedures, these are not enough to ensure full and effective participation of all persons with disabilities”.^{xxiv} Furthermore, it recommends to “include in legislation clear timeframes for conformity with accessibility requirements as well as to establish monitoring mechanisms to ensure the correct application of accessibility legislation”^{xxv}. The report also emphasizes that “formal equality measures, such as simple guarantees of equality, without any supporting measures, are not enough to realise the substantive equality vision of the UN CRPD.”^{xxvi}

23. The **International Institute for Democracy and Electoral Assistance**, while developing International Obligations for Elections - Guidelines for Legal Frameworks stated in the same sense that “Off-site voting measures can also be considered, such as: (1) advance voting; (2) postal voting; (3) voting at institutions, hospitals and homes for the elderly; (4) home-based voting; and (5) kerbside voting. These options supplement, but do not supplant, the right to vote at public polling stations.”^{xxvii}

24. The **US Department of Justice** has affirmed that “architectural barriers that made it difficult or even impossible for people with disabilities to enter their polling place and vote side by side with their neighbors. People with disabilities must have the opportunity to be full participants in an integrated civic event”. In this sense, it has defended that “public entities are encouraged to make permanent modifications to their facilities used as polling places”, and “where low cost temporary measures cannot be implanted to ensure accessibility” then “the public entity must look for an alternative, accessible polling place”. Likewise, “The use of temporary measures to provide access to polling places on Election Day does not change a public entity’s obligations under the [Americans with Disabilities Act] to ensure that its programs and services are accessible to people with disabilities, nor does it mean that a temporary remedy would be appropriate in a public facility on an everyday basis.”^{xxviii}

25. Based on the information above, there is a consensus emerging from specialised international instruments and research at the levels of the United Nations, Council of Europe, EU, think tanks and civil society organisations that:

25.1 The right to vote is an essential right and not a privilege. Universal suffrage requires that all citizens have the same opportunities to participate in the political life of the country, as enshrined in international covenants but also in national law.

25.2 Full autonomous accessibility at every stage of the voting process to polling stations by PWDs should be the norm. Accessibility is an unconditional requirement and cannot be diluted by reference to ‘disproportionate burden’ since it is a precondition for the full enjoyment of rights of PWDs, including their participation in political and social life on an equal standing with others. This reflects significant developments that have taken place since the ECtHR’s decision in *Móčka v Poland*.^{xxix}

25.3 In practice, the access of people with disabilities to their rights on an equal basis with those of people without disabilities frequently remains wishful thinking and proves inadequate, which translates into significantly lower participation of PWDs in the electoral process and further marginalises them. This impacts upon the representation of PWDs and undermines democratic legitimacy.

25.4 Alternative or temporary accessibility measures should not be used as a permanent substitute in place of ensuring the full accessibility of polling stations.

25.5 While, as pointed out by the ECtHR in *Móčka v Poland*, extending legal requirements for accessibility is important; the period since then has shown it is not enough and there exists a positive obligation on States to ensure effective accessibility of polling stations, complementing the formal legal requirements to do so.

III. Legislation and practice across the Contracting States

26. The **Constitutional Court of Slovenia** stated in case U-I-156/11 of 10 April 2014, in paragraph 19 of the reasoning of the decision: *"Taking into consideration the central importance of the right to vote in a democratic state and the fact that new and adapted old buildings in public use should enable functionally impaired persons access, entry and use without architectural barriers, it is unacceptable that the vast majority of polling stations are in facilities that do not meet the conditions of physical accessibility"*. In paragraph 25 of the reasoning, the Constitutional Court recalled that *"the fulfilment of the obligation to ensure disabled persons physical accessibility to publicly-owned facilities, in case of legal persons under public law (the state and the local community), cannot be postponed to a distant future when it comes to the realization of one of the fundamental human rights, i.e. voting rights."* The Government in the proceedings before the Constitutional Court also draws attention to the requirements of Article 9 of the Law on the Equalization of Opportunities for Persons with Disabilities (ZIMI), which refers to the use and adaptation of publicly-owned facilities for disabled persons. However, according to the Court the maximum deadline referred to in Paragraph 3 of Article 9 of the ZIMI for removing these obstacles is disproportionately long when it comes to the exercise of the right to vote, thus being unable to ensure their de facto equality as far as possible.^{xxx}

27. Likewise, the **National Council of Disabled Persons’ Organizations of Slovenia** pointed out to the CRPD Committee that *"the decision of the Constitutional Court in case no. U-I-156/11, which found the existence of discrimination due to the architectural inaccessibility of the vast majority of polling stations, the valid regulations on the commandment of the accessibility of the architectural environment obviously have not been implemented properly for several decades. In addition, the aforementioned decision of the Constitutional Court conveyed a much broader message that the provisions of ZIMI are unconstitutional*

because it allows for too long a transitional period for the provision of accessibility of all premises or facilities in which human rights are directly exercised".^{xxxix} Likewise, the same report outlined that the lack of real accessibility to PWDs is a structural issue in Slovenia.^{xxxix}

28. The **CRPD Committee, in its Concluding observations on the initial report of Slovenia** underlined in 2018, that the Committee was concerned with "[t]he low participation in political and public life of persons with disabilities, especially women with disabilities." And recommended Slovenia to "(a) Ensure the right of all persons to vote, (...) including accessible voting materials for all persons with disabilities, regardless of their impairment and (b) Enable persons with disabilities, in particular women with disabilities, to exercise their political rights, including the right to stand for public office and participate in the conduct of public affairs."^{xxxix}

29. In order to present the European Court of Human Rights with relevant legislation, jurisprudence and practice across the Council of Europe Member States, Equinet gathered information from 19 NEBs. The following information from Council of Europe Member States demonstrates a tendency towards ensuring the participation of persons with disabilities in electoral processes on an equal footing with others, respect for the principle of autonomy but an overall lack of control of how those measures ensuring accessibility are executed in practice. It indicates a step towards formal recognition of the PWDs' right to vote but also a lack of measures to ensure the substantive enjoyment of such rights.

29.1 In 2013, the **Albanian** NEB dealt with 2 complaints of persons with disabilities claiming discrimination on the basis of disability by the Central Election Commission (CEC), related to the elections to the Albanian Parliament. The elections were held in 2013. Despite the fact that relevant legislation existed on the adaptation of polling stations or polling stations for persons with disabilities, it was found that the CEC had failed to adapt them. In these conditions, the NEB, after finding out the discriminatory situation against them, recommended that in the next elections, the CEC should take measures to create adequate conditions in polling stations for persons with disabilities. Following these cases, Albania passed the law for inclusion and accessibility of PWDs in 2014. The law fully aligns with CRPD requirements and establishes that "[the law] is aimed to guarantee and stimulate the protection of the rights of disabled people in order to enable them full and efficient inclusion in equal conditions to all the society spheres enabling autonomy and independent living through the offer of assistance and support."^{xxxix} The MEDPAK association, an Albanian CSO that defends the rights of persons with disabilities, organised in 2019 a campaign to increase awareness on the importance of voting as an expression of real democracy in the Elbasan district given the low participation rate of persons with disabilities in voting. The identified issues included lack of awareness and information about voting rights for PWD, as well as lack of accessible ballot papers for PWD and physical barriers. The law has therefore not been fully implemented, and it is affecting the electoral participation of PWDs.^{xxxix}

29.2 In **Belgium**, the Federal Public Service Home Affairs, as well as regional administrations,^{xxxix} produces binding guidelines that are communicated before elections and which the Communes (municipalities) to follow, resulting in accessibility measures in three ways: access to the polling stations, accessibility of the polling stations themselves, and mobility within the polling stations. Unia, one of the Belgian NEBs, received one complaint during the last elections in 2019. The complainant was not able to enter the polling station in his wheelchair. He was helped by other people to enter the polling station via the stairs. In the voting booth the voting computer was not set to an acceptable height for wheelchair users. The guidelines of the government were not put in place. Unia wrote to the administrative authority of the city involved who apologised for the inconvenience at the entrance, but claimed that an adaptable voting booth was in place. Nonetheless, according to the guidelines a person should have been present to redirect the

person to the specially equipped voting booth. In surveys conducted in Brussels in 2018, 85.26% of respondents confirmed that they were able to vote in the assigned polling station. In Wallonia, 73% of respondents said that the entrance of the polling station was accessible, while 75% affirmed that circulation in the building was accessible.^{xxxvii} There is no federal monitoring of the application of these guidelines, which means that compliance with the guidelines would rely on the PWDs who were unable to vote cannot vote (ex post control).

29.3 In **Croatia** given the lack of detailed regulation regarding voting for persons with physical disabilities, illiterate voters and voters who cannot access a polling station, the State Electoral Commission issues mandatory instructions before each election filling legal gaps, ensuring transparency and making clearer election procedures.^{xxxviii} The NGO GONG has nonetheless warned that it is necessary to include those mandatory instructions in the law to ensure access for PWDs to polling stations.^{xxxix}

29.4 In the **Czech Republic**, the National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2015–2020, states: *“The right to vote is one of the basic rights. This does not only mean participation in the political process, but integration into society and the opportunity to express one’s opinion. The insufficient accessibility of elections for some persons with disabilities is still a problem.”*^{xl} Additionally, the NEB has stated repeatedly that *“[p]olling stations are often not barrier-free and people with severe physical disabilities are forced to vote home or in front of the building where the polling station is located”*.^{xli} In addition, the Supreme Administrative Court has stated that equality is both formal and substantive. It said that the latter consists of two dimensions – equality of opportunities (focus on creating equal starting lines) and equality of results (focus on the consequences of equal treatment and redistribution of power and resources). The Court then went on to say that equality as understood by the Czech Antidiscrimination Act represents equality of opportunities since, in its opinion, ensuring equal treatment does not only mean preventing discrimination but also inherently encompasses ensuring equal opportunities.^{xlii}

29.5 In **Estonia** there are construction standards that ensure the accessibility for the majority of polling stations. However, the Estonian Chancellor of Justice has pointed out the need to avoid problems with the lack of physical accessibility.^{xliii}

29.6 In **Finland**, the Non-discrimination Act includes requirements of reasonable accommodation and equality planning for authorities, as well as remedies against service providers in the event of breach of accessibility.^{xliv} These provisions apply to polling stations. The Parliamentary Ombudsman that monitors CRPD compliance has nonetheless reported several breaches during inspections in several randomly selected polling stations.^{xlv}

29.7 **France** has, likewise, a strong legal framework^{xlvi} to ensure the accessibility of polling stations to PWDs. Nonetheless, the NEB has since 2014 consistently reported difficulties regarding its implementation, including lack of accessibility of polling stations (obstacles such as stairs, steps, narrow doors or steep inclines), difficulties getting to polling stations, or problems with the equipment.^{xlvii} The NEB has intervened locally to make sure that PWDs are able to vote in the elections. On her visit to France, The United Nations Special Rapporteur on the rights of PWDs also pointed out the lack of accessibility of polling stations and encouraged the Government to *“make the entire electoral process accessible and inclusive of persons with disabilities.”*^{xlviii} Since 2015, the NEB has observed that the accessibility of polling stations has improved.

29.8 The Electoral Code of **Georgia** contains legal provisions requesting that if an appropriate building is available, the building for an election precinct shall be accessible for every voter.^{xlix} In reality, both the NEB, as well as various NGOs have denounced that a vast majority of the polling stations remain inaccessible to PWDs.^l The Central Election Commission of Georgia confirmed that during the 2016 parliamentary elections 70% of the polling stations were not accessible for PWDs.^{li} Importantly, the Central Election Commission reported very low turnout by PWDs (3-6%) at recent parliamentary, local and presidential elections in 2016, 2017 and 2018, respectively.

29.9 In **Germany**, separate but similar election rules exist for federal, state, local, and European elections, establishing that polling stations shall be selected and equipped in accordance with local conditions in such a way that participation in the election is made as easy as possible for all those entitled to vote, in particular PWDs and other people with mobility impairments. In the reports of the German Institute for Human Rights to the Bundestag, it is repeatedly pointed out that polling stations are not accessible.^{lii}

29.10 In **Greece** the Ministry of Home Affairs issues instructions to the relevant authorities before each election that the polling stations should be accessible and that the PWDs should be given priority in the voting procedure. Nonetheless the CRPD Committee, in 2019 required the State to “ensure that persons with disabilities can effectively and fully participate in political and public life and exercise their right to vote”.^{liii} Furthermore, in 2019 the Greek Confederation of Persons with Disabilities in its proposed national programme of action for the implementation of CRPD called for greater access of all PWDs to the whole electoral procedure, including voting, polling stations and electoral material, amendment of the legal framework so as to provide for alternative forms of voting for persons with disabilities and adoption of specific measures aiming to maximise as far as possible the fulfilment of autonomous participation of persons with disabilities to political and public life.

29.11 In **Hungary**, the legal framework establishes that at least one polling station in each constituency has to provide “disabled access”^{liv} and contemplates the request of use of an accessible polling station as one of the assistance measures to be provided.^{lv} In 2009, the NEB stated in a comprehensive project report concerning the rights of PWDs, that their right to vote is infringed if election procedures, polling stations and information materials are not accessible.^{lvi} According to a letter sent by the president of the National Election Office to the National Federation of Associations of Persons with Physical Disabilities only 70.5% of polling stations were accessible to PWDs (7255 out of 10285), and out of the 2030 municipalities with only one polling station, there were 47 municipalities where the polling stations were not barrier-free.

29.12 In **Ireland** according to the law the PWDs who are unable to come to the polling station may be visited by the electoral officer.^{lvii} The PWDs, who are not able to vote in their designated polling station, may be authorised to vote in a different polling station.^{lviii} In 2017 the High Court ruled that the State has a duty to provide voting arrangements to visually impaired voters “where there are no disclosed reasonably practicable economic or effective reasons not to vindicate the right to mark ballot papers without assistance”.^{lix} In line with the National Disability Inclusion Strategy 2017-2021 the State pledged to progress the accessibility of voting and voter information.^{lx}

29.13 In **the Netherlands**, since 2019 the law provides that each of the municipalities is required to ensure that all of the polling stations are situated and designed in such a manner that they are accessible to people with (physical) disabilities, respecting the principle of autonomy.^{lxi} Prior to this law, only 25% of polling stations had to be accessible. According to a 2019 study regarding Provincial and water board elections, 24% of polling stations still lack full accessibility.^{lxii} Governmental, NEB and NGO sources call for

further focus reinforcing accessibility and autonomy over individual reasonable accommodation measures.^{lxiii}

29.14 In **Norway**, the law establishes that voting shall take place in (unassisted) accessible premises.^{lxiv} The Election Directorate funded a survey in January 2020 concerning the accessibility of the polling stations and the right to vote for persons with disabilities in the 2019 municipality elections. The conclusion was that the election overall was accessible and that persons with disabilities were satisfied with it.^{lxv} On top of that, Statistics Norway indicated through statistical data that there is almost no difference between the number of persons with disabilities and the general population that voted in the 2009 general election.^{lxvi}

29.15 In **Serbia**, according to the Law on Prohibition of Discrimination, public authorities have a duty to undertake measures to eliminate barriers which obstruct or make difficult access to buildings in public use for PWDs.^{lxvii} The CRPD Committee recommends the State to ensure that upcoming elections are inclusive of and accessible to all PWDs, including voting facilities and campaign materials.^{lxviii} The NEB has recommended that the Republic Electoral Commission should undertake all necessary measures and activities within its purview to ensure accessible polling stations and provide for communication and provision of information, so that all PWDs, as well as other persons with reduced mobility or impaired hearing or vision can participate in elections unassisted and on an equal basis.^{lxix}

29.16 In **Slovakia**, according to the law, the mayor when deciding on a polling station has to take into account its accessibility.^{lxx} Nonetheless, the CRPD Committee has expressed “*deep concern that all citizens with disabilities are not able to fully exercise their right to vote [...]*”.^{lxxi}

29.17 In **Spain**, following a CRPD committee recommendation^{lxxii}, the law was modified in order to guarantee that “*all relevant legislation [is] reviewed to ensure that all persons with disabilities, regardless of their impairment, legal status or place of residence, have the right to vote and participate in public life on an equal basis with others.*”^{lxxiii} Nonetheless NGOs warn that many polling stations remain inaccessible^{lxxiv} and that there is no designated monitoring body to make sure that all polling stations are indeed accessible.

29.18 In **Sweden** the law establishes that every municipality shall ensure that there are appropriate premises that can be used as polling stations and that voters are provided with good opportunities to vote as regards location, accessibility and opening hours. There shall be one polling station for each electoral district.^{lxxv} The possibility for exemption from this rule was removed from the Elections Act on 28 January 2014, with reference to national and international law. Statistics Sweden published a report concluding: “*Election participation was somewhat lower among persons with disabilities compared with the rest of the population. This was noted in the European Parliament election as well as the Riksdag election in 2014. Above all, persons with reduced mobility, impaired vision or disorders from anxiety and distress voted to a lesser extent.*”^{lxxvi} It further added: “*The lowest election participation was among those with serious reduced mobility, 64 percent in the Riksdag election and 30 percent in the European Parliament election, compared with 88 and 53 percent respectively among those without reduced mobility.*” In 2018 Statistics Sweden repeated that “[v]oter turnout among persons with disabilities is lower by six percentage points compared with the rest of the population.”

29.19 In the **United Kingdom** (Great Britain and Northern Ireland) according to the law polling stations have to be accessible as far as is reasonable and practicable and authorities designating polling stations must have regard to the accessibility of potential polling places.^{lxxviii} In June 2019, the Electoral

Commission issued the report *Elections for everyone* which makes recommendations about improved accessibility for voters with a disability. However, the CRPD Committee is concerned at the insufficient information on accessibility and reasonable accommodation for PWDs regarding elections.^{lxxxix} Based on a 2017 survey of the Electoral Commission 5% of PWDs said it was hard to get into the polling station (no one without a disability said it was difficult) and PWDs were more likely to say they voted by post than people without disabilities (35% compared to 19%). For some voters the polling booths were not wide enough, staff or other voters could see how people voted and some PWDs said they could not have voted by themselves.^{lxxx} According to a 2017 NGO survey only 1 in 4 blind and partially sighted people said the current system let them vote independently and in secret.^{lxxxi} In that regard, in 2019 the Electoral Commission issued recommendations for the Government to make changes to election forms and to change the law to allow more choice about who to take to the polling station as a companion. The report recommended that those running elections should look at ways they can make registering to vote and voting more accessible.^{lxxxii} In a decision of the High Court from 2019, a blind voter successfully argued that the Tactile Voting Device used for filling in the ballot paper was not sufficient.^{lxxxiii} The barriers presented at polling stations are also illustrated by a case from 2017 of a wheelchair user who was compensated (out of Court settlement) by the local authority after he could not enter the polling station.^{lxxxiv}

30. Equinet acknowledges that the lack of full autonomous accessibility is still a reality in some Council of Europe Member States. As shown through the available statistics, this has a clear connection with the participation rates of PWDs in the political life of the country and thus the sense of belonging. Furthermore, the CRPD Committee has been consistent in recommending that States guarantee full accessibility of polling stations for PWDs, in conformity with the CRPD. In spite of these practices, the trend towards ensuring full accessibility of PWDs in all areas of life, including access to vote and polling stations is noticeable across Council of Europe Member States with a number of countries having adapted their legislation in the past decade to provide for better accessibility of polling stations.

IV. Conclusion

31. Equinet submits that the clear implication from the recent changes in legislation, jurisprudence and practices across Council of Europe Member States is that there is a consensus and common values emerging around the principle that the voting rights of persons with disabilities shall be fully guaranteed through ensuring full autonomous accessibility.

32. Equinet also submits that this consensus can equally be inferred from different reports, resolutions, opinions, statements and recommendations from various international and regional human rights bodies, which have repeatedly emphasised that accessibility is the basis for PWDs to enjoy all their rights, especially regarding political participation.

ⁱ This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

ⁱⁱ ECtHR, *Opuz v. Turkey*, application no. 33401/02, 9 June 2009, para. 164.

ⁱⁱⁱ ECtHR, *Hirst v the United Kingdom (No. 2)*, application no. 74025/01, 6 October 2005, para. 58.

^{iv} ECtHR, *Scoppola v Italy (No. 3)*, application no. 126/05, 22 May 2012, para. 82.

^v Venice Commission, Strasbourg, 19 December 2011 Study No. 584 / 2010 CDL-AD(2011)045 Or. Engl. European Commission For Democracy Through Law (Venice Commission) Revised Interpretative Declaration To The Code Of Good Practice In Electoral Matters On The Participation Of People With Disabilities In Elections Adopted by the Council for Democratic Elections at its 39th meeting (Venice, 15 December 2011) and by the Venice Commission at its 89th plenary session (Venice, 16-17 December 2011)

^{vi} Venice Commission, Strasbourg, 30 October 2002 Opinion no. 190/2002 CDL-AD (2002) 23 Or. Fr. European Commission For Democracy Through Law (Venice Commission) Code Of Good Practice In Electoral Matters Guidelines And Explanatory Report, Adopted by the Venice Commission at its 51st and 52nd sessions (Venice, 5-6 July and 18-19 October 2002).

^{vii} Committee of Ministers Recommendation CM/Rec(2011)14 on the participation of persons with disabilities in political and public life.

^{viii} PACE, The Parliamentary Assembly of the Council of Europe (PACE), Resolution 1642 on “Access to rights for people with disabilities and their full and active participation in society”, adopted 26 January 2009.

^{ix} PACE, The Parliamentary Assembly of the Council of Europe (PACE), Resolution 2155 on “The political rights of persons with disabilities: a democratic issue”, adopted 10 March 2017.

^x European Treaty Series, No. 163 European Social Charter (Revised) Strasbourg, 3 May 1996.

^{xi} Council of Europe, The Council of Europe Disability Strategy 2017-2023, March 2017.

^{xii} CRPD Committee, General comment No. 2 (2014), Article 9: Accessibility, 22 May 2014, CRPD/C/GC/2, para. 43.

^{xiii} CRPD Committee, Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 19/2014 (*Fiona Given vs. Australia*), 29 March 2018, CRPD/C/19/D/19/2014, para. 8.5.

^{xiv} *Ibid*, para. 8.8.

^{xv} CRPD Committee, Political participation and equal recognition before the law, 29 March 2018, CRPD/CSP/2018/4, paras 1 and 5.

^{xvi} *Ibid*, para 7.

^{xvii} *Ibid*, para 8.

^{xviii} *Ibid*, para 10. Also pointed out in CRPD Committee, Consideration of reports submitted by States parties under article 35 of the Convention, 19 October 2011, CRPD/C/ESP/CO/1, para. 48 and para 64.

^{xix} *Ibid* para 27.

^{xx} Human Rights Committee, International covenant on civil and political rights General Comment No. 25, 27 August 1996, CCPR/C/21/Rev.1/Add.7, para 12.

^{xxi} European Economic and Social Committee, Information Report, Real rights of persons with disabilities to vote in European Parliament elections, 20 March 2019, SOC/554, para. 6.1.4.

^{xxii} *Ibid*, para. 6.2.1.

^{xxiii} *Ibid*, para 6.2.3.

^{xxiv} European Foundation Centre, Study on challenges and good practices in the implementation of the UN Convention on the Rights of Persons with Disabilities Final Report, October 2010, VC/2008/1214, p. 11.

^{xxv} *Ibid*, p.73.

^{xxvi} *Ibid*, p.45.

^{xxvii} IDEA, International Obligations for Elections- Guidelines for Legal Frameworks, 2014, p.142.

^{xxviii} U.S. Department of Justice, Americans with Disabilities Act, ADA checklist for polling places 2016.

^{xxix} ECtHR, *Antoni MÓŁKA against Poland*, 11 April 2006, Application no. 56550/00

^{xxx} Translation available in National Council of Disabled Persons' Organizations of Slovenia, Alternative report on the implementation of the provisions of the convention on the rights of persons with disabilities in the Republic of Slovenia (2008 – 2017) Ljubljana, December, p 31-32

^{xxxi} Ibid, p 31-32.

^{xxxii} Ibid, p49. *“The system of informing by the National Electoral Commission in exercising the right to vote is also discriminatory. Among other things, only tables and online maps with accessible polls and addresses of district election commissions are accessible, while only pdf forms for exercising rights are available online. To date, the information system has not changed. The provision of documentation and information in easy to read is still at the beginning, as it provides only insight into some of the most basic documents (the Constitution of the Republic of Slovenia, CRPD and certain laws), and the easy to read version of the guide for the rights of persons with disabilities has only a very limited set of presentations of individual selected rights. As the disability organizations point out, the need for this is also very high on the level of local self-government. The readable and understandable Slovenian language is left to the good will of lay persons and professionals in the field of special and rehabilitation pedagogy who, as volunteers and without system support, try to reach the standardized readable and understandable version of Slovene language. No standards on this topic exists. The number of recordings with interpretation in sign language on e-governance is small and is limited only to certain important services.”*

^{xxxiii} CRPD Committee, Concluding observations on the initial report of Slovenia, 16 April 2018.

^{xxxiv} Albania, Law for inclusion and accessibility of people with disabilities, 2014, article 2 a).

^{xxxv} European Association of Service Providers for Persons with Disabilities, The Right to Vote for Persons with Disabilities: An overview of the situation in Europe, 2019.

^{xxxvi} The Federal Public Service of Interior Affairs published guidelines on accessibility of polling stations for persons with disabilities in preparation for the 2019 elections (Accessibilité des bureaux de vote aux personnes handicapées)

A 2018 Flemish Ministerial Decree determines the organisation of polling stations where voting takes place electronically. As regards persons with disabilities, it determines that: *“In each building where votes are cast, the municipality provides at least one specially equipped polling booth for voters with physical disabilities. These polling booths are located in or in the immediate vicinity of the polling stations. A chair is available in the immediate vicinity. From the entrance to the building, clear signs are placed so that those who wish to use them can easily find the location of the polling booth.*

The polling booth mentioned in the first paragraph has:

1° a free manoeuvring space with a diameter of 1.5 m;

2° a writing desk with a top at a height of 80 cm, a width of 1 m and a depth of 60 cm. The space underneath the writing surface must remain free and have a free height of at least 70 centimetres.”

In Flanders, Inter published a brochure on accessibility of polling stations for local authorities. It provides recommendations on physical accessibility: public transportation, reserved parking spots, accessible entrance and doors, set-up of the room, communication, the voting booth, ...

In both Wallonia and Brussels, the authorities have set up a working group to improve the accessibility of the elections. These two regions have worked with CAWaB and Unia to develop circulars for municipalities and information tools for people with disabilities. They also carried out an evaluation among people with disabilities following the elections.

^{xxxvii} CAWaB, Evaluation de l'accessibilité des élections 2018.

^{xxxviii} Additionally the Ombudsman for persons with disabilities regularly issues recommendations to the State Electoral Commission to ensure the architectural, communication and orientation accessibility of polling stations and to enable persons with disabilities to be elected and to be able to participate in discussions that preceded the election.

^{xxxix} GONG, The Final Report on the Election for the President of the Republic of Croatia, 2 and 16 January 2005, p. 14.

^{xl} Government Board for Persons with Disabilities, National Plan for the Promotion of Equal Opportunities for Persons with Disabilities 2015–2020, p. 59.

^{xlii} Statement of the Public Defender of Rights Concerning the preparation of a List of Issues related to the supplementary report on meeting the obligations under the Convention on the Rights of Persons with Disabilities, 11 February 2019, p. 20.

^{xliii} Czech Republic, Judgment No. 30 A 106/2015 – 63 of the Supreme Administrative Court of 12th April 2018.

^{xliiii} Estonia, Letter of Chancellor of Justice 8 March 2019 no 16-6/190358/1901244.

^{xliiv} Finland, Non-discrimination Act (yhdenvertaisuuslaki) 30.12.2014/1325

^{xliiv} The Parliamentary Ombudsman that monitors CRDP compliance, has made inspections in several randomly selected polling stations in order to look over the situation as regards accessibility for persons with disabilities. The Ombudsman reported several breaches, here on the situation concerning the latest EU Parliamentary elections: EOAK/2657/2019. The Parliamentary Ombudsman also inspected the facilities for in-advance voting prior to the latest parliamentary election, EOAK/1670/2019.

^{xlivi} One of the fundamental principles of the Law of 11 February 2005 for Equal rights and opportunities, participation and citizenship for persons with disabilities is to enable them to be full citizens. It provides in particular that polling stations and techniques must be accessible to disabled persons, whatever their disability (physical, mental...) (see Article L62-2 of the electoral code, see also Articles D.56-1 and following articles, D.61-1, D.64...). The Décret n° 2006-1287 du 20 octobre 2006 relatif à l'exercice du droit de vote par les personnes handicapées contains similar provisions that provide that regardless of their location, polling stations must be made accessible on the polling day to all persons with disabilities regardless of their disabilities, if necessary by means of temporary or permanent accommodation.

^{xlvii} For instance, Défenseur des droits, L'accès au vote des personnes handicapées, 2014. Report published after 65 claims of persons with disabilities who could not access the polling stations. Opinion to Parliament - Avis 14-04 du 28 mai 2014 relatif à l'accessibilité électorale des personnes handicapées : Mission sur l'accessibilité électorale.

^{xlviii} See the End of Mission Statement by the United Nations Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas-Aguilar on her visit to France (2017). Extract:

"I was also informed that polling stations and electoral campaigns are not accessible to the diversity of persons with disabilities. I encourage the Government to make the entire electoral process accessible and inclusive of persons with disabilities."

^{xlix} Article 58 11 of the Electoral Code of Georgia states that if an appropriate building is available, the building for an election precinct shall be accessible for every voter, and where such building is not available, the building allocated for the election precinct shall, where possible, be adapted by the allocating body for the polling day to ensure accessibility for every voter.

^l The Public Defender of Rights has consistently denounced that in spite of active and passive electoral rights being granted to all citizens of Georgia, persons with disabilities meet certain barriers in the practical realization of these rights. According to the "2014-2016 Government Action Plan on Providing Equal Opportunities for Persons with Disabilities", the Central Election Commission, along with local self-government bodies was obliged: to adapt the polling stations for voters with movement disabilities, construct permanent / temporary ramps; construct and arrange special voting booths for voters with mobility problems; create the video for deaf voters explaining election procedures in sign language and broadcast it through public broadcaster; display video clip in certain polling stations using portable computer software providing access to election for blind voters. In spite of these plans the situation has not improved. The Georgian NGO Coalition for Independent Living published a Monitoring Report of 2017 local elections concerning the practical realization of the right to vote for persons with disabilities emphasizing that the vast majority of polling stations are not adapted to the needs of persons with disabilities. Even the presented adaptation is not full (the ramps are useless, out of standards). According to the monitoring results, out of 40 wheelchair users taking part in the elections, only 10 were able to get to the polling station. The practise is appraised negatively by the PWD organisation since this once again equals PWDs to persons with health problems who cannot live independently. Equal Rights, Equal Opportunities, Monitoring Report of 2017 local Elections.

^{li} Annual Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia – (2016), p. 413-414.

^{lii} Deutsches Institut für Menschenrechte: „Wer Inklusion will, sucht Wege“, Autor/in: Dr. Valentin Aichele, Dr. Sabine Bernot, Catharina Hübner, Dr. Susann Kroworsch, Dr. Britta Leisering, Peter Litschke, Dr. Leander Palleit, Kristin Pöllmann, Dr. Judith Striek, Analyse/Studie, ISBN: 978-3-946499-46-6 (PDF), März 2019, p. 52 - 56. Note that in July 2013, the Federal Competence Centre for Accessibility drew up a catalogue of criteria for accessibility of polling stations.

^{liii} CRPD Committee, Concluding observations on the initial report of Greece, 29 October 2019, CRPD/C/GRC/CO/1, para. 43: *“The Committee recommends that the State party revise the relevant voting framework, including laws, rules of procedure and support mechanisms, to ensure that persons with disabilities can effectively and fully participate in political and public life and exercise their right to vote, inter alia, by guaranteeing unhindered physical access to voting, ensuring the secrecy of the ballot and the availability of other voting materials and information in accessible formats in line with general comment No. 2 (2014) on accessibility.”*

^{liv} According to Section 166 of Act XXXVI. of 2013 on electoral procedure (EP Act), *“at least one polling station in each constituency of each settlement shall provide disabled access”*.

^{lv} According to Section 88 of EP Act voters with a disability may request the following types of assistance in exercising their right to vote:

- a) the sending of a notification in Braille transcription;
- b) the sending of simplified information material;
- c) use of a Braille voting template at the polling station or during mobile voting;
- d) use of an accessible polling station.

^{lvi} Hungarian Commissioner for Fundamental Rights, report in case no. 2405/2009.

^{lvii} Electoral Act, 1992, Section 17 and 82.

^{lviii} Ibid, Section 100.

^{lix} High Court, case, Sinnott v The Minister for Environment, The Community and Local Government, Attorney General and Ireland, 30 March 2017, [2017] IEHC 214.

^{lx} Department of Justice and Equality, National Disability Inclusion Strategy 2017-2021, p. 17.

^{lxi} Article J4 paragraph 2 of the Kieswet (Electoral Law). On top of that the central government has provided a checklist for (physical) accessibility for municipalities to use: Netherlands, Ministry for The Interior, General Checklist for Accessible Polling Stations (Ministerie van Binnenlandse Zaken en Koninkrijksrelaties, Globale Checklist Toegankelijke Stemlokalen), 2018.

^{lxii} Democracy Volunteers, Netherlands Provincial and Water Board Elections, (Democracy Volunteers, 2019).

^{lxiii} Central government/ministry for Health, Welfare and Sport, Programma VN-verdrag: onbepert meedoen! (Programme UN Treaty: unhindered participation), 2018. College voor de Rechten van de Mens, report to the UNCRPD (focussing on accessibility to goods and services) 2019. Alliantie VN-verdrag Handicap, Verdrag inzake de rechten van personen met een handicap in Nederland, 3 December 2019.

^{lxiv} Finland, Act relating to parliamentary and local government elections (Election Act) Section 9-3(2): *“The Electoral Committee determines where and when voting shall take place. Voting shall take place in suitable and accessible premises. Voters must be able to enter the polling stations unassisted. Other premises shall not be used unless special reasons exist”*.

^{lxv} Kantar, Tilgjengelighet ved valg for syns- og bevegelseshemmede, lokalvalget i 2019, Spørreundersøkelsen Valgdirektoratet 31.10.2019

^{lxvi} Statistics Norway, Jorun Ramm og Berit Otnes Personer med nedsatt funksjonsevne Indikatorer for levekår og likestilling, Rapporter Reports 8/2013.

^{lxvii} Law on the Prohibition of Discrimination in the Republic of Serbia (Official Gazette of the Republic of Serbia No 22/2009), article 17.2.

^{lxviii} CRPD Committee, Concluding observations on the initial report of Serbia, 23 May 2016, CRPD/C/SRB/CO/1, para. 60.

^{lxix} Recommendation No. 021-01-00655/2019-02, dated 20 November 2019.

^{lxx} The Act of the National Council of the Slovak Republic No. 180/2014 Coll. on the conditions for the exercise of the right to vote and on amendments to certain acts.

^{lxxi} Additionally the Committee expressed: *“The Committee recommends that the State party repeal sections 4 (c) and 6 (c) of the Elections Act and provide for an accessible electoral system to enable all persons with disabilities to exercise their right to vote, including by electronic means, and their right to stand for election.”* CRPD Committee Convention on the Rights of Persons with Disabilities, Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Slovakia, 17 May 2016, CRPD/C/SVK/CO/1.

^{lxxii} CRPD Committee, Consideration of reports submitted by States parties under article 35 of the Convention, Concluding observations of the Committee on the Rights of Persons with Disabilities, Spain, 19 October 2011, CRPD/C/ESP/CO/1.

^{lxxiii} Organic Law 2/2018, of 5 of December to modify Organic Law 5/1985 of 19 of June of the General Electoral Regime to guarantee the right to vote of all persons with disabilities.

^{lxxiv} CERMI for instance estimates that even after the reinforcement of the legal framework, at least 30% of polling stations showed serious problems, while 15% showed mild accessibility problems, based on the amount of complaints they received after the 2019 elections. Comité español de representantes de personas con discapacidad, CERMI, La accesibilidad del parque de colegios electorales aún presenta graves deficiencias, 10.11.2019. The NGO FAMMA denounced that in the Autonomous Community of Madrid almost 80% of the polling stations had architectural barriers and none of them applied universal design. FAMMA, FAMMA denuncia nuevamente la NO accesibilidad de los colegios electorales, 26.02.2019.

^{lxxv} According to Chapter 4, Section 20 of the Swedish Elections Act (2005:837) (Swe: Vallagen).

^{lxxvi} Statistical news from Statistics Sweden, Less participation among persons with disabilities, 2015-04-16.

^{lxxvii} Statistical news from Statistics Sweden. General elections, Electoral participation survey 2018, Analysis of voter turnout in the 2018 general elections, 2019-06-25.

^{lxxviii} Section 18 B (4) of the Representation of the People Act 1983 (modified for Northern Ireland Assembly Elections). Rule 29 (3A) of Schedule 1, 1983 Act also contains rules about the equipment that must be available at each polling station, for example large print ballot papers and special equipment to assist people with visual impairments.

^{lxxix} CRPD Committee, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, 3 October 2017, CRPD/C/GBR/CO/1, para. 60.

^{lxxx} The Electoral Commission, Report: Elections for everyone, 12 June 2019.

^{lxxxi} Royal National Institute of Blind People, Turned Out 2017, 2017, p. 2.

^{lxxxii} The Electoral Commission, Report: Elections for everyone, 12 June 2019.

^{lxxxiii} High Court, 3 May 2019, CO/3098/2018. [2019] EWHC 1126 (Admin), 2019 WL 01959789.

^{lxxxiv} PRING, John, Disabled voter secures legal settlement over polling station discrimination, Disability News Service, 22 June 2017.