

# Policy Recommendations



## myPart – Participatory Approaches in the Civic Education with and for People with Intellectual Disabilities

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## Setting the scene

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Article 29 of the UN Convention on the Rights of Persons with Disabilities (CRPD) states that all member states must “guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others”, namely by ensuring the right to vote and stand up for elections, full accessibility at all stages of the electoral process, and actively promoting an environment in which persons with disabilities can effectively and fully participate.

The myPart project aims to enhance political participation, by focusing on the promotion of political participation of people with intellectual disabilities and raising politicians' and policy makers' awareness about the right of this target group to fully exercise citizenship.

The project was implemented in 4 European countries, at different stages of engagement of people with intellectual disabilities in the political process and legal framework on the subject.

Partner countries were Austria, Hungary, Portugal, and Slovenia.

In common, they have the fact that all of them had signed and ratified the CRPD and its optional protocol.

Consequently, all of them must ensure that the national legal framework complies with the CRPD, namely its article 29.

The next chapter is dedicated to learning about what is happening in partner countries.

Key promoters and inhibitors to full citizenship are identified and a set of recommendations to partners countries (that can also be of use to any country with the same issues identified within the myPart project) on how to promote active citizenship and fulfil legal obligations resulting from the CRPD, is drawn.

The project has a set of key concepts that should be explained beforehand, like intellectual and developmental disabilities, political participation, participatory approaches, active citizenship, easy to read, and legal capacity.

## INTELLECTUAL DISABILITY

Intellectual disability (ID) refers to conditions that are usually present at birth and that almost every time have a negative effect on the trajectory of the individual's physical, intellectual, and/or emotional development, and that can affect multiple body parts or systems.

According to the World Health Organisation (WHO), intellectual disability "...means a significantly reduced ability to understand new or complex information and to learn and apply new skills (impaired intelligence). This results in a reduced ability to cope independently (impaired social functioning), and begins before adulthood, with a lasting effect on development."<sup>1</sup>

The American Association of Intellectual and Developmental Disabilities (AAIDD) has a slightly different definition, introducing the concept of adaptive behaviour and stretching the age of onset to 22<sup>2</sup>.

## CIVIC AND POLITICAL PARTICIPATION

Civic participation occurs when people are allowed to participate in their community and develop skills and values that will make a difference in society. Civic participation aims to raise the standard and quality of life in the community, by having citizens committed and motivated to take part.

Political participation (one of the pillars of civic participation) refers to activities that enable people to develop and express their opinions on society and the way the world is governed, promoting their participation in decisions that affect their lives.

When applied to the field of disability, such activities include the way people think about disability or other social topics, from individual to organisational level, and can also refer to the involvement we decide to have, as individuals, in campaigning at all levels (local, regional, national, European) and taking part on formal aspects of politics, such as voting, joining a political party or standing for elections.

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<sup>1</sup> <https://www.euro.who.int/en/health-topics/noncommunicable-diseases/mental-health/news/news/2010/15/childrens-right-to-family-life/definition-intellectual-disability>

<sup>2</sup> <https://www.aaidd.org/intellectual-disability/definition>

In some European countries, people with intellectual disabilities still are excluded from their political rights like voting or standing for election. This is very often the case when they are deprived of legal capacity or placed under any kind of supportive legal measures.

The myPart project wants to address some of the barriers faced by people with intellectual disabilities in practicing their political rights, like the lack of accessibility to voting procedures or accessible materials.

## **PARTICIPATORY APPROACHES**

Participatory approaches occur when people that are the targets/recipients of the intervention or services are involved and have a voice.

The myPart project involved people with intellectual disabilities in all steps of the project, allowing them to contribute to the final results and to take part in the project activities from an empowered perspective, not just as recipients of what was delivered by the partnership. People with intellectual disabilities were involved as members of the project team, acting as validators of the materials produced but also with a representative role close to politicians and policymakers.

The setting up of Cooperation Groups (involving professionals and persons with intellectual disabilities) and the organisation of Civic Circles (involving persons with disabilities, policymakers, trainers, assistants, representatives of adult education centers, public authorities, and others) in all partner countries, are two examples of how we have implemented this type of approach within the project.

As a result, this target group was directly involved in the development of one of our project outputs – the Curriculum for Civic Education, thus helping us to design a course that will be tested right from the development stage, helping us to design curriculum adapted and addressed to their needs and learning profiles.

We are confident that the Cooperation Groups' heterogeneity will be useful to ensure successful transferability to other European countries' realities, in what comes to involve people with intellectual disabilities in democracy, politics, and political rights.

## ACTIVE CITIZENSHIP

Active citizenship, also referred to as civic engagement, is a concept that applies to all people who are part of and committed to the community. That is, the active citizen is completely involved in all matters that correspond to the community he/she lives and participates.

According to Sullivan (2015), active citizenship refers to the vast range of activities of people that work, at various levels, to make a difference in the public life of their communities. Getting involved in the electoral process, volunteer tutoring, organizing a community clean-up, and working to obtain affordable housing, are some of the examples provided by her.

Little and Shackel (2016) point out that civic engagement happens when communities cooperate to address matters that concern the public. We believe that political participation is a key area to enhancing civic engagement.

The exercise of civic engagement is facilitated by the capacity to engage in sustained modes of deliberation and discussion and to act, motivated by careful deliberation, a consciousness of social location, and empathetic connections across boundaries of difference (Clingerman and Locklin, 2016).

The myPart project aims to develop citizenship competence, defined as “the ability to act as responsible citizens and to fully participate in civic and social life, based on an understanding of social, economic, legal and political concepts and structures, as well as global developments and sustainability” (2018/C 189/01), promoting higher participation in civic and social life as well as in political decision-making processes.

In our project, active citizenship refers to the involvement in political and public life, taking part in the community, and recognising and demanding a role in an inclusive society.

## LEGAL CAPACITY

In general, legal capacity is the ability to enter into legal relationships, along with making decisions and have them recognised.

The Fundamental Rights Agency (FRA) defines it as the "ability of a person to make legally valid decisions and to enter into binding contractual relations. It makes a person a subject of law and a holder of legal rights and obligations. Legal capacity is particularly important because it affects all areas of life, from choosing where to live, whether and whom to marry, to signing an employment contract or casting a vote"<sup>3</sup>.

When we think about the particular group of people with intellectual disabilities, article 12 of the CRPD recognises their right to make decisions that affect their lives. Article 12 also says that states parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse under international human rights law.

When conjugated with article 29, it means that the right to vote and to take part in public and political life cannot be denied to a person due to her/his disability.

However, people with intellectual disabilities are still facing challenges regarding the exercise of voting rights. The European Court of Human Rights (ECHR), has ruled more than once in favour of the disfranchisement of voting rights if a person lacks "mental capacity", persisting in relating both concepts (legal and mental capacity).<sup>4</sup>

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<sup>3</sup> <https://fra.europa.eu/sites/default/files/legal-capacity-intellectual-disabilities-mental-health-problems-factsheet-en>

<sup>4</sup> *Caamaño Valle v Spain* (2021) and *Strobye and Rosenlund v Denmark* (2021) [ation-and-legal-capacity/](#)

## EASY-TO-READ

Easy-to-read, sometimes also referred to as easy-read or easy-language, is a way to present written information that makes it accessible to people that have difficulty in reading and understanding written texts.

It has a set of rules or guidelines, concerning the words used, the length of the text, the visual background, the font, the use of pictures/images that give context and meaning to what is written, and other aspects.<sup>5</sup>

Within the project, we used easy-to-read methodology to produce our training materials, and we involved persons with intellectual and developmental disabilities to test and validate what was written.

This means that all the training content is designed in a way that can be understood by people with intellectual disabilities, not only by the ones that helped to develop it (by being part of the cooperation groups) but also by anyone that would like to learn more about the topics addressed in myPart.

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<sup>5</sup> Information for all - European standards for making information easy to read and understand (2010)

## Legal framework – a snapshot

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To understand what are the legal instruments that frame the right to full citizenship and to exercise democratic rights, it is important to refer to international and European instruments and also to national laws.

We will point out some of the more relevant, but we will not go into deep analyses, since this is not our project scope.

The idea is to give readers the road that leads to further investigation if they wish to do it.

### INTERNATIONAL/EUROPEAN LEGISLATION

#### CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)

The CRPD and its Optional Protocol were adopted at the United Nations Headquarters in New York in 2006 and opened for signatures in 2007.

On the first day, 82 countries signed the Convention, 44 the Optional Protocol and 1 country ratified it already, the higher number of signatures any UN Convention had reached on an opening day.

This human rights instrument does not create any new rights but ensures that all human rights and fundamental freedoms are accessed and exercised by persons with disabilities, regardless of the level of support they need.

All partner countries have signed and ratified the CRPD<sup>6</sup>. This means that they need to ensure that national laws comply with the CRPD, on the full respect for the rights of persons with disabilities.

Member-states have some time to adjust to this new legal framework, and they must tackle any issues identified by the Committee as non-compliances.

Partner countries have also signed and ratified the optional protocol, that establishes an individual complaints mechanism for the Convention and recognise the competence of the Committee on the Rights of Persons with Disabilities (hereafter referred to as the Committee) to consider complaints from individuals or groups who claim their rights under the Convention have been violated.

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<sup>6</sup> <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> (30.11.2021)

Austria and Slovenia have signed the treaty in 2008, Hungary in 2007, and Portugal in 2009.

The CRPD has one article that refers specifically to political participation –article 29 – but has also other articles that impact the ability to exercise rights, like article 12 (legal capacity) and article 9 (accessibility).

The right to vote is closely related to legal capacity in most of the partner countries, with being Austria the only exception.

Although the CRPD is clear when it states that the right to vote cannot be denied to any citizen, regardless of their level of support needs, in Hungary<sup>7</sup>, Portugal<sup>8</sup> and Slovenia<sup>9</sup> we still see court decisions that take away that right on the grounds of disability. Although clear noncompliance with the CRPD, it is still widely accepted in those countries to do it.

More worrying, is the fact that the European Court of Human Rights (ECRH) still rules against citizens that complain against their national court's ruling regarding political participation, as for recent cases related to Denmark<sup>10</sup> and Spain<sup>11</sup>.

In 2014, 15 European Member States prohibited people with disabilities who have been deprived of their legal capacity from voting (Portugal was one of them), 2 allowed an individual evaluation (Hungary and Slovenia), and 7 guaranteed the right to vote for all persons with disabilities, including those without legal capacity (Austria among them).<sup>12</sup>

Since then, the situation has legally changed in Portugal, although some court decisions still deprive people with intellectual disabilities of their right to vote. In fact, electoral laws in Portugal still refer to electoral incapacities, e.g. when a person “notoriously present limitation or severe alteration of mental functions,

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<sup>7</sup> ECtHR, Alajos Kiss v. Hungary, No 38832/06

<sup>8</sup> Proc. n<sup>o</sup> 690/19.0T8SSB.E1

<http://www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/c4fe510862a144e08025867a003d52b1?OpenDocument>

2126/19.8T8OER.E1 <https://jurisprudencia.pt/acordao/201388/>

<sup>9</sup> Završek, D. and Gorenc. K, ANED country report (2013),

<https://ec.europa.eu/social/main.jsp?catId=1540&langId=en&preview=cHJldkVtcGxQb3J0YWwhMjAxMjAyMTVwcmV2aWV3>

[https://www.europarl.europa.eu/doceo/document/E-9-2020-005158\\_EN.html](https://www.europarl.europa.eu/doceo/document/E-9-2020-005158_EN.html)

<sup>10</sup> <https://hudoc.echr.coe.int/fre?i=002-13109>

<sup>11</sup> <https://hudoc.echr.coe.int/eng?i=001-210089>

<sup>12</sup> European Union Agency for Fundamental Rights (FRA), “The right to political participation for persons with disabilities: Human rights indicators”, (Vienna, 2014), accessed 17/12/2021

even if not subject to follow-up, when hospitalized in a psychiatric facility or as such declared by a board of two doctors”.

Accessibility is also closely related to the exercise of citizenship and participation in public and political life, namely by ensuring that people know about their rights and how to claim them. However, information about legal capacity, democratic rights, politics, and other issues relevant to democratic participation, is rarely accessible to persons with intellectual and developmental disabilities.

Persons with intellectual disabilities are usually not included or targeted in political and/or civic campaigns and face great challenges when trying to understand policies, laws, or any information that relates to civic participation.

Inaccessible websites, political programs, ballot papers, voting campaigns, are just some examples of what the reasons for the low civic engagement of people with intellectual disabilities may well be.

Political participation requires more than just an interest in political processes. It requires also knowledge, and that is where people with intellectual disabilities usually fails to have access. Usually, the training/educational curriculum for people with intellectual disabilities does not include topics on democratic values, fundamental rights, and active citizenship, leading to a lack of interest in politics and even to a self-perception of being unimportant to political and public life.

## STRATEGY FOR THE RIGHTS OF PERSONS WITH DISABILITIES 2021-2030

In 2021, the European Commission published the document “Union of Equality – Strategy for the Rights of Persons with Disabilities 2021-2030”<sup>13</sup> Contrary to the CRPD, the Strategy is not legally binding, and it is up to the Member States to determine their national policies on disability issues. The strategy has 5 main areas of concern: accessibility (to built and virtual environments, information and communication technologies, and goods and services), the enjoyment of European Union rights (namely the participation in the democratic process), quality of life, and independent living, equal access and non-discrimination, and the promotion of the rights of persons with disabilities at a global level.

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<sup>13</sup> [https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2021/04/European-Strategy-2021-2030\\_EN.pdf](https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2021/04/European-Strategy-2021-2030_EN.pdf) (30.11.2021)

In our project, we have paid special attention to participation in the democratic process. Among several initiatives, the Commission focused on full electoral participation and accessibility, the production of a guide to good electoral practices, and the implementation of the CERV program (Citizenship, Equalities, Rights, and Values).

## NATIONAL LEGISLATION

National legislation regarding democratic rights and political participation of persons with intellectual disabilities was identified with desk research, using the following keywords:

- Disability
- Citizenship
- Voting rights
- Political participation
- Participation in public life
- Access to public service
- Volunteering
- Discrimination

A questionnaire was sent to all partners and European umbrella organisations, like Inclusion Europe and the Brain Injured People & Families European Confederation. The questionnaire allowed us to gather relevant information in what comes to the level of implementation of relevant legislation and also to identify the bigger promoters and inhibitors to political participation and active citizenship.

One of the constraints we faced was the lack of up-to-date information related specifically to citizenship and political participation of persons with disabilities in partner countries.

The ANED<sup>14</sup> reports on political participation we could identify referred to 2013, and there was no organised available data on the subject after that. We also consulted the ANED country reports from 2018 and other documents (you can find the links at the end of this report). In some of the partners' countries, the organisations supporting people with intellectual and developmental disabilities have produced written materials on the specific topic.

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<sup>14</sup> Academic Network of European Disability experts

## AUSTRIA

In Austria, there are no restrictions on the right to vote and be elected, on the grounds of disability.

Article 26(5) of the Austrian Constitution, states that a person can only be deprived of the right to vote or to be elected (passive and active voting rights) in case of a criminal conviction. Even so, a judge must decide on a case-by-case basis, with no automatic exclusion from the electoral process.

According to the 2013 ANED report, there is no statistical data related to the participation of persons with disabilities in political and public life, so it is difficult to establish the level of democratic participation.

A 2018 research project on political participation<sup>15</sup> reports that the lack of information on political participation of persons with disabilities made it difficult to know what was happening in this regard, and that there were fewer opportunities for participation for people with disabilities beyond disability aid.

Austrian National Action Plan on Disability 2012-2020 has a specific point on participation in political and public life (6.2), targeting the accessibility of written official documents and political adult education and a change on existing legislation to ensure that persons with disabilities are not excluded from the possibility to be jurors or lay judges. This last measure was to be implemented by 2015. However, online consultation with the law<sup>16</sup> showed that there was no change and that the formulation of §2.1. is still the same: “who, as a result of their physical or mental condition, are unable to fulfil the duties of the Office”, opening the possibility to deny persons with disabilities the right to be jurors or lay judges.

Our desk research shows that there is no limitation in Austria to political participation, either as an elector or as a candidate, but it seems that the lack of access to participation in public life (like being a juror or a lay judge) still exists.

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<sup>15</sup> [https://lebenshilfen-sd.at/Arbeiten/arbeiten\\_in\\_werkstaetten/Forschungsbuero-](https://lebenshilfen-sd.at/Arbeiten/arbeiten_in_werkstaetten/Forschungsbuero-) (30.11.2021)

<sup>16</sup> <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002954> (1.12.2021)

## HUNGARY

In Hungary, Act CXXV on Equal Treatment and Promotion of Equal Opportunities (2003)<sup>17</sup> refers to employment, housing, education and training, and goods and services, but has no reference to political and public life.

Hungarian National Disability program 2015-2025<sup>18</sup> has “absolute and efficient social participation” as a principle, namely by “ensuring that people with disabilities can in each stage and each area of their life exercise their political, economic and social rights”. However, political participation it’s not listed under the areas of intervention or thematic objectives.

The Hungarian Constitution was amended in 2012, in response to a ruling by the European Court of Human Rights<sup>19</sup>, however, it still allows for a redraw of voting rights to “persons who are under guardianship or conservatorship, persons who are subject to a final legal judgment forbidding them to participate in public affairs, or persons who are incarcerated based on a final legal judgment or who have been committed to treatment in a mental institution based on a final legal judgment rendered in criminal proceedings”<sup>20</sup> (article 70 §5).

What changed was the fact that now this was decided by a court, and not automatic.

According to our desk research, we can say that in Hungary, the existence of a disability may be ground for refusing the exercise to participate in political and public life, in a clear breach of article 29 of the CRPD.

## PORTUGAL

Article 48 §1 of the Portuguese Constitution states that all citizens have the right to take part in political life and in the direction of the country's public affairs, directly or through freely elected representatives, and article 49 §1 says that all citizens over the age of eighteen are entitled to suffrage, except for the incapacities provided for in the general law.

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<sup>17</sup> [https://ec.europa.eu/migrant-integration/library-document/act-cxxv-2003-equal-treatment-and-promotion-equal-opportunities-0\\_en](https://ec.europa.eu/migrant-integration/library-document/act-cxxv-2003-equal-treatment-and-promotion-equal-opportunities-0_en)

<sup>18</sup> [https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/10/Hungary\\_National-Disability-Program-2015-2025.pdf](https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/10/Hungary_National-Disability-Program-2015-2025.pdf)

<sup>19</sup> <https://fra.europa.eu/en/content/cases-considered-international-complaints-bodies>

<sup>20</sup> <https://www.wipo.int/edocs/lexdocs/laws/en/hu/hu047en.pdf#page=21>

Law 49/2006<sup>21</sup> prohibits discrimination on the grounds of disability or health risk and Decree-law 163/2006 (the Accessibility Act) defines the accessibility regime for buildings and establishments that receive the public, public roads, and residential buildings.

At a first glimpse, there are no legal limitations to participation in public and political life for persons with disabilities. However, this is not the case.

The new regime for protecting and supporting people to exercise their rights – Law 49/2018 “Regime do Maior Acompanhamento”, which replaced the former guardianship legislation, still allows for limitation to the right to vote, since it is open for interpretation by judges, that have been depriving people of the right to vote or stand for election<sup>22</sup>.

Law 49/2018 still collides with article 12 of the CRPD and with General Comment n°1<sup>23</sup>, by allowing that legal capacity may be reduced on the grounds of mental capacity and that personal rights can be limited on the grounds of disability.

All legal documents are still pretty much connected with the medical model of disability, despite the mention of the social model and the paradigm shift. Determination of capacity is still depending on clinical evaluation and no mechanisms for supported decision making are in place or even foreseen.

In Portugal, electoral acts have different legal framework<sup>24</sup> (e.g., parliament, local, presidential, etc.) but all of them deny electoral capacity to those who notoriously present limitation or severe alteration of mental functions, even if not subject to accompanying measures when admitted to a psychiatric establishment or declared as such by a board of two physicians.

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<sup>21</sup> <https://dre.pt/dre/detalhe/lei/46-2006-540797>

<sup>22</sup> <http://www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/c4fe510862a144e08025867a003d52b1?OpenDocument>

<sup>23</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>

<sup>24</sup> <https://www.cne.pt/content/legislacao-eleitoral>

## SLOVENIA

Article 12 of the Slovenian Constitution<sup>25</sup> states that all individuals shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other beliefs, financial status, birth, education, social status, or whatever other personal circumstance and that all persons shall be equal before the law.

Article 35 determines that the physical and mental integrity of each person shall be guaranteed, as shall be his right to privacy and his other personal rights; and article 42 only limits the right of assembly and association to permanent defense and police personnel.

Articles 43 (voting rights) and 44 (participation in public affairs) relate directly to the scope of our project and neither deny the right to vote or to take part in public affairs to any citizen.

So, if we just looked at the Slovenian Constitution, we would have to say that there were no legal limitations to participation in political and public life.

However, article 7 of the National Assembly Elections Act stipulates that “ the right to vote and the right to stand for the election shall not be recognised for a citizen of Slovenia who has reached the age of 18 but has for reasons of mental illness, developmental difficulties or impairment legally been deprived of the legal capacity or for whom parental rights have been prolonged for their parents or other persons beyond their majority, and is consequently not capable of understanding the meaning, purpose, and impact of elections. In the procedure for taking away the legal capacity or extending parental rights beyond majority, the court shall make a separate decision on taking away the right to stand for election and the right to vote”.

These provisions also apply to municipal elections and elections to the EU parliament.<sup>26</sup>

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<sup>25</sup>[https://www.concourt.am/armenian/legal\\_resources/world\\_constitutions/constit/slovenia/slnold-e.htm](https://www.concourt.am/armenian/legal_resources/world_constitutions/constit/slovenia/slnold-e.htm)

<sup>26</sup> This information refers to 2014, we could not identify any further information online.

The Action Programme for Persons with Disabilities 2014-2021<sup>27</sup> only refers twice to political life, when speaking about accessibility. However, there is no specific measure addressing this topic.

The Protection Against Discrimination Act<sup>28</sup>, although referring to political rights in article 1, does not refer to any specific measures needed to ensure this participation.

The Law on referendum and people initiative, under revision, does not allow persons deprived of their legal capacity to exercise the right to vote. This is also the case of the Law on local elections, under revision.

On both cases<sup>29</sup>, the Advocate of the Principle of Equality sets out a list of recommendations to the drafters on the new documents, that includes full accessibility to the election processes, a system of supported decision-making, and full compliance with the CRPD, pointing out that the proposed solutions could restrict or hindered access for people with intellectual and/or psychosocial disabilities and people living in institutions. This is also referred to in its Annual Report<sup>30</sup>.

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<sup>27</sup> [https://www.gov.si/assets/ministrstva/MDDSZ/Invalidi/API-2014-2021/API\\_2014\\_2021\\_ANG.pdf](https://www.gov.si/assets/ministrstva/MDDSZ/Invalidi/API-2014-2021/API_2014_2021_ANG.pdf)

<sup>28</sup> [http://www.zagovornik.si/wp-content/uploads/2019/02/PADA-ZVarD\\_EN.pdf](http://www.zagovornik.si/wp-content/uploads/2019/02/PADA-ZVarD_EN.pdf)

<sup>29</sup> EVA 2020-3130-0017 <http://www.zagovornik.si/wp-content/uploads/2020/12/riporocilo-Zagovornika-nacela-enakosti-glede-osnutka-Zakona-o-spremembah-in-dopolnitvah-zakona-o-referendumu-in-o-ljudski-iniciativi.pdf>

EVA 2020-3130-0026 <http://www.zagovornik.si/wp-content/uploads/2020/12/Priporocilo-Zagovornika-nacela-enakosti-glede-osnutka-Zakona-o-spremembah-in.pdf>

<sup>30</sup> Annual Report of the Advocate of the Principle of Equality for 2020 - CASES AND ISSUES <https://www.zagovornik.si/wp-content/uploads/2021/07/ANNUAL-REPORT-2019-%E2%80%93-CASES-AND-ISSUES.pdf>

## Political participation and active citizenship

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For people with intellectual disabilities and mental health issues, participation in political and public life has been historically understood as something they should not be involved with. In fact, most European countries have or had legislation that denied this right if a person was placed under some kind of regime that compared them with children in the exercise of some civic and personal rights.

With the changing of the disability paradigm and with the understanding that persons with disabilities are subject to rights, countries started to discuss how to ensure that people could access these rights, regardless of their support needs.

The CRPD does not bring any new rights. What it does, is reaffirm universal principles (dignity, completeness, equality, and non-discrimination) that were already accepted and recognised, in the disability field, so that Governments integrate the various dimensions of disability in their policies and legal framework, setting also specific obligations regarding the awareness of society to disability, combating stereotypes and valuing people with disabilities.

The right to political participation and active citizenship is interrelated with the enjoyment of several other human rights. If the right to education is denied to a person with a disability, this will also have an impact on their ability to take part in the political process, since education provides the basis for active citizenship.

Accessibility, either to information, transport, or built environment, is also critical to political participation and active citizenship.

And last, but not least, discriminatory laws that deprive people with intellectual disabilities of their legal rights by denying them their legal capacity, are at the core of the disfranchising of civil rights.

Active and voluntary involvement of citizens in public decision-making is one of the pillars of democracy and is enshrined as a fundamental right in the universal declaration of human rights<sup>31</sup>. According to modern theories of democracy, the inclusion of individuals in decision-making processes promotes, and at the same time reflects, autonomy, competence, empowerment, and freedom, contributing

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<sup>31</sup> Article 21 Universal Declaration of Human Rights

to informing citizens about socio-economic and political problems and the functioning of the governmental process, animating public debate.

The most conventional form of political participation is electoral activities, constituting the core of political participation and representative democracy.

There are other channels of participation, through which citizens exert influence over the political process, in non-electoral periods, namely referendums, petitions, demonstrations, rallies, participatory budgets, public debates, lobbying, etc.

If we look at democratic principles and mediating values<sup>32</sup>, we can easily identify some gaps when we think about people with intellectual disabilities, namely in what comes to the needed requirements to allow access. The following table (adapted from Beetham et al. 2008) refers to the values of participation, representation, responsiveness, and solidarity, and shows the requirements and institutional means of realisation, from the myPart perspective (the ones we aimed to address).

Mediating values	Requirements	Institutional means of realisation
<b>Participation</b>	Rights to participate Capacities/resources to participate Agencies for participation Participatory culture	Civil and political rights system Economic, social and cultural rights Elections, parties, NGOs Education for citizenship
<b>Representation</b>	Legislature representative of main currents of popular opinion All public institutions representative of social composition of electorate	Electoral and party system Anti-discrimination laws Affirmative action policies
<b>Responsiveness</b>	Accessibility of government to electors	Systematic, open and accessible procedures and channels of public consultation Local government close to people
<b>Solidarity</b>	Tolerance of diversity at home	Civic and human rights education International human rights law

Adapted from "Assessing the quality of democracy- a practical guide" Beetham et al. 2008

<sup>32</sup> <https://www.idea.int/sites/default/files/publications/assessing-the-quality-of-democracy-a-practical-guide.pdf>

In a democracy, political participation implies equal opportunities in the formulation and transmission of preferences, intending to influence collective decisions that affect social and individual activity.

Participation cannot be influenced by factors such as class, disability, gender, religion, or other social and/or individual characteristics, or by differences in access to information on social and political issues and governance mechanisms.

Within the myPart project, we aimed at promoting political and civic participation, by addressing the issue of training on political systems and civil rights, especially focusing on the mediating values identified above.

## Key inhibitors/promoters of political participation and active citizenship

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We present inhibitors and promoters together since it is the lack of a certain aspect that inhibits and its existence that promotes political participation and active citizenship. They go together and cannot be disassociated.

### DISCRIMINATORY LEGAL FRAMEWORK

The existence of discriminatory laws and policies, that prevent people with intellectual disabilities to take part in political and public life, is one of the main barriers to the exercise of this right.

Although we must refer to laws that deny legal capacity and, by doing it, allow for substitute decision-making and the extension of parental rights after a person's become of age, we must not forget that laws that allow for segregated education or deny access to quality education also have a huge impact on the ability to advocate for rights and to civic participation.

In 3 of 4 of the countries that are involved in myPart project, there is some level of prevention participation in political and public life, due to the existence of legislation that denies and strips people of civil rights on the grounds of disability, disrespecting the equal treatment principle – e.g. citizens without intellectual and/or psychosocial disabilities do not have to prove their ability to understand the legal principles or the implications of exercising the right to vote. The fact that this disenfranchisement is done by a court, should not put our minds at ease.

Any court decision that results in the denial of civil rights on the grounds of disability clearly violates article 29 of the CRPD and discriminates against persons with disabilities.

The fact that one of the partner countries has set up a legal framework that recognises the right to political and public participation for all citizens, regardless of their individual characteristics or level of support needed, comes to show that there is no reason whatsoever to argue against this recognition.

## NO RELIABLE DATA

Reliable data is crucial to allow for the drawing of policies and services. Without that data, people remain invisible to policymakers, politicians, and society.

As far as we were able to find, no partner country has accurate and UpToDate data regarding the political participation of persons with disabilities. This is also the case for data on the number of people with intellectual disabilities placed under any kind of restrictive measure that may prevent them to vote (Portugal<sup>33</sup>, Hungary<sup>34</sup>, Austria<sup>35</sup>, and Slovenia<sup>36</sup>) or on the accessibility of polling stations (Portugal). In Slovenia, there is information on the number of people who used voting machines aimed at assisting persons with visual impairments and physical disabilities, in some elections.

Although we recognise the need to respect privacy and the right to choose if a person wants to disclose his or her disability, we believe that a system could be set up that would provide for the needed information without hindering privacy rights.

## ACCESSIBILITY

When we think about participation in politics and public life, we are considering the accessibility of polling stations, information, and procedures, including electoral campaigns, but also the accessibility of transport network, that will enable a person to reach the polling station.

But, if all partner countries have some legal framework for accessibility to the built environment, this is certainly not the case for accessibility of the electoral process or information.

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<sup>33</sup> FRANET - PT – Country information Indicators on political participation of persons with disabilities - 2014

<sup>34</sup> FRANET - HU – Country information Indicators on political participation of persons with disabilities - 2014

<sup>35</sup> FRANET - AT – Country information Indicators on political participation of persons with disabilities - 2014

<sup>36</sup> FRANET - SI – Country information Indicators on political participation of persons with disabilities - 2014

## BUILT ENVIRONMENT

In the partners' countries, measures to eliminate physical barriers to accessibility are dependent on reasonable accommodation and both constructs are not defined when referring to the accessibility of the electoral act.

According to FRANET reports (2014), although it is recognised that the authorities must provide accessible polling stations, there is no specific definition on which accessibility measures must be put into place, nor about the number of accessible polling stations that must be provided.

Involvement and participation do not start and end in the act of voting or standing up for elections. Concerning built environment accessibility, meeting rooms, debating chambers, public transport, also present barriers. The accessibility of the polis, or the lack of it, deeply affects the level of participation of persons with disabilities in the democratic process.

In some of the project countries, voting is possible outside the polling station/booth<sup>37</sup>, if a person cannot access it, or in one specific voting room. From our perspective, this does not comply with the "on an equal basis as others" idea, thus resulting in a discriminatory practice. On others, voting is not possible outside the polling station and, although accessibility legislation regarding public buildings exists, there is no mention or definition of accessibility in electoral law<sup>38</sup>. In some cases, although some good practices were identified, there is still a lack of regulations providing accessibility in a comprehensive way<sup>39</sup>.

## THE ELECTORAL PROCESS

Within our project, the electoral process refers to all events that precede and follow the act of election itself, and that provide citizens with the information and means they need to exercise their voting rights.

So, accessibility in this context is referring to information campaigns, voting ballots, information on results, and so on.

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<sup>37</sup> Hungary and Slovenia

<sup>38</sup> Portugal

<sup>39</sup> Austria

For people with intellectual disabilities, the main constraint regarding access to information is related to cognitive accessibility<sup>40</sup>, or the lack of it.

Our desk research was not able to identify any country legislation that ensured that electoral information should be provided in an accessible format for people with intellectual disabilities, namely easy-to-read and understand.

Information about political parties, candidates, polling stations, and election results, are not available in an accessible format for people with intellectual disabilities, preventing them from being informed and having a voice in the way policies are written, implemented, and evaluated, together with a sense of exclusion from democratic processes.

We believe that politicians and decision-makers do not consider the needs and perspectives of people with intellectual disabilities when developing a campaign because they do not see them as potential electors. Historically, they have never been given that role and, although we have come a long way, there is still a lot to do to change this perception.

Sign language is already recognised as an obligation to be provided during campaigns and relevant public communications, but this is not the case for easy-to-read.

There are not any legal provisions addressing public and private media providers to ensure cognitive accessibility, nor to ensure that political parties and public websites are accessible to people with intellectual disabilities. This is relevant because complying with WCAG 2.2 does not give people with intellectual disabilities immediate access to the web content. So, even when public websites must (and do) comply with these standards, they still can be inaccessible to our target group. We could also identify some obligations targeting persons that are blind, but they are not mandatory.

In all partner countries, there were organisations (Non-Governmental Organisations, Disabled People Organisations, and even public services) that provided some information in easy-to-read about political parties, election procedures, and voting rights.

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<sup>40</sup> Inclusive practices that aim to remove barriers for people whose disabilities affect the way they process information

We could not identify any voting materials (e.g. ballots) made accessible to people with intellectual disabilities, and the same happened regarding training provided to election authorities and election officials on non-discrimination, reasonable accommodation, and cognitive accessibility.

Some political parties are starting to produce their manifestos in easy-to-read, but this is not something done for all the information and by all political forces. Nevertheless, it shows a slow mentality changing, probably related to the fact that some legal provisions that impede the exercise of the right to vote tend to disappear, to respect article 29 of the CRPD.

## **INFORMAL BARRIERS TO PARTICIPATION IN POLITICS AND PUBLIC LIFE**

These are probably the most prevalent and harder to overcome, with deep roots in the collective imagination.

People with disabilities face several informal barriers, related to socio-economic factors, social isolation, stigma, and the lack of role models.

Many of the disadvantages faced by persons with disabilities are related to social barriers and discrimination, that push them away from the top of the policy agenda, failing to recognise their value as citizens.

Society still looks at people with intellectual disabilities as unable to take personal, financial, or health-related decisions, and this is still perpetuated by the “new” legal framework in some of the partner countries, that allows for the restriction on civil rights on the grounds of disability.

The assumption that people with intellectual disabilities cannot, or should not, be making decisions as important as voting, is still a current one. When they are allowed to do it, they may be subjected to evaluation on their ability to do so, while this is not asked from any other group of citizens.

Disability and poverty are interconnected and are the cause and the consequence of each other (Pinilla-Roncancio, 2015)<sup>41</sup>. Poor people are more focused on surviving, so the satisfaction of basic needs comes first. While these are not satisfied, people will have limited interest in taking part in politics or public life. On

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<sup>41</sup> <http://dx.doi.org/10.15446/revfacmed.v63n3sup.50132>

the other hand, good education, civic skills, and high income promote participation, together with good social relations (Matilla & Papageorgiu, 2017<sup>42</sup>).

Most families also put other rights first (e.g. education, work, health) before the right to participation in political and public life, thus not investing in building the necessary competencies and interests in this field for their family members.

Decision-making skills, so relevant for civic engagement, are not developed from an early age, resulting in adults that struggle to express their opinions and make choices.

The lack of a social network that would promote and encourage civic participation can also play a role in the lack of interest and involvement shown by people with intellectual disabilities, together with limited confidence or motivation to take part. The fact that there are not so many persons with disabilities in high-profile political positions results in the difficulty to have role models that people could look up to and feel that they too could reach those positions.

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<sup>42</sup>[https://www.researchgate.net/publication/303281526\\_Disability\\_Perceived\\_Discrimination\\_and\\_Political\\_Participation/link/5a60438ba6fdcc21f487b77b/download](https://www.researchgate.net/publication/303281526_Disability_Perceived_Discrimination_and_Political_Participation/link/5a60438ba6fdcc21f487b77b/download)

## Reality check

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### AUSTRIA

The "Political Group" was founded in 2014 by Lebenshilfe and is a group of people with disabilities getting involved in politics. The aim is to inform people in the group about political issues and to discuss this with them. Lebenshilfe is the organiser of the "Political Group", but also invites people with disabilities from other supporting organisations to these meetings. In recent years (before Corona) there have been between 3 - 5 meetings per year. In the early years, the meetings were mainly to get basic information about politics (what is a democracy? Voting in Austria, ...) and to get to know the most important topics/contents of the individual parties. The main question was: What are the individual parties doing in the field of social affairs and for people with disabilities? Therefore, the spokespersons for social affairs were invited to these meetings. Over time, socio-politically relevant topics were then dealt with in the parliamentary group, such as migration. As a rule, external speakers/experts are invited to the meetings. Part of the time is spent with input/information/theory (in easy language), part of the time is available for questions and exchange between the group and the speakers. Our work is done in small groups and the results are then presented in plenary.

### HUNGARY

F. lives in Budapest with his parents. He was doing light manual labour for years in an industrial co-operative society since graduating from elementary school. Now he works at a national advocacy organization, where his job is the improvement of training on independent living skills for his peers. In his free time, he likes going to the daycare, watching television, listening to folk music, and collecting DVDs and books.

F. has the right to vote. He has strong opinions about the local politicians and their measures that are affecting his life. "A good mayor must help the people and support the people with disabilities." He is staying informed by the local newspapers and news.

He thinks that easy-to-read political programs and ballots would make elections more accessible for him. "I am happy because I am not under guardianship, hence I can practice my right to vote. I don't agree with the fact that judges can limit my peers' right to vote. I don't think judges should be able to do that. I do think the more people go to vote, the better. I encourage every one of my peers to go and vote because you have the right to do so!"<sup>43</sup>

## PORTUGAL

In 2019, a 64-year-old man, had his right to vote denied by a court decision, after an accompanying measure was decreed. The Public Ministry appealed but the Court of Appeal dismissed the appeal in January 2021<sup>44</sup>, ruling that the amendments to the electoral laws inherent to the revocation of the institute of interdiction do not prevent the accompanying sentence to decide the obstacle to the exercise of the right to vote by the accompanied adult.

In its ruling, it also deprived the man of the right to marry or constitute situations of de facto union, to procreate, to adopt, to take care of and educate biological or adopted children, to move within the country or abroad alone, to establish domicile and residence, and to sign official documents.

All this was done based on chronic alcoholism, with severe and permanent memory impairment and cognitive deterioration of the defendant, that (according to the court) made it impossible for him to fully, personally, and conscientiously exercise his rights and fulfil his duties.

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<sup>43</sup> <https://www.facebook.com/kozpont.efoesz/posts/2046616108965604>

<sup>44</sup> <http://www.dgsi.pt/jtre.nsf/134973db04f39bf2802579bf005f080b/c4fe510862a144e08025867a003d52b1?OpenDocument>

## SLOVENIA

In 2015<sup>45</sup>, The Ombudsman of the Republic of Slovenia (the Ombudsman) was approached by a father of an adult person with an intellectual disability, who had gotten the right to vote taken away in the process of extending the parental rights. The father questioned this withdrawal of the right to vote and asked the Ombudsman to assess following international conventions ratified by the Republic of Slovenia.

The Ombudsman examined the valid national legal acts and international documents binding the Republic of Slovenia. The Ombudsman assessed that the national legal regulation of the right to vote of persons with disabilities, especially those with intellectual disabilities, could conflict with the United Nations Convention on the Rights of Persons with Disabilities.

The continuation of the story was revealed in 2021 by the mother of the person with intellectual disability in question. She testified that her son had had to take a stand in court for the judge to assess his abilities. He had to prove he had been able to read and write and had been asked many questions. The process had been excruciating for him, leaving him distressed and emotionally torn as he “had done nothing wrong, but had to prove himself in the court and was treated like a criminal.”

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<sup>45</sup> In 2019, the Family code (act) (EVA 2016-2611-0062) erased the possibility of extension of the parental rights; however, it does not apply retrograde for people who already had the parental rights extension in place. The institute of guardianship still stands.

## Recommendations

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One of the goals of the myPart project was to collect and provide information and set up recommendations about the civic participation of people with intellectual disabilities on local, regional, national, and European levels.

What we came to realise was that the factors that prevent or promote political and public life participation of people with intellectual disabilities are the same regardless of the level we examine. It does not matter if we are talking about participation at the European, national, regional or local levels.

Participation or the lack of it depends on the same barriers/facilitators: unreliable data, formal and informal denial of full legal capacity, discriminatory laws and policies, accessibility issues, social and cultural norms, and a lack of interest and knowledge of the rights of people with intellectual disabilities.

Considering all that, and aiming at the promotion of civic participation of people with intellectual disabilities, the myPart project partnership recommends:

### LEGAL FRAMEWORK

- To abolish all laws and legal documents that link legal capacity with voting rights and political participation.
- To review all laws that restrict legal capacity on the grounds of disability confusing two quite different concepts: legal capacity vs mental capacity.
- To replace substitute decision-making mechanisms with supported decision-making mechanisms.
- To set up accessible complaints mechanisms that can be used by any person, regardless of his/her/their legal status.

## STIGMA AND ATTITUDINAL BARRIERS (DISCRIMINATION)

- Implement awareness-raising campaigns on the political and civic rights of people with intellectual disabilities, together with NGOs and DPOs that represent them. These campaigns should focus on eliminating stereotypes concerning their capacity to take part in elections and run as candidates.
- Promote visibility and participation of people with intellectual disabilities in electoral debates in the media and ensure that political programmes and debates are provided in accessible formats for people with intellectual disabilities.
- Fostering education in civic competencies, critical thinking and media literacy in adult education.
- Ensure access to civic education in accessible formats, namely in easy-to-read and understand. Schools should be actively involved in providing opportunities for pupils to learn and exercise civic duties.
- Ensure that young people (with and without disabilities) have access to practical learning experiences that will prepare them to be actively involved as citizens (participatory budgets in schools, student associations, class delegates, etc.)
- Develop and implement strategies to engage families in education about voting rights. This could be done by electoral commissions and/or other bodies with an interest in equal rights and political participation.
- Provide training on non-discrimination and how to assist people with intellectual disabilities for polling station officers and other professionals in charge of voter registration and involved in the electoral process.
- Draw and disseminate guidelines on how to assist voters with a disability, involving representative NGOs and DPOs.

## ACCESSIBILITY

- Ensure that public buildings, polling stations, parliaments, and government buildings are accessible, on an equal basis with others. people with intellectual disabilities should be able to use the public space in the same scope and with the same dignity as any other citizen.
- Provide information about the electoral process, political programs, and voting procedures in accessible formats, namely in easy-to-read and understand.
- Provide practice opportunities, by using mock polling stations.
- NGOs could work together with the Elections bodies to set up mock polling stations for practice before the voting day.
- Provide accessible voting ballots and/or other means of voting that will respect secrecy and are undue from manipulation.
- Explore the possibilities offered by electronic voting.
- Ensure accessible free transportation to and from the polling station on the voting day.
- Create a toll-free information hotline for persons with disabilities and/or caregivers, to provide information or request accommodation.

## ACTIVE PARTICIPATION

- Collect desegregated data on the political and civic participation of persons with disability in a systematic way, at European, national and local levels.
- Establish a quota for the participation of people with disabilities in elections, from local to European levels.
- Provide additional financial support to candidates with disabilities, so that additional costs resulting from their participation are covered (e.g. the need for sign language interpretation or other types of assistance).

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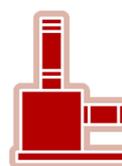
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