Additional information about Hungary's compliance with the UN Convention on the Rights of Persons with Disabilities, with respect to the List of Issues and Replies from the Government of Hungary to the List of issues.

5 September 2012

Introduction

The Hungarian Disability Caucus welcomes the replies from the Hungarian Government to the list of issues raised by the Committee on the Rights of Persons with Disabilities and acknowledges the efforts made by Hungary in order to implement the UN Convention on the Rights of Persons with Disabilities. However, the Hungarian Disability Caucus wants to highlight that although Hungary ratified the CRPD more than five years ago, the implementation process is still far from the spirit and aim of the Convention.

There is only one field where the Hungarian Government succeeded making some progress but these developments are not satisfactory. (See: Sign language interpretation – para 18)

The Hungarian Government intended implementing certain articles of the CRPD without making real efforts in order to properly follow the standards of the Convention. (See: consultations and active involvement of persons with disabilities, including children with disabilities, through their representative organizations in the implementation of the Convention: „nothing about us without us" - paras 3-4; living independently and being included in the community – paras 15-17; reasonable accommodation and support in the general education system (inclusive education) – para 21; right to vote of persons under guardianship – para 26; establishing independent monitoring mechanisms – para 31.)

There are areas where the Hungarian Government has already started working on the implementation of the CRPD but it cannot at all be described as progression. Rather, the way of how the CRPD is taken into account in Hungarian law reform processes shall be characterised by regression. (See: accessibility – paras 6-7; Legal capacity – paras 9-10; early intervention services and support to children with disabilities and their families; institutionalisation of children with disabilities – para 20; new system of social security, disability and rehabilitation benefits – para 24.)

There are areas where the Hungarian Government has not made any effort in order to bring domestic legislation and practice in line with the CRPD. (See: definition of disability – para 1; reasonable accommodation – paras 2 and 11; development of programs to promote the rights of persons with disabilities amongst the Rome people – para 5; Situation of risk and humanitarian emergencies – para 8; consent to medical or scientific experiments of persons under guardianship – para 12; abuses of children with disabilities – para 13; forced sterilization – paras 14 and 19; accessibility and availability of tools and services on sexual and reproductive health – para 22; data collection regarding employment – para 23; special protective measures for homeless persons with disabilities – para 25; limitation of the right to hold public office on the basis of being deprived of legal capacity – para 27; ensuring the full and equal enjoyment by women with disabilities of all human rights and fundamental freedoms – para 28.)

The full Hungarian parallel report "Disability rights or disabling rights?" was submitted by the Hungarian Disability Caucus to the CRPD Committee in August 2010.

This report is available at: http://mdac.info/sites/mdac.info/files/english_crpd_alternative_report.pdf

CRPD Committee questions:

1. Bearing in mind the fact that the term “disability” in the Hungarian legal system is not applicable in relation to persons with psycho-social disabilities, please give more information on the measures taken to provide those persons with protection of their rights as set out in the Convention on the Rights of Persons with Disabilities.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Paras. 1-2

What is the issue?

The Hungarian law[1] currently does not classify individuals with psycho-social disabilities in the category reserved for persons with disabilities and there is no special legal protection mechanism in place in Hungary for individuals with such disabilities. However, in view of how the Hungarian legal environment does not make any distinction on the grounds of any particular state – and therefore neither in respect of mental impairment – concerning fundamental rights, persons with psycho-social disabilities have the right to take advantage of every legal protection instrument available for any other person with a disability.(Reply from the Government regarding question No 1 of the List of issues)

The Act XXVI of 1998 on ensuring equal opportunities for persons with disabilities (*thereinafter Disability Act*)[2] is based on the medical model of disability and completely disregards civil and political rights, and recognizes only very special social and economic rights.

The Mental Health Interest Forum (Pszichiátriai Érdekvédelmi Fórum, PÉF) initiated a consultation on the implementation of the right to mental health according to the CRPD for which the State Secretariat for Healthcare assigned the director of the National Psychiatric Centre. According to the Ministry, psycho-social disability can be classified individually according to the medical standards but the National Rehabilitation and Social Office (Nemzeti Rehabilitációs és Szociális Hivatal, NRSZH) is not prepared for this as the definition of people with disabilities in the Disability Act does not cover people with psycho-social disabilities.

The Hungarian Alzheimer Society advances the rights of people who suffer from Alzheimer’s desease and other dementia. As the Hungarian legislation does not include them in the definition of people with disabilities, these people cannot receive those financial benefits that people with disabilities are entitled to.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the “constructive dialogue” and address them in the “concluding observations”:

In the Hungarian law harmonise and standardize the definition of ‘person with disabilities’ with Article 1 of the Convention. The definition should be as inclusive as that of the Convention. Highlight that the Hungarian term used for mental impairment (“szellemi károsodás”) is not only outdated and stigmatizing, but also constitutes an error with regard to the scope of persons covered by the Convention. Mental impairment includes persons with psychiatric problems, which the Hungarian translation fails to indicate.

The harmonization in three instruments are of particular significance for the rights of persons with disabilities: Act XXVI of 1998, on ensuring equal opportunities for persons with disabilities [1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlôségük biztosításáról, Fot.]; Act CXXV of 2003, on equal treatment and the promotion of equal opportunities [2003. évi CXXV. törvény az egyenlô bánásmódról és az esélyegyenlôség elômozdításáról, Ebktv.]; Resolution of Parliament 10/2006 (16 February) on the new National Disability Programme [10/2006.(II. 16.) OGY határozat az új Országos Fogyatékosügyi Programról, OFP].

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[1] Act XXVI of 1998 on ensuring equal opportunities for persons with disabilities.

[2] Available at http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99800026.TV (last accessed 24 May 2012).

2. Please provide more information on whether the requirement of “reasonable accommodation” is applied to any other social sphere besides the employment of persons with disabilities.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Para 20.

What is the issue?

The Hungarian legislation does not recognize the requirement of reasonable accommodation. This makes it particularly difficult to apply legal remedies for discrimination because persons with disabilities often suffer discrimination through the denial of reasonable accomodation. The absence of the concept and requirement of reasonable accommodation in the Hungarian law is responsible for a legal obstacle in the fields of accessibility as well.

The Disability Act mentions active participation and makes integration, rather than inclusion, the guiding principle. Integration does not require reasonable accommodation for the personal needs of the person with disability, without which integration will not lead to an inclusive society in which the effective equality of persons with disabilities is guaranteed. At present, reasonable accommodation is a technical term and content used only by disability activists and a few professionals, and it is typically absent from policies or programmes. The failure of policies and programs is due to the fact that they prioritise integration rather than inclusion. Without the acknowledgment of the right of persons with disabilities to *reasonable accommodation,* integration fails to meet the Convention’s requirements for social inclusion.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the “constructive dialogue” and address them in the “concluding observations”:

The principle of “reasonable accommodation” should be included as a discrimination based on disability in the new Fundamental Law and in the Act CXXV of 2003 on equal treatment and the promotion of equal opportunities which does not even define the principle of reasonable accomodation. The government should take the necessary steps to change attitudes, to familiarise the public and within the government (departments, decision makers, regional directors and officiers) with the concept and requiremenet of reasonable accomodation.

3. Please provide more information on the follow- up to the National Council on Disabilities (NCD) studies on domestic legislation and whether the results have been used to harmonize legislation with the provisions of the Convention.
4. Please provide additional information on the work of the NCD and other methods and framework for ensuring consultations with the persons with disabilities and their representative organizations in Hungary (paragraphs 24 and 25 of the State Party's report), in accordance with the provisions of clause 3 of article 4 of the Convention.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Paras. 24-25

What is the issue?

To the Caucus’ best knowledge, nothing has been happened with the studies compilled by the National Disability Council (NDC) on the CRPD implementation. Actually, the NDC has not been functioning in the way and with the frequency prescribed by the relevant legal measures since May 2010 when the new government entered into power. Afterwards the member NGOs asked both in written and orally to convene the NDC but it never happened. In some occasions the leader of the Disability Department organised some informal consultations with the civil members with very short deadline, without real competencies and only in minor questions. Regarding the amendment of acts which affects thousands of people with disabilities, such as the Fundamental Law, the act on disability benefits the Social Act, the NDC has not been convened and consulted at all.

In the light of the consultations with civil society, the government’s response to the initiatives of NGOs and the government’s activity since the ratification of the Convention – especially since November 2008, as far as

Article 33 is concerned –, it is clear that the Hungarian government considers the national implementation and monitoring of the Convention solved by merely appointing a single and not independent body, the National Disability Council, NDC [Országos Fogyatékosügyi Tanács, OFT].[3] (see: replies to para 31 of the list of issues)

Persons with disabilities are involved in legislative and policy planning primarily through the National Disability Council. However the Hungarian government prefers one-by-one meetings or e-mail contacts with members of the NCD instead of convening a plenary meeting. In 2012, NGO members of the NDC requested a consultation regarding two highly important bills[4] regarding the rights of people with disabilities but the the government failed to convenve the Council. The Caucus finds it particularly concerning because under Article 3 of the Government Decree 67/2001. (IV. 20.) on the organization and functioning of the NCD the president of the Council is obliged to convene a meeting if it is requested by one fourth of the members. In this way the government by refusing to convene the meeting violated its legal obligations.

The exclusivity of the NCD's composition fails to provide for effective participation. It is necessary – depending on the nature of the specific legislative or policy objective – to acknowledge and involve more flexible and more inclusive forums. The Disability Caucus is one such forum. Children with disabilities, for example, are not involved systematically at all.

In May 2011 the NCD was convened when the National Disability Programme was discussed. At the same meeting the NCD discussed the government's action plan which mainly contained general expectations with only a few specific measures and financial resources. So far almost nothing has been carried out of the action plan. For example there is a plan to survey the situation of accessibility with the deadline of 30 September 2012 and nothing has happened so far. The bill of the Fundamental Law was not dicussed by the NCD either as it was not convened at all. The members of the NCD are not aware of the budgetary funding mentioned in the government's report.
Beyond the NCD there was neither formal nor informal consultation with the DPOs in any importan questions. The currant government does not function any formal consultation mechanism.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the "constructive dialogue" and address them in the "concluding observations":

The National Disability Council cannot be considered an independent mechanism, as it also represents the government. The National Disability Council should not be designated, as it is now, as the independent framework responsible for monitoring, because this is in conflict with the Paris Principles. An independent mechanism should be established as soon as possible, and in the meantime, the national implementation should be monitored by a disability section within the Office of the Commissioner for Fundamental Rights.

The government should provide for the effective involvement of persons with disabilities in legislative and policy planning, and should support the establishment and acknowledgement of inclusive forums.

5. Please provide information on the development of programs to promote the rights of persons with disabilities amongst the Roma people.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Para. 46.

What is the issue?

The Caucus has no information about programs to promote the rights of persons with disabilities amongst the Rome people. At the same time we would like to highlight that roma children are overrepresented in schools for children with intellectual disabilities due to discrimination. There is no legal obligation which would make inclusive education mandatory. Although the Act CXXV of 2003 on equal treatment and the promotion of equal

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[3] Article 24 of Act XXVI of 1998 on ensuring equal opportunities for persons with disabilities.

[4] One of them was the Government Decree 253/1997. (XII. 20.) on the requirements of the national town planning and building (regarding accessibility requirements) and the other one was the new Civil Code which is currently being drafted (regarding legal capacity, guardianship and supported decision-making).

opportunities and the Act LXXIX of 1993 on public education ban segregation in Hungary, in practice both the lack of special training for teachers and the low level of social awareness hinder the spread of inclusive education and equal recognition of children with intellectual disabilities. People with disabilities who belong to the Roma minority are in a specifically defenceless situation: their indexes of education are dramatically lower in comparison to any other population group.[5]

The European Roma Rights Centre (ERRC)[6] is not aware of any measures by the Hungarian government specifically to promote the rights of persons with disabilities among Roma. However, when discussing disability among Roma, it is important to note that Romani children have historically been and continue until the present to be overrepresented in schools for children with intellectual disabilities due to discrimination and misdiagnosis. In Hungary, there is no legal obligation which would make inclusive education mandatory and due to the flawed diagnostic system mentally sound Romani children are channeled to segregated special schools.

This practice has been revealed and since the 1970s sociological data have shown that Romani students have been overrepresented in special schools and classes; that is they have been put at a particular disadvantage by being 15 times more likely to be diagnosed as mentally disabled or having special educational needs than majority students. Significantly, the level of disadvantage has grown since 1993, despite efforts at curtailing this trend. In that year, official school statistics showed that 42% of special school students were of Romani origin, whereas in the 1992/1993 school year Romani children represented only 8,22 % of the total student body.

In 2000, sociologists, Gábor Havas, István Kemény and Ilona Liskó, in their research on Romani children in the education concluded that the misdiagnosis of Romani children as mentally disabled is a tool to segregate Romani children from non-Romani children. Despite professional debates and ad hoc re-diagnosis programmes, misdiagnosis has persisted to date. Although data disaggregated by ethnicity is not collected in Hungary by the central government, official research by county level government in 2003 and research conducted by the Chance for Children Foundation (CFCF) in 2009 in the field revealed that in Heves County (NE Hungary), the vast majority of children studying in special education are Roma. A court procedure challenging the practice of misdiagnosis as a form of discrimination in Heves County is currently pending before the domestic courts. Similarly, an application before the European Court of Human Rights is also pending, which was launched jointly by the ERRC and CFCF on behalf of two Romani applicants who allege that their right to education was denied based on their ethnic origin when they were diagnosed as mentally disabled and channelled into special schools despite their sound mental ability.

According to the then Ministry of National Resources, in 2004 5.3% of primary school children were mentally disabled in Hungary, whereas this ratio stood at 2.5% in the European Union. The Ministry estimated that at least 42% of these children were of Romani origin, as in 1993, the last year when ethnic data were officially collected in public education. The Ministry noted that “in the last decade the rate of mentally disabled children has been continuously increasing, especially under the ‘mild mental disability’ and ‘other disability’ categories. Children with disadvantaged background, who lack capability to enforce their rights, especially Romani children, are forcefully over-represented amongst children with disability.”

In the children’s homes visited during ERRC research on Romani children in State care, most children labeled with a disability amongst the institutionalised children were also Romani.

Despite the international condemnation of the overrepresentation of Romani children in special education without adequate justification, and the finding that this constituted illegal discrimination, in the D. H. and others v. Czech Republic judgment of the European Court of Human Rights, Romani children are still disproportionately assigned to special schools and classes based on their alleged intellectual difficulties. The tests and methods used for the assessment for placing children in special schools or classes are still out of date and culturally biased resulting in the overrepresentation of Romani children in such schools.

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[5] Civil Society Report: HUNGARY - Submission to the UN Universal Periodic Review 11th session of the UPR Working Group of the Human Rights Council November 2010,

[6] This section of the Caucus report is based on the contribution of the ERRC email corrspondance, August 2012.

A recent sign of acknowledgment of the systematic problem of misdiagnosis can be assumed by the Government's action to provide under the Támop 3.1.1. program financial sources to develop the work of the expert committees diagnosing children in order to avoid misdiagnosis.

With regards to the implementation of the law on the equal opportunity programmes, normally they provide an analysis of the situation of the different target groups (like individuals living in deep poverty and Roma, children, women, persons with disabilities and elderly people,) however experience shows that Roma and disability as grounds for discrimination are normally handled separately in the local equal opportunity plans rather than addressing ethnicity and disability in its complexity and as grounds for multiple discrimination.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the "constructive dialogue" and address them in the "concluding observations":

Develop programs to promote the rights of persons with disabilities amongst the Roma people and actively involve persons with disabilities in program planning, implementation and evaluation.

6.Please provide more information whether the deadlines prescribed for by the law for accessibility of public services rendered by the state (31 December 2010) and accessibility of educational, health and social services as well as that of municipality client services (31 December 2008, 2009 and 2010 respectively) had been met as scheduled (paragraph 51 of the State Party's report). Also provide information whether there are any sanctions prescribed against those who violate the accessibility standards.

7. Please provide more information on implementation, in accordance with Article 9 of the convention, of Act LXXXVIII of 1997 on the formation and protection of the built environment and Government Decree 253/1997 (XII. 20) on National Requirements of Spatial Planning and Building.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Paras. 51-52

What is the issue?

Since the ratification of the UN Convention, Hungary has not improved the guarantees that ensure accessibility for persons with disabilities. The absence of the concept and requirement of reasonable accommodation in Hungarian law is responsible for a legal obstacle in the fields of accessibility as well.

The deadlines defined in the laws for the implementation of accessibility measures are systematically disregarded, moreover a national accessibility plan does not exist. It is particularly distressing that the laws do not define concrete enforceable measures in connection with the accessibility of information and communications. There is no monitoring or evaluation of the implementation of accessibility measures; no official data are available or gathered that could represent the current situation of accessibility or serve as an indicator for implementation. Further, there are no regulations in the field of public procurement that would make the provision of accessibility a requirement.

The Disability Act defines deadlines for the measures to be taken only with regard to *equal access to public services,* though even the minister's explanation notes that earlier legal deadlines have passed without any result. It seems then that this measure fails to guarantee the realization of disability rights. In certain fields, the Disability Act refers to other regulations, which concretise the rights included in the parent act, and otherwise increase its normative power. With regard to communications the provisions of the Disability Act are merely indicative, not enforceable, which can be considered a serious defect.

The Caucus is concerned about the failure of the statutory deadlines to facilitate accessibility.

Whilst public transport had to be made physically accessible by 31 December 2010, Commissioner for Fundamental Rights launched an investigation about *the conditions of public transport, including rail transport, in the capital and the country*[7]. Furthermore, a comprehensive investigation was carried out on how new

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[7] AJB 1792/2009, AJB 1799/2009, AJB 5477/2009, AJB 5629/2009. Find these reports of the OBH in Hungarian at www.obh.hu/allam/jelentes/200901792.rtf

transport developments observe the criteria of universal design, which ensure equal access. The results are discouraging. A few data on the accessibility of vehicles used in rail transport..

The inquiry found that 81 per cent of the carriages, 97 per cent of the passenger cars and 90.3 per cent of passenger facilities at the public railways (MÁV-Start Zrt.) are not accessible. The Ombudsman found that the practice of the Budapest transport company (BKV) is discriminatory. There is little reliable information on the accessibility of information and communication technologies.

The objectives of the second National Development Plan (Nemzeti Fejlesztési Terv, NFT), which were written to use EU resources in the period 2007–2013, *include the support of activities aiming to increase accessibility,* to be financed mainly from EU grants. In the calls for EU-funded tenders for this period, accessibility – as one of the horizontal principles of equal opportunity – is among the application criteria. In connection with the accessibility of public buildings the positive effects of the above are evident though *it is predictable even the modified deadlines of the Disability Act will not be met.* This delay is especially evident in public transport systems.

The Government Decree 253/1997. (XII. 20.) on the requirements of the national town planning and building has been amended again in 2012 which was a step back regarding accessibility. For example a new concept was introduced: *'part of the building used by people with disabilities'.* DPOs, which were not involved in the consultations in any way, do not agree with the use of this term. The government approached the DPOs only when the draft amendment was almost finalised therefore these organisations could not contribute to the content of the draft. Rehabilitation environment planning expert engineers were involved in the consultations but the government did not take into account their suggestions. DPOs drew the attention of the Ministry that the approach of the amended Government Decree is not in compliance with the CRPD but substantive amendments have not been made.

The financial institutions provide universal services. However in case of conlusion of contracts of bank accounts, insurance or credit and during the further contact with the clients there is no easy-to-understand material which violates Article 9 of the CRPD. The European Court of Justice stated that “in the assessment of the ‘unfair’ nature of a term […] the possibility for the consumer to foresee, on the basis of clear, intelligible criteria, the amendments, by a seller or supplier, of the GBC [general business conditions] with regard to the fees connected to the service to be provided is of fundamental importance.”[8]

The survey for the accessibility has not started yet. The government has neither initiated a public procurement procedure, nor invited organisations to carry out the survey. As not even the structure of the survey has been developed it is quite unlikely that it will be concluded until the end of this year because it has to be carried out in thousends of villages and thousends of buildings should be examined.

Three days before the amendment of the Government Decree 253/1997 (XII. 20) on National Requirements of Spatial Planning and Building (OTÉK) was submitted to the Hungarian government there was a formal consultation. The DPOs which attended the meeting prepared a written recommendation in which they stressed that the amendment violated the law and they recommended how the act should be amended. There were no minutes taken at the meeting and none of the recommendations of the DPOs was accepted by the government.

On 3 January 2011, “Government Gateways,” integrated government agency customer service offices were opened in 29 locations in Hungary as the first step towards establishing a one-stop shop system to handle customer service. 4 of them operating in Budapest, among them 3 are not accessible for people with disabilities! 31 December 2010 deadlines defined in the Act CXXV of 2003 (Equal treatment and on the promotion opportunities act) for the implementation of accessibility measures are systematically disregarded. It is predictable even the modified deadlines of the Disability Act will not be met.

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[8] European Court of Justice, C-472/10 (26 April 2012), para 28.

The objectives of the second National Development Plan (Nemzeti Fejlesztési Terv, NFT) in the period 2007–2011, which were financed mainly from EU grants total 60 milliard forint[1] which is roughly 210 million Euros, aimed to support of activities on increase accessibility of educational, health and social services as well as that of municipality client services.

During the tenders for the local municipalities 8 milliard forint were earmarked to provide ramps in the public buildings wherever stairs obstruct the free passage of pedestrians, mainly wheelchair users and people with mobility problems.

As far as the built-up environment is concerned, it is important that it should be barrier-free and adapted to fulfill the needs of all people with disabilities equally, putting into considerations the followings: communication elements; accessible routes, pictogram fields etc.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the "constructive dialogue" and address them in the "concluding observations":

A unified, objective system of registration should be introduced in the field of accessibility, one that represents the real situation and serves as an indicator of implementation. A legal instrument should be established that guarantees deadlines for accessibility of public services cannot be disregarded. Responsible ministries should be sanctioned for non-compliance.

Until complete accessibility is ensured in public transport, temporary solutions should be found. Accessibility for persons with disabilities should be a requirement in the act on public procurement. The funds that enable the facilitation of accessibility should be identified in the National Disability Programme and the government's short-term Action Plan. NGOs should receive financial support so that they can increase their capacity to enforce legal requirements. *"To solve the complex problems related to accessibility, the barriers to accessibility must be identified, and then eliminated, by finding resources and by appointing persons responsible for this task.(Report of the Commissioner for Fundamental Rights)"*

8. Are there any protocols for the handling of emergencies and risks (earthquakes, floods, fires) and do they include persons with disabilities?

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Paras. 72-73

What is the issue?

The Caucus thinks it is a cause for concern that persons with disabilities, who are particularly powerless in situations of risk, do not enjoy additional constitutional protection during emergencies

In September 2011 the Commissioner for Fundamental Rights carried out an inverstigation on the fundamental rights of several vulnerable groups, inter alia people with disabilities, in emergencies and risks.[9] The Ombudsman found that the Hungarian Army does not have a special protocol applicable for vulnerable groups of people. The armed forces in these cases work with humanitarian organisations. The treatment of people with disabilities in emergencies and risks is not included in the training of the armed forces either and there is no legal obligation to have such a protocol.

It is also cause for concern that the only regulation that contains specific references to the special needs of persons with disabilities and the prohibition of discrimination is a low-level one, the Code of Conduct of the National Directorate General for Disaster Management, which lacks sanctions. Due to the lack of appropriate regulations, for instance, no special emergency alarm systems are available for those groups of persons with disabilities who need them.

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[1] http://www.mnb.hu/arfolyamok 3 September 2012 (1 Euro= 285,12 ft)

[9] Report number: AJB-3765/2011 avaliable at http://www.obh.hu/allam/aktualis/htm/kozlemeny20120117.htm (last accessed 8 August 2012).

In the first half of 2012 the internal standards of the National Directorate for Disaster Management have set the target of developing a central training package, opportunities for addressing our compatriots with disabilities.
Neither Hungary's Fundamental Law, nor the Disaster Act includes provisions or special proceedings with respect to how the rights of persons with disabilities should be protected in emergency situations, armed conflict, humanitarian emergencies and natural disasters. What is more, there are no legal sanctions in place in the event that these provisions are violated. The Code of Conduct stipulates that (IV. 1.1.4) "In situations of risk a balance between compassion and professionalism facilitates successful execution of the diverse tasks. Respect the rights and human dignity of persons in a situation of risk. Comply with and make others comply with all written and unwritten rules that ensure equal opportunity for all at-risk persons irrespective of race, religion, party affiliation, political conviction, gender, age, and nationality. (IV.1.2.8) In the course of your actions pay special attention to disadvantaged persons and to persons with disabilities."

For example, due to the absence of relevant legal regulation a special signal system for certain groups of persons with disabilities in case of emergency situations, including a non-verbal signal system for the deaf and hard of hearing and the implementation of a rescue plan which enables evacuation of persons with disabilities has not been established. Further, it remains an open question whether organizations participating in disaster management are in fact prepared in the event of floods and other natural disasters to handle a full range of rescue needs.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the "constructive dialogue" and address them in the "concluding observations":

Appropriate amendment of Hungary's Fundamental Law is required as a result of which persons with disabilities would receive protection under state of emergency and it will not be possible to suspend related fundamental rights. The rules and procedures of disaster management should be made sensitive to the needs of persons with disabilities. The regulations on the treatment of refugees should be amended so that the timely identification of the special needs of persons with disabilities become possible, and reasonable accommodation and personal assistance become requirements. Persons with disabilities should be involved in the planning, implementation and monitoring of the relevant regulations.

9. Please provide additional information on the practice regarding revisions of the court's orders on guardianship, including data disaggregated by sex on number of persons under guardianship and decisions revising the orders on guardianship.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Paras. 75-76.

What is the issue?

According to the legislation in force the termination of guardianship is possible by a court's order if the grounds upon which it was ordered no longer exist. The person under guardianship as well as the guardian (and some other persons defined by law) can initiate this procedure. Such applications are allowed before the mandatory review. Modification of guardianship is also a court procedure. A request for modification may be made for one of three reasons: to change from plenary to partial guardianship; to change from partial guardianship to plenary guardianship; or to modify the areas of rights which may or may not be exercised independently by an adult under partial guardianship.

Regarding mandatory review of guardianship orders, the court must schedule a review for the necessity of guardianship in no more than five years from the date on which it limited or deprived the adult of legal capacity. These reviews should be initiated by the guardianship authority. In those cases when the judge considers the condition of the adult placed under plenary guardianship permanent, the mandatory review does not apply.

The statistical data on the number of persons placed under the different guardianship categories does not contain the number of decisions revised by the courts. In practice, the legal status of the person does not change in general after the mandatory review (in general persons remain in the same guardianship category) and guardians (or the person under guardianship) hardly ever initiate the termination of guardianship or the change from plenary to partial guardianship.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the “constructive dialogue” and address them in the “concluding observations”:

According to the Caucus, any kind of limitation of legal capacity based on disability is in contradiction with the CRPD. However, while adult guardianship exists revision of guardianship orders should be based on the human rights standards of the right to fair trial.

10. Please provide information on the possible progress made with the reform of legislation that would provide for the abolition of excluding guardianship and the provision on the introduction of supported decision-making.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Para. 78.

What is the issue?

According to the registry of the National Office for the Judiciary (Országos Bírósági Hivatal, OBH), which manages the data on the number of people under guardianship gathered from the guardianship authorities, as of 31 May 2012: 59,927 people were placed under guardianship out of which 33,914 were under plenary and 23,335 were under partial guardianship (there was no data available regarding 2,678 people).

According to the Hungarian Disability Caucus, the new Bill on the Civil Code, including the regulation on legal capacity is contrary to Article 12 of the CRPD, because it does not recognise the full legal capacity of persons who may require support in making decisions. The Bill on the Civil Code maintains plenary guardianship under a different name: full limitation of legal capacity (“a cselekvőképesség teljes korlátozása”). Consequently and in accordance with the regulation in force, persons with disabilities can be deprived of their rights. According to the Bill, the support person is appointed by the guardianship authority which is questionnable. The Code does not amend the selection, tasks and responsibilities of the guardians either, thus the new regulation, similar to the one in force, leaves persons under guardianship without the exercise of their rights and wholly dependent on their guardians, or in case of public guardians to the guardianship authorities.

The Code was drafted by law professors behind closed doors without any meaningful consultation with the Hungarian disability movement.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the “constructive dialogue” and address them in the “concluding observations”:

Inappropriate translation of Article 12 of the CRPD should be amended by using the term “jog- és cselekvôképesség” [legal capacity and capacity to act] in paras 2, 3 and 4 of Article 12.

Plenary guardianship and general partial guardianship should be abolished. Instruments that do not restrict the legal capacity but facilitate its exercise (supported decision-making, advance directive) should be introduced. The person and the guardian’s joint decision-making, applied only for concrete groups of cases should be prescribed, if less limiting solution has not been proved sufficient.

The Government, in cooperation with civil society, should support model programmes that popularise supported decision-making. NGOs’ capacity building and the education of supporters should receive government support.

Awareness raising is needed in the judiciary, the civil service and society at large about the fact that persons with disabilities are persons with abilities who have will and can make decisions when assisted.

11. Please provide information on the number and the situation of persons with disabilities who are detained. Please explain if reasonable accommodation is provided to detainees with disabilities.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Paras. 86-87.

What is the issue?

The government's response fails to include statistics of persons with psycho-social disabilities in its table on prison populations, which is particularly worrisome in light of the fact that people with disabilities and in particular those with labels of psycho-social disabilities also make up a considerable subgroup of general prison populations and are often left without any reasonable accommodations and adequate services exposed to severe human rights violations in the criminal justice system.[10]

It is similarly troubling that the government's response suggests they do not recognize non-traditional places of detention - such as psychiatric and social care institutions, emergency rooms and psychiatric wards of general hospitals, etc. -, as facilities where persons with disabilities may be deprived of their liberty. The CRPD establishes that no one shall be deprived of liberty on the basis of their disability. Regional and international torture prevention bodies as well as the European Court of Human Rights[11] have recognized that placement in such institutions amounts to *de jure* or *de facto* detention. It has also been recognized by the former UN Special Rapporteur on Torture that persons deprived of their liberty in such facilities are at a higher risk of abuses and those remaining unaddressed. The Special Rapporteur address forms of torture and ill-treatment against persons with disabilities in a thematic report in 2008.[12] The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), whose mandate is to monitor places of detention, routinely visits psychiatric and social care institutions. The UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) also visits psychiatric facilities.

Hungary ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in January 2012 and is obliged to set up its National Preventive Mechanism to monitor all places of detention and deprivation of liberty. It is troubling that the government's response fails to acknowledge that persons with disabilities can be – de jure or de facto – deprived of liberty in non-traditional places of detention.

The government's response suggests that persons with disabilities in detention settings are not provided with any reasonable accommodations. The government keeps referring to 'providing accessibility' for detainees, and discusses such measures solely in the context of health care and the removal of physical barriers. Under the CRPD all persons with disabilities are entitled to be provided with reasonable accommodations, the denial of which constitutes discrimination. The government should ensure that where persons are deprived of their liberty, it fullfils its obligations regarding accessibility as well as reasonable accommodations.

The response mentions the IMEI institution and legitimizes forced treatment in this forensic unit, in clear violation of the CRPD. The use of words in the response, such as „partial insanity" are troubling.

The response fails to mention concrete examples of

- „therapeutic work"
- „accessibility" in and the quality of health care provided for detainees with disabilities
- „basic services and rehabilitation in in- and outpatient services"
- „special medical services"

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[10] A 2010 study about the prison population in New South Wales, Australia has found that 75% of prisoners had mental health problems: Leila Kavanagh, Donald Rowe, Jolyn Hersch, Kylie J. Barnett, Robert Reznik, "Neurocognitive deficits and psychiatric disorders in a NSW prison population", p. 1. *International Journal of Law and Psychiatry*, 33 (2010) 20-26. Another study from 2007 revealed that 9 out of 10 prisoners met their criteria for at least one mental disorder: Prison psychiatry: adult prisons in England and Wales" *Royal College of Psychiatrists*, College Report CR141, February 2007, p. 15.

[11] See for instance the recent Stanev v Bulgaria judgment of the ECHR, in which the Court found a violation of Art. 5 and 8. *Stanev v. Bulgaria*, judgment of the Grand Chamber of the European Court of Human Rights, 17 January 2012, Application no. 36760/06

[12] Manfred Nowak, "Protecting Persons with Disabilities from Torture", Office of the UN High Commissioner for Human Rights, July 2008,

  - „suitable places for persons with intellectual and physical disabilities"
  - „qualified professionals"
  - „remedial, therapeutic groups […] care, training, and work"
  - „complex therapeutic programme"
  - „major progress in detention facilities"

It is concerning that all of these items lack concrete examples, references, numbers, and measureable indicators, leaving their effectiveness questionable.

The law does not ensure any alternative whatsoever to guarantee liberty of movement, the freedom to choose residence, thereby also failing to comply with the provision of reasonable accommodation, designating a certain degree of disability as the sole legal basis for restricting liberty, despite the fact that the Convention expressly prohibits this.

For perpetrators of an "unsound mind"[13] the Forensic Psychiatric Mental Institution (Igazságügyi Megfigyelő és Elmegyógyító Intézet, IMEI) is the only institution available. Irrespectively of the designation of their disorder, the degree of danger they pose to society, or the cessation thereof, patients are compelled to reside at IMEI. This constitutes violation of the requirement of reasonable accommodation set forth under Article 14 (2) of the Convention.

The Caucus thinks that the involuntary treatment of perpetrators of "unsound mind" in the IMEI severely violates the purpose and principles of the Convention, and fails to satisfy the requirement of reasonable accommodation.

The Caucus considers it a cause for concern that the requirement of reasonable accommodation is completely absent from Hungarian criminal law and the practice of prisons.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the "constructive dialogue" and address them in the "concluding observations":

Review the laws allowing for the deprivation of liberty on the basis of disability, including mental, psychosocial or intellectual disabilities; repeal provisions that authorize involuntary internment linked to an apparent or diagnosed disability; and adopt measures to ensure that health-care services, including all mental-health-care services, are based on the informed consent of the person concerned.

Judges and lawyers must receive training on the human rights aspects of involuntary psychiatric treatment. Both public and forensic mental health professionals should adopt alternative methods that respect personal liberty. Public awareness raising is needed about the fact that psychiatric patients are not more dangerous than other members of the society. The Act III of 1993 on social welfare must be amended so that no one could be placed in a psychiatric institution against their will. The system of the representation of the rights of patients and persons on social welfare must be improved.

The patient rights representation system should be strengthened and the accessibility thereof improved. The concept and requirements of reasonable accommodation should be integrated into the Act CLIV of 1997 on Public Health, the new Criminal Code and the Law-Decree 11 of 1979 on the Execution of Sentences and Measures.

12. Please provide additional information on the legal guarantees given to "persons with limited ability to act or incompetent persons", in order to protect them from any medical or scientific experiments taken without their consent.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Para 91.

What is the issue?

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[13] Article 31 of Law-Decree 11 of 1979 on the Execution of Sentences and Measures.

The Caucus considers it a cause for concern that persons under guardianship cannot exercise their right to accept or refuse medical treatment – including medical research and pharmaceutical tests –, instead their guardians acting for them in full or in part decides on it.

The Mental Health Interest Forum (Pszichiátriai Érdekvédelmi Fórum, PÉF) has a client who got sick during a pharmaceutical research. The undesired side effects of the research were not examined. In addition s/he was excluded from the health care services of the hospital where the research took place. What is more, in the ethical investigation the doctor who gave the medical opinion was the same one who treated him/her therefore there was a clear conflict of interest.

There is no independent investigation on medical or scientific experiments which would provide fact-based evidence on side effects and medical/scientific issues which is at odds with the CRPD.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the “constructive dialogue” and address them in the “concluding observations”:

Adopt measures to ensure that particular, no one shall be subjected without his or her free and informed consent to medical or scientific experimentation.

13. Please provide information on which measures are being taken regarding the prevention, detection and treatment of abuses of children with disabilities as regulated by the Child Protection Act.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Para. 96.

What is the issue?

The government fails to provide any concrete examples or references to the following:

- “the warning system”
- “possible measures to eliminate, handle, reduce or prevent the risk factor endangering the child”
- “competent experts” launching the EU training program.

The response fails to address the great number of children with disabilities growing up in institutions, which are often segregated from society and place children at a heightened risk of ill-treatment and abuse.

The Caucus finds it concerning that the Act XXXI of 1997 on the Protection of Children and Guardianship Administration (Child Protection Act) does not include any special regulations specifically concerning children with disabilities as it is recognised by the Hungarian government in its answer. Another cause for concern is that the legislation does not make any distinction between children with mental and physical disabilities.[14] Neither the old Penal Code (Act IV of 1978), nor the new one (Act C of 2012)[15] contain psychological domestic violence as a felony. In this way the psychological abuse or ill-treatment of children with disabilities stays unpunished.

Although the mandatory reporting system (in the government’s report it is called ‘*warning system*’) exists it does not function well. Even though a disciplinary procedure can be initiated against a professional who fails to report child abuses, this provision does not change the ill-functioning of the system. Although the mandatory reporting system is set up on the regional level, the State Audit Office of Hungary (Állami Számvevőszék, ÁSZ) found that since the adoption of the Child Protection Act material, human and financial resources have not been available which would have been necessary for the implementation.[16] It means that the mandatory reporting system cannot function properly as a preventive measure.

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[14] „Children with disabilities and children with permanent health problems have the right to access special services assisting their development and personality development.” (Article 6(3))

[15] The new Penal Code will enter into force on 1 July 2013.

[16] State Audit Office of Hungary, Report on the audit of the child protection activity of the local governments, June 2004, available at http://www.tegyesz.hu/file/Szakmai_informaciok/Statisztikak/%C3%81llami%20sz%C3%A1mvev%C5%91sz%C3%A9k/asz%20jelentes.pdf (last accessed 6 August 2012).

In Hungary there is no effective system for the treatment of the victims of abuse and there are no victim support services of a holistic view. The Justice Service of the Ministry of Public Administration and Justice (Közigazgatási és Igazságügyi Minisztérium Igazságügyi Szolgálata, KIMISZ) only offers legal aid but it does not provide psychotherapic, medical or social aid. The local educational advisory services (nevelési tanácsadó) do not provide quality therapies, they only carry out investigations and in many cases they pass the cases of child abuse to other authorities. Apart from the local educational advisory services there is no decentralised system which would offer therapeutic aid for child victims.

There is a good example to illustrate the severe situation: in Hungary currently there is *only one* NGO[17] (the staff consists of three psychologists and one lawyer) which provides both therapeutic and legal aid for children who suffered sexual abuse.

There is a higher risk that children with disabilities become victims of sexual abuse. The fundamental problem is that there are no protocols or standards for abuse detection of child victims with disabilities. The National Child Health Institution (Országos Gyermekegészségügyi Intézet, OGYEI) has some fragmented abuse protocols but those are not legally binding and they are not generally accessible or applicable.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the “constructive dialogue” and address them in the “concluding observations”:

The Child Protection Act should be amended so that Article 16(4) of the Convention be completely fulfilled.Amend Act CXXXV of 2005 on crime victim support and state compensation [2005. évi CXXXV. törvény a bűncselekmények áldozatainak segítéséről és az állami kárenyhítésről] in order to harmonize it with Article 16(4) of the Convention, so that persons with disabilities who become victims of crime can have access to the measures mentioned in the Convention (which promote their physical, cognitive and psychological recovery), as well as the services that assist their rehabilitation and social reintegration, and provide protection.

14. Please specify who is entitled to enter an action to the courts to sterilize an "incompetent" person.
19. Please provide information on plans to amend legislation in order to additionally protect the right to fertility of persons with disabilities, including the prohibition of forced sterilization of those persons, as prescribed for in the Convention.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Paras 101, 103.

What is the issue?

People with disabilities in Hungary face legal, financial, physical and attitudinal barriers with respect to living at home and founding a family of their own. Although support services are in place to assist with independent and family living, this amounts to help provided in a mere 10% of the everyday problems of the 10% of those grappling with these issues.

Hungarian family law regulations are not supportive and encouraging of persons with disabilities founding a family, exercising their role as parents or spouses. Besides not encouraging persons with disabilities to found a family, in some areas statutory measures expressly impede it.[18]

Hungary’s Family Act[19] excludes people with disabilities whose legal capacity is affected from

- entering marriage or dissolving their marriage (statutory provision even makes it possible for an outsider third party to file for divorce on behalf of persons with disabilities against their will),
- from exercising parental supervision rights,

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[17] Eszter Alapítvány – Eszter Foundation (www.eszteralapitvany.hu).

[18] Boglárka Benkó, János Fiala and Gábor Gombos: “MDAC tanulmány a hazai jogszabályi környezet összhangjáról a CRPD-vel [Mental Disability Advocacy Center / MDAC/ Study on the Extent to Which the Hungarian Legislative Environment is in Compliance with CRPD], analysis commissioned by Hungary’s National Disability Council (OFT), MDAC, 2008. (Only in Hungarian.)

[19] [Családjogi törvény] Act IV of 1952 on Marriage, Family, and Custody [1952. évi IV. törvény a házasságról, a családról és a gyámságról]

- from initiating restoration of parental rights,
- from adoption,
- from making their own decisions, or at least influencing the decision with respect to putting their own children up for adoption.

Having children is “acceptable” for persons with disabilities other than intellectual disability, and therefore participating in reproductive procedures, adoption of minor children and foster parenting are only available for them.[20] In the case of adoption, persons with physical or sensory disability theoretically have equal opportunities with the non-disabled applicants, but their disability appears as a great risk factor in the practice of considerations and environmental studies compiled by the guardianship authorities. It has happened that a visually impaired couple was only allowed to adopt an older child, arguing that they would not be able to provide sufficient care to an infant.

Women with disability are in a multiple disadvantageous situation as expectant, pregnant women or mothers raising their children. It is not only so because certain fundamental support services like, for example, counseling to facilitate the bringing up of their children, education or practical support to help with infant’s care, the enhanced attention and support of the pediatrician or the district nurse, are not ensured to them, but also because, in the general opinion of health-care professionals, disabled parents are not suitable for giving birth to and taking care of and educating children. As a result of that, the health-care staff either openly or covertly tries to dissuade women with disability from starting a family in numerous cases without even having any concrete ideas about their self-supporting abilities or respecting their rights of self-determination, which is a severe violation of their human dignity. This fact is currently not supported by any research or court decisions, but professionals and activists working in the disability field regularly meet such cases and complaints.

As an example, it can be mentioned that the specific preparation of visually impaired mothers for child care started only a few years ago in Hungary, but this service is available in only one location in the entire country, namely at the Group of Primary Rehabilitation for the Blind within the National Institute of the Blind.

On the basis of the provisions of the Health Act[21] (emergency and involuntary treatments) and Criminal Code (forced medical treatment), the involuntary treatment, including sterilisation of women with psychosocial disabilities (psychiatric patients) can be delivered without the informed consent of the person concerned. Women with intellectual disability almost never initiate their own sterilisation. In the decisive majority of cases, the application is submitted not by the person concerned but by their legal representative.

The Caucus is concerned that the restriction of the personal freedom of those under involuntary psychiatric treatment automatically leads to the restriction of their medical self-determination.

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In general, the equal access to Public Health services is not ensured for persons with intellectual disabilities in regard to quality, fees, infrastructure and geographical accessibility. The representatives of persons under guardianship need to give their consent only to invasive interventions.

The Caucus notes with regret that the right to information that the Act on Public Health provides for is often violated because accessible information is unavailable due to the lack of financial resources and competent professionals.

Coercive sterilisation remains a concern for Roma women in Hungary. To date, Hungary has failed to fully implement the recommendations by the CEDAW Committee in its 2006 decision in the case of A.S. v Hungary.

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[20] Adoption: Article 47 (1), Act IV of 1952 on Marriage, Family and Guardianship, foster parenting: Article 54 (1, Act XXXI of 1997 on the Protection of Children and Guardianship Administration [1997. évi XXXI. Törvény a gyermek védelmérôl és a gyámügyi igazgatásról], Article 168 (5), reproductive procedures: Act CLIV of 1997 on Health

[21] Article 187, Act CLIV of 1997 on Health [Az egészségügyrôl szóló 1997. évi CLIV. törvény] Based on final court judgment, this is done subsequently to the onset of fertility, “if employing another form of contraception is not possible or not recommendable for health reasons, and a) the person deprived of legal capacity is unfit to raise children, and performing the procedure is in conformity with the will of the person deprived of legal capacity, b) the child born of the pregnancy would, in medical likelihood, suffer from severe disability, and performing the procedure does not conflict with the will of the person deprived of legal capacity, or c) a pregnancy would be of immediate danger to the woman’s life, bodily integrity and health.”

The Committee in its Concluding Comments[22] recommended that the Hungarian government review domestic legislation on the principle of informed consent in cases of sterilisation and ensure its conformity with international human rights and medical standards; and monitor public and private health centres, including hospitals and clinics that perform sterilisation procedures to ensure that fully informed consent is given before any sterilisation procedure is carried out.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the "constructive dialogue" and address them in the "concluding observations":

Develop rules that provide effective protection for women with disabilities with regard to sterilization. To ensure that consent to an irreversible intervention for purposes of family planning is free and informed, it must be controlled at a high, judicial level. The requirement of informed consent must be supplemented with the absolute obligation of providing information that enables access for all.

The idea that a fetus with a disability is as valuable as one without should be emphasized. Representing this principle in law would also help to eliminate the anomalies of society's value judgement of – already born – persons with disabilities. The problems of the parents of fetuses with disabilities should be compensated by other means (e.g. family support services, education, financial support), not by the discriminative restriction of the right to life.

Long- term programmes are needed to counter prejudices. Measures should be taken to facilitate social inclusion and acceptance, so that the notion that life with a disability is as valuable as one without become the prevailing view in society.

The Hungarian government review domestic legislation on the principle of informed consent in cases of sterilisation and ensure its conformity with international human rights and medical standards. Monitor public and private health centres, including hospitals and clinics that perform sterilisation procedures to ensure that fully informed consent is given before any sterilisation procedure is carried out.

15. Please provide information on the number of users, the geographical distribution, and the availability of various support services presented in the State Party's report in both urban and rural areas.
16. Please provide information on how living centers give persons with disabilities further access to living independently and being included in the community compared to large institutions?
17. Please provide information on the number of persons with disabilities who are in institutions and living centers, and on what steps are being taken by the government to enable these persons to live independently in the community.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Paras 108,109, 110, 111.

What is the issue?

According to the available data of the Central Statistical Office 8,889 people with psycho-social disabilities and 16,230 people with other disabilities were living in institutions in 2011.[23] There is no available data regarding how many new admissions there are and how many people leave these innstitutions each year. On average, the number of persons living in one institution is 95 persons in a home for persons with disabilities, and 132 for psychiatric patients, but a psychiatric institution where 720 persons live together also exists. 80–100% of adults living in patient care homes for persons with psychosocial disabilities are deprived of their rights and live under guardianship.[24]

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[22] Concluding comments of the Committee on the Elimination of Discrimination against Women: Hungary, CEDAW/C/HUN/CO/6 (10 August 2007).

[23] http://www.ksh.hu/docs/eng/xstadat/xstadat_annual/i_fsi001.html (last accessed 7 August 2012).

[24] Mental Health Interest Forum (PÉF): „Az értelmi fogyatékosok szociális gondozó otthonaiban élô betegek emberi jogai [The Human Rights of Patients Care Homes For Mentally Ill]"

One of the largest institutions in Europe is the Home of Psychiatric Patients of the Metropolitan Municipality in Szentgotthárd (Fővárosi Önkormányzat Pszichiátriai Betegek Otthona)[25] where 734 people with psycho-social disabilities live together. It is very improbable that in such a huge institution individualised care based on a former needs assessment is provided.

A report to the authorities by two previously dismissed orderlies triggered a criminal investigation and internal inquiry into events that took place at the Home for Psychiatric and Disabled Patients in Kiskunhalas. The two female orderlies alleged that several of their co-workers beat up and humiliated patients at the locked psychiatric unit, forcing some of them to engage in sexual games. They reported the problem to the director but there was no change. A Mental Health Interest Forum press release stated: "The abuse of psychiatric patients, their wrongful treatment, lack of respect for patients' legal right to freedom of decision, unnecessary and often harmful institutional control are everyday practice in some psychiatric care and social welfare institutions. Patients who are vulnerable frequently dare not complain: they are afraid of retaliation by institution staff. Oversight of such practices is inadequate: the practice of judicial inspection is formal, patients can be detained in locked psychiatric units without access to legal protection, civil society oversight is rudimentary, and there are institutions which refuse entry to patients rights group representatives."[26] Internal and independent inquiries maintain that the abuses alleged by media reports did not in fact occur. The investigation is currently still ongoing, with the public prosecutor's office – contrary to the findings of the local government investigation – having issued warrants for the preliminary arrest of three persons to date.

The government committed itself to deinstitutionalisation in the Act XXVI of 1998 on ensuring equal opportunities for persons with disabilities (Disability Act).[27] In this Act the government set out a gradual transformation of institutions providing permanent residence for persons with disabilities by 1 January 2010. The rhetoric of the Disability Act is that "people with disabilities should be offered care in residential homes where care is humanised and the living conditions are modern and therapeutic". A failing of this Act is that it only applies to people with disabilities who are "capable" (as judged by State doctors) of living independently with support, whereas nothing is planned for those people who do not pass the test. This approach is based on the medical model and fulfills the needs of services rather than people. Distribution of resources according to perceived severity of disabilities could well amount to discrimination.

Although the 12-year deadline passed at the beginning of 2010, no significant changes were implemented. Since then the Disability Act has been amended and a new deadline of 31 December 2013 has been set, for 1,500 places for people with disabilities in social care institutions that provide care and nursing for more than 50 persons with disabilities, will be replaced in the development programmes co-financed by the European Union.

In 2011 a government decree was adopted on the deinstitutionalisation strategy (DI Strategy).[28] It is the first coherent strategy on deinstitutionalisation since the Disability Act was adopted in 1998. One of the positive reforms is the introduction of the "protected housing" which had not existed before.

On the other hand, the DI Strategy has several shortcomings. One of the most significant disadvantages is that the DI Strategy sets a 30-year implementation period (2011-2041) without intermediate measurable indicators. Under the DI Strategy the Minister of National Resources has to develop an Activity Plan every three years[29] but to achieve the overall aim there are no tied financial resources.

On 27 January 2012 the Hungarian Ministry of National Resources issued a tender (entitled Deinstitutionalisation – Social care homes component A" reference TIOP.3.4.1.A-11/1.1).[30] The value of this tender is 7 billion HUF which is roughly 24 million EUR for 1500 people with disabilities. Up to ten projects will be funded, each of minimum 250 million HUF to maximum 1 billion HUF. The funding comes from two

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[25] Website of the social care home: http://www.gotthardotthon.hu/ (last accessed 7 August 2012).
[26] Mental Health Interest Forum (PÉF) press release, 26 January 2010. (Only in Hungarian.)
[27] Available at http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99800026.TV (last accessed 7 August 2012).
[28] 1257/2011 (VII.21) government decree on the governmental tasks regarding the strategy and implementation of the deinstitutionalization of residential places of social care homes for persons with disabilities. Available at http://www.fszk.hu/fszk/forrasok/jogszabalyi-kornyezet/Kormanyhatarozat-es-Strategia-a-fogyatekos-szemelyek-szamara-apolast-gondozast-nyujto-szocialis-intezmenyi-ferohelyek-kivaltasarol.pdf (last accessed: 7 August 2012).
[29] Article 3 of the 1257/2011 (VII.21) Government Decree.
[30] http://www.nfu.hu/doc/3342 (last accessed 7 August 2012).

sources: the EU Regional Development Fund (ERDF) and the Hungarian state budget. The tender seeks to finance the government's deinstitutionalisation plan. The tender allows managers of social care institutions to apply for funding to implement one of three goals:

1. Construct or renovate apartments in the community.
2. Construct or renovate "group homes".
3. Construct so-called home centres ("lakócentrum"), which are group of buildings with structures of flats where up to 50 people with disabilities would live in a congregated setting.

On 9 July 2012 the Hungarian Parliament adopted an amendment to the Social Act (Act III of 1993) which introduced the following forms of protected housing:

a) flat or house for up to six people or
b) a flat or house for seven to twelve people or
c) flat or block of buildings for up to fifty people (living centre).

With the legal definition of living centres as protected housing the Hungarian government's intention is to retain institutions in the Hungarian legal system and practice.

The Hungarian government is planning to spend 7 billion HUF for deinstitutionalisation but at the same time it as decreased the budget of the community-based services and the daily support services. Therefore those people who want to leave institutions will not be provided with the necessary community-based services. There are no efficient rehabilitation services provided so people with disabilities that spent years in institutions do not have the chance to develope their skills and be included in the labour market. Therefore deinstiutionalisation is planned without any support in the community.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the "constructive dialogue" and address them in the "concluding observations":

Amend the Deinstitutionalisation Strategy by abolishing the possibility of the construction of living centers and take concrete steps to set up individualized community-based services in both urban and rural areas of Hungary.

Stop admitting and transferring persons with disabilities to large residential institutions.

Awareness raising is needed in the government, the civil service and society at large about the concept of Community Based Rehabilitation.

18. Please provide information on the operation of sign language interpretation services from January 1st 2011, and figures for budgetary allocation of the resources for funding the service.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Para. 125.

20. Please provide information on which measures are being taken to prevent children with disabilities from being separated from their families and being placed in alternative care, many of them for a long period of time, and being institutionalized taking into account the Committee on the Rights of thé Childs Concluding Observations (CRC/C/HUN/CO/2).

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Paras. 133.

What is the issue?

Until today there are no any legal measures has been taken to prevent children with disabilites being separated from their families and being placed in alternative care. However still many children continue to reside in large live-in institutions for two main reasons. First there is an absence of basic social services.

Second, parents maybe unable to care for a child with a disability in their home because of financial constraints or due to the severity of the child's condition.

Hungary's Family Act [Családjogi törvény],[31] which generally excludes persons with disabilities with legal capacity, regardless of the type of legal capacity, from adoption, from exercising parental supervision rights, and from making their own decisions, or at least influence such decisions in some way, with respect to putting their own children up for adoption.

In Hungary, persons with disabilities cannot, practically speaking, have children because they are "unfit" therefor, nor does the state provide the system of social welfare required for raising children in the family. Even if a child is born to a person with disabilities, he/she is immediately taken away from his/her mother and placed in a residential institution, and, if lucky, he/she will be adopted.

The present social welfare system is unable to provide a personal helper to assist families with disabilities for an hour or two on a daily basis. In this case, it is Act XXXI of 1997 on the Protection of Children and Guardianship (Child Protection Act) [1997.évi XXXI. törvény a gyermek védelméről és a gyámügyi igazgatásról, Gyermekédelmi törvény] which expressly allows, placing the best interests of the child above all else, that the state's representative decide the child's fate. In every case the decision is to separate the child from the mother. Persons with disabilities whose legal capacity is affected are not entitled to initiate either termination or restoration of parental rights, it is the guardianship authority and the legal representative who decides for them in this, the most personal of their relationships.

The child protection legislative regulatory system governing it is supportive of all children growing up in their biological family or with foster or adoptive parents in a family setting. Hungary grapples with a special disadvantage in this area, namely that parents raising children with disabilities do not receive an income commensurate with their responsibilities. In short, there are counter-incentives to taking in children with special needs.

The lack of an adequate social welfare and support system: Although since 2006 support services have been providing transportation and personal helpers for persons with severe disabilities, this service reaches a mere 10–20 per cent of those in need.

Generally speaking, Hungary's social welfare system, based on its traditions and potential, does not ensure support for genuinely independent living. It unequivocally tilts towards residential institutions as its primary form of recommended support. Indubitably, at the better institutions the number of couple relationships is markedly on the rise, enabling cohabitation in a private room. From here, however, primarily for financial reasons, there is no possibility for moving on, for gradually establishing independent family living. It is a fact that social welfare services, currently focusing on isolated large-scale residential institutions are not presently prepared, are incapable of ensuring support for large numbers of such families.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the "constructive dialogue" and address them in the "concluding observations":

The state should provide appropriate help and support to families raising children with disabilities in order to prevent separation and promote family based assistance in foster care as a form of alternative care. A family help/support network should be launched.

Institutionalization be used only as a measure of last resort, taking into account the best interests of the child. In this regard the government should provide maximum support possible for the work of child representatives and child protection officers with a view to prevent and reduce placements in institutions."

21. Please provide more information on the reasonable accommodation and support provided within the general education system to students with disabilities, in order to facilitate their effective education in

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[31] Act IV of 1952 on Marriage, Family, and Custody [1952. évi IV.törvény a házasságról, a családról és a gyámságról]

accordance with paragraph 2 of article 24 of the CRPD. Furthermore, please provide information on the new Act on Public Education (Act' CXC of 2011).

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Para. 138.

What is the issue?

The Caucus notes with regret that apart from a few commendable model experiments, education is not inclusive in Hungary.A study compiled in 2008 reports that *one* of the areas that most lags behind is education.[32] Anomalies in the educational system, everyday discrimination against persons with disabilities have constituted the subject of several investigations by the Ombudsman. Infringement of equal opportunity is perpetrated from kindergarten care right up to higher education, simply by the fact that the majority of educational institutions fail to comply with the requirement of accessibility. Over and above legal and physical barriers, the introduction of inclusive education is significantly impeded by society's resistance, the lack of appropriate training for teachers and the underfinancing of the educational system.

Therefore, it is no surprise that the level of education of persons with disabilities is lower than that of those without disabilities.[33] With respect to persons with disabilities:

- 32% did not finish primary school,
- 39% completed their primary education,
- 25% had vocational training or the diploma of a secondary school,
- 5% had a college or university degree. [34]

According to the data (1 October 2011) of the Central Statistical Office (Köponti Statisztikai Hivatal, KSH), in the academic year of 2011/2012:
-*Segregated studied*: 30.186 children and young adults with disabilities (kindergarten and between grade 1-14.) attended public education, among them 11.377 girls (38%) -
-*Integrated studied:* 50.947 children and young adults with disabilities (kindergarten and between grade 1-15) attended public education, among them 16.691 girls (33%).[35]

In the tertiary and adult education it is still very common that people with disabilities are absolved of some requirements instead of providing them with the necessary support. In the university application system people with disabilities can receive 40 extra points but it does not guarantee that they receive the necessary individualised support in the tertiary educational system. This measure contributed to the fact that there are more people with disabilities who hold a diploma but many of these people cannot find a job in the labour market because they would need rehabilitation or other support to be employed.

Although in the academic year 2011/2012 the training of special education teachers was expanded and the specialisation on autism spectrum disorders was launched for the first time, unfortunately neither the number of professionals, nor the quality of service is appropriate. What is more, the financing of students with autism spectrum disorder is not proportionate with the needs. Although an additional contribution to public education is available it does not make the schools interested in providing professional support.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the "constructive dialogue" and address them in the "concluding observations":

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[32] Dr. Ádám Kósa and Dr. László Gábor Lovászy, Ph.D. (2008) A fogyatékossággal élô személyek jogairól szóló egyezmény értékelése és kritikája a jelnyelvhez kapcsolódó jogok vonatkozásában [The Evaluation and Critique of the Convention on the Rights of Persons with Disabilities With Respect to Rights Associated With Sign Language], SINOSZ, 2008. (Only in Hungarian.)

[33] Source: Resolution of Parliament 10/2006 (16 February) on the new National Disability Programme [10/2006. (II. 16.) OGY határozat az új Országos Fogyatékosügyi Programról], p. 11.

[34] According to the census data of 2001.

[35] 1.898 million children and young adults aged 3-22 attended public education. Among them, 341 thousand were kindergarteners, 748 thousand were primary school students, 567 thousand attended secondary schools.

Ensure that students with disabilities are provided with reasonable accommodation and support in the mainstream education system. In order to promote the quality of inclusive education sufficient number of well-trained professionals and sufficient financial resources are needed.

Urge the Government to develop a strategy for the introduction of inclusive education, and provide the financial sources necessary. The Government must take appropriate measures to ensure that education institutions not only meet the requirements of accessibility, but are also inclusive.

22. Please provide data as to whether tools and services on sexual and reproductive health are accessible and available to persons with disabilities in accessible formats and technologies, augmentative and alternative modes.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Paras. 157-158.

What is the issue?

Today is difficult for DPOs to provide statistical data and research results on the whether tools and services on sexual and reproductive health are accessible and available to persons with disabilities in accessible formats and technologies, augmentative and alternative modes. The situation of persons with disability appears in more and more basic and applied research works as a topic, but surveys specifically about women with disability and they sexual and reproductive health are very rarely carried out, let it be about demographics, health care analysis or assessing their needs.

The right to physical and mental health is a fundamental right for everyone, enacted in the new Basic Law of Hungary. However, the above right is not properly upheld, regarding especially persons living with autism and intellectual disabilities due to geographical inequalities, lack of personal and material conditions, especially the lack of special training of medical staff, and the lack of specialised health care providers. Their right to health does not prevail, neither in the area of basic, nor in specialised health care (especially in the field of gynaecology and dental care).

The Caucus points out that the equal access of persons with disabilities to sexual and reproductive health and services is considerably impeded by the fact that healthcare workers receive no training in communicating with, and treating, patients with disabilities.

Screening tests aiming at prevention and early detection of medical disorders are not accessible to persons with severe disabilities, and therefore are not carried out. This hits women with disabilities especially hard because they are left without access to gynecological and breast screening tests. Exemption from organised and mandatory screenings can be granted in the event of illness.[36]

The Caucus notes with regret that persons with disabilities do not have equal access to various screening tests.

According to Article 12(5) of the Act CLIV of 1997 on Health Care (Act on Helath), patients under plenary guardianship cannot leave the hospital on their own decision; they need the approval of their guardian. Article 24(6) of the Act on Health Care declares that patients under plenary guardianship cannot exercise their right to access medical records.

The Caucus notes with concern that the Act on Health excludes persons under guardianship from certain reproductive health services, which violates the norm of the Convention.

The National Disability Programme (Országos Fogyatékosügyi Program,OFP) spells out that access on an equal basis must be provided to basic medical care and specialist care for all persons with disabilities.

The requirement of costless or affordable services is not met.

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[36] A publication produced under the EU DAPHNE project, Nők, fogyatékosság és egészség [Women, Disability, Health],” contains the findings of a Hungarian study on health care provision for women with disabilities and the violence suffered therein.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the "constructive dialogue" and address them in the "concluding observations":

The Act CLIV of 1997 on health [1997. évi CLIV. törvény az egészségügyről, Eütv.] should be transformed so that all services (including health and reproductive services) be accessible to persons with disabilities.

Take effective measures, including legislation, to ensure that persons with disabilities have equal access to all healthcare services, including reproductive health services and screening tests (costless and affordably).

Quality management system procedures should include measures on accessible format and technologies measures for persons with disabilities (especially regarding women with disabilities).

Screening tests should be made accessible: disability is not an illness in and of itself, therefore it should not be possible to grant exemptions to screening tests on the ground of disability.

Healthcare workers must receive compulsory training in skills related to patients with disabilities, and in particular to the special needs of women with disabilities (provide a helpful hints on what tools and services on sexual and reproductive health available in accessible formats and technologies, augmentative and alternative modes).

23. Please, provide data, disaggregated by sex, on the number of persons with disabilities employed in the public and private sectors, social enterprises, and self-employed persons with disabilities, as compared with the general population.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Para. 201.

What is the issue?

The employment rate of persons with disabilities is extremely low. According to estimates, this rate is less than 10 % in the case of persons with disabilities of working-age, most of whom work in sheltered workplaces, in supported jobs. According to the data of the 2001 census there are 577.000 persons with disabilities among them, 51.806 were employed (registrated). According to the Central Statistical Office (Központi Statsitikai Hivatal, KSH) latest (June 2012) information total 3.908 million persons employed (registrated) in the open labour market.

In 2012, the Commissioner for Fundamental Rigths carried out an investigation on the work conditions of people with disabilities.[37] The Ombudsman found that people with disabilities are still unproportionally excluded from the labor market.

The majority of people with disabilities have lower qualification than people without disabilities which makes them more difficult to find a proper job. What is more, rehabilitation services are mainly available in bigger cities and the accessories necessary for the independent living cannot be obtained on an individual basis.[38] According to statistical data the majority of people with disabilities rather live in villages than in the capital. All these lead to their social exclusion and isolation.

Due to the above mentioned reasons the vast majority of 15-year-old and older people with disabilities do not look for a job. However, 4% of them, more than 20,000 people, including 12,000 unemployed people said that they are seeking for a job. People who would like to work generally have less severe disabilities. Most of them are people with physical, visual and hearing impairments.

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[37] Report number: AJB 2618/2012 available at http://www.obh.hu/allam/aktualis/htm/kozlemeny20120703.htm (last accessed 8 August 2012).

[38] II capital, Article 5, 10/2006. (II. 16.) Parliamentary Resolution on the new National Disability Programme.

The Ombudsman found that only a few people with disabilities participate in any traning organised by the Labour Offices due to their mobility difficulties and the lack of motivation. In 2011, only 1,8% of the job seeking people with disabilities participated in such a training.

According to the Public Foundation for Equal Opportunities of Persons with Disabilities (Fogyatékos Személyek Esélyegyenlőségéért Közhasznú Nonprofit Kft., FSZK) people with psycho-social disabilities face a big challange in finding a job because due to their special needs, their skills and competences cannot be assessed by the same methodology as in case of people with other disabilities. Their access to labour market services is not guaranteed on the national level.

The Hungarian Autistic Society (Autisták Országos Szövetsége, AOSZ) said that the majority of people with autism generally are not employed according to their qualifications and many of them only have a part-time job. They mainly work on sheltered work places but there are not many of these in Hungary. Employers are not open to employ people with autism mainly due to the lack of information on autism and prejudice.

According to the Hungarian Association for Persons with Intellectual Disability (Értelmi Fogyatékossággal Élők és Segítőik Országos Érdekvédelmi Szövetsége, ÉFOÉSZ) people with intellectual disabilities do not have any access to the labour market because employers prefer paying the rehabilitation contribution[39] or they prefer employ someone with a different type of disability. The rehabilitation contribution is paid to the state budget therefore it does not directly contribute to the implementation of the new National Disability Programme. One of the main problems is that there are no available adult trainings and their subsidization ceased in 2010. Another problem is that people in the Labour Offices are not trained to communicate with people with intellectual disabilities and there are no easy-to-understand materials.

All the NGOs highlighted in the Ombudsman's report that the government is reluctant to consult them. If it still happens their opinion is not taken into account or the deadline for the consultation is so short that they do not have time to elaborate on their contribution.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the "constructive dialogue" and address them in the "concluding observations":

Legislation must represent the requirement of reasonable accommodation in law.

The Government must develop an employment strategy – include disaggregated data gathering - to increase the rate of employment of people with disabilities.

Ensure that the employment system of persons with disabilities are transparent. Promote the active involvment of persons with disabilities in the open labour market.

Ensure that the right to dignity, the right to choose one's job freely, the right to equal treatment of persons with disabilities, including reasonable accommodations, are not violeted.

24.Please provide information on the new system of social security, disability and rehabilitation benefits that entered in force in Hungary on January 1st 2012. Please provide data on income of persons with disabilities as compared to the general population.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Para. 229.

What is the issue?

Act CXCI of 2011 on Services Provided for Persons with Disabilities and the Amendment of Certain Pieces of Legislation (2011. évi CXCI. törvény a megváltozott munkaképességű személyek ellátásairól és egyes törvények módosításáról) entered into force on 1 January 2012. During the preparation of the Act neither the

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[39] Under Article 23 of the Act CXCI of 2011 on the benefits of people with changed work abilities every employer who employs more than 25 people has the obligation to employ at least 5% of „people with changed work abilities" otherwise they have to pay a so called rehabilitation contribution. In 2012 the amount of the rehabilitation contribution is 964,500 HUF/person/year.

National Disability Council nor NGOs and DPOs were in the position to be able to express their opinion on the merits!

The amount of the *minimum wage is 93,000 HUF* (roughly 340 EUR).[40] In Hungary according to the Central Statistical Office the average salary in the first six months of 2012 was 220,700 HUF (roughly 800 EUR).[41]

Accroding to the Act the monthly amount of the rehabilitation financial benefit for those people

a) who can be employed after the rehabilitation: 35% of the monthly average salary
   but at least 30% of the minimum wage (27,900 HUF which is roughly **100 EUR**)
   maximum the 40% of the minimum wage (37,200 HUF which is roughly **135 EUR**).

b) who needs permanent employment rehabilitation: 45% of the monthly salary
   but at least 40% of the minimum wage (32,700 HUF which is roughly **120 EUR**)
   maximum the 50% of the minimum wage (46,500 HUF which is roughly **170 EUR**).[42]

The most important detrimental changes in the Act:

1.) The disability pension system that used to function as part of the integrated social security system was abolished; it was substituted by a quasi-subsidising system that guarantees sick-leave-like services. In terms of amount, this guarantees a financial service to individuals with permanent health problems who are new entrants to them system, approximately 55-60% of the previous 70,000 HUF/month of the disability pension. In Hungary this does not even amount to the subsistence level.

2.) The disability pension provision was terminated for those who were already recipients by 31 December 2011, and the disability pension that used to function reliably depending on time employed, on the income acquired during employment, and on the extent of disability was substituted by two types of provisions:
    a. The rehabilitation subsidy that can amount to a maximum of a 3-year rehabilitation period, but one cannot be employed simultaneously, because the transfer of rehabilitation subsidy needs to be stopped in case of any minimal income from work.
    b. The disability subsidy, next to which income can only amount to a maximum of 150% of the minimum wage, since any higher income attained for longer than 90 days results in the cancelling of the disability subsidy. Disability subsidy can be given to people with 80-100% disability who were essentially previously deemed unfit for work, as well as persons who had previously received disability pensions and had by 31 December 2011 turned 57 years old. Everyone else had to „voluntarily” apply by 31 March 2012 for a complex rehabilitation review, because if s/he did not „voluntarily” apply, all their provisions were discontinued from 1 May 2012.

3.) The criteria system to determine change in one's work ability became significantly stricter, which resulted in the complete abolishment of provisions for a significant number (18-22%) of the people concerned who had previously received either disability pension or regular social subsidy for prolonged health damage, furthermore resulted in the approximate halving of the service provision for roughly 26-30% of the people concerned.
    The lowered provisions amount to approximately half of the social minimum, and depending on the severity of the health damage it equals to one-fourth to one half of the minimum wage.
    It is extremely unfortunate that the functioning of the rehabilitation system exists only on the level of the law but in fact has not been implemented in Hungary.
    There are no new support systems functioning that would incentivise employers to rehabilitation, rather cuts in resources for previously functioning support systems are tangible.
    Even among healthy people unemployment is very significant, the chances for individuals with permanent health problems to find a job are very slim, in certain areas impossible.
    An extremely cruel pauperisation process has started among people with permanent health problems.

4.) Due to the abolishment of the provision of disability pension, previous disability pensioners lost a significant number of other side benefits – e.g. travel subsidies for public transport; entry discounts for cultural, leisure and touristic services; discounts for local tax and social services; the possibility to file a

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[40] Government Decree 298/2011. (XII. 22.)

[41] http://www.ksh.hu/docs/hun/xftp/gyor/let/let21206.pdf (last accessed 24 August 2012).

[42] Article 9 of Act CXCI of 2011 on Services Provided for Persons with Disabilities and the Amendment of Certain Pieces of Legislation.

special request to increase low pensions, etc. – which all in all resulted in the 15-20% decrease in the previous living standards.

The National Federation of Disabled Persons' Associations (MEOSZ) and about 40 further individual claimants filed a proposal to the ombudsman to annul the law.

The ombudsman found the submission substantiated and turned to the Constitutional Court to have the law annulled, which found that it violated the constitution on various accounts. With the help of MEOSZ about 40 private persons filed an individual constitutional complaint against the law, asking the Constitutional Court to have the law repealed. With the help of MEOSZ 18 private persons and independently further 14 people initiated a lawsuit at the Strasbourg European Court of Human Rights for compensation because of the severe material and non-material damages caused by the law. At the moment all suits are pending and there are no final decisions in these cases.

From 1 July 2012 the former accreditation wage subsidies has not been granted to the employers which endangeres the employment of about 18,000-22,000 people with permanent health problems. From 1 July 2012 only sheltered organisations, which employ people with severe diasbilities or permanent health problems, can be granted with the wage subsidies if they apply for it. This limitation endangeres the employment of approximately 15,000-17,000 people.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the “constructive dialogue” and address them in the “concluding observations”:

Amend the relevant legal measures in order to provide persons with disabilities with (at least) the same amount of social security and retirement and other benefits as they had before introducing the new system of social security, disability and rehabilitiation benefits.

Ensure the effective functionning of the rehabilitation system.

Develop programmes to increase employment opportunities in the open labour market for women and men with disabilities.

25. Please provide information on how homeless persons with disabilities and more specifically with psychosocial disabilities are being protected.

What is the issue?

To the best knowledge of the Caucus, there are no special services, support measures for persons with disabilities, and especially persons with psycho-social disabilities, amongst homeless persons in Hungary.

In 2012, the Commissioner for Fundamental Rights carried out an investigation on homeless people’s job opportunities.[43] The Ombudsman found that the mental and physical burden of homelessness has a detrimental effect on these people’s health, many of them suffer from illnesses which impede them from working. The social isolation and loneliness of homeless people often causes different mental health problems. People who has spent many years in the streets need both social and mental hygiene support.

According to the research of the 3rd of February Working Group (Február Harmadika Munkacsoport) 37% of the homeless people has some chronic illness or disability and more than 55% has some physical or mental disability which impede them from working.[44]

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the “constructive dialogue” and address them in the “concluding observations”:

Develop programs to promote the rights of persons with disabilities amongst homeless people and actively involve homeless persons with disabilities in program planning, implementation and evaluation.

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[43] Report number: AJB-2823/2012.

[44] Research of 3rd of February Working Group, 2011.

26. Please provide additional information on the legal implications of decision of the European Court of Human Rights in *Alajos Kiss* v. *Hungary,* Application no 38832/06, and whether any actions have subsequently been taken to amend the national .legislation (paragraph 232 of the State Party's report).

27. Is there any disability- based restriction on the right of Hungarian citizens to hold public office in accordance with their skills, qualifications and professional knowledge, and or their right to petition (paragraph 233 of the State Party's report)?

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Paras. 232, 233

What is the issue?

Apart from severe restrictions concerning the right to vote, Hungarian persons with disabilities are also underrepresented in political life, both in terms of elected officials and lower-level associations and (self-) advocacy groups.
Until 31 December 2011 persons placed under guardianship had no voting rights on the basis of the automatic blanket restriction stipulated in the former Constitution of Hungary. Article XXIII(3) of the new Fundamental Law, in force from 1 January 2012, however, states that: “[t]hose deprived of their right to vote by a court for limited mental ability and for a criminal offense shall not have the right to vote.” Courts are given the power to decide over electoral rights through an individualised assessment within the framework of the guardianship initiating or reviewing procedure. Those already under guardianship by 1 January 2012 can request a revision; nevertheless, until the upcoming revision they continue to be automatically stripped of their right to vote. The actual assessment to determine one’s mental ability is not specified anywhere and is to be applied only to people with disabilities during the guardianship procedure. Persons without disabilities are not subject to individual assessment. Therefore the new system discriminates against persons with disabilities in violation of Article 29 of the CRPD.

In order to hold public office in Hungary one has to have legal capacity (Article 39(1) of the Act CXCIX of 2011 on public servants [2011. évi CXCIX. törvény a közszolgálati tisztviselőkről]). As a result, everyone under plenary guardianship as well as those under partial guardianship who are stripped of their legal capacity are excluded from holding public office. With regards to the right to petition, Article 15(7) of the Act CXL of 2004 on General Rules of the administrative procedure and service [2004. évi CXL. törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól] states, as a rule, that “natural person as client has procedural capacity in the case of having legal capacity according to the provisions of civil law.”

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the “constructive dialogue” and address them in the “concluding observations”:

Call on the government to review all relevant legislation (and proposed legislation) to ensure that all persons with disabilities have the right to vote and participate in public life on an equal basis with others. The upcoming cardinal Electoral law should ensure that all persons with disabilities have the right to vote and full access to political participation.

As to the right to holding office and the right to petition, the current disability-based discrimination should be abolished.

28. Please provide additional information as to how a perspective on disability is mainstreamed into the National Strategy Promoting the Social Equality of Men and Women.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Para. 242.

What is the issue?

The National Strategy Promoting the Social Equality of Men and Women Guidelines and Objectives 2010-2021 adopted by the governmental resolution 1004/2010. (I.21.) – 3 years after Hungary ratified the UN Convention! - does not have any reference on women with disabilities.

There are approximately 577,000 persons with disabilities in Hungary, constituting 5.7% of the total population, among them 294.138 girls and women with disabilities (2001 census). Their proportion among the total population is 2.9%.

Hungarian society considers persons with disability as asexual, which implies that there is no space for gender-related issues such as the multiple discrimination of girls and women with disability, the advocacy and awareness-raising regarding the femininity and motherhood of women with disability, or depicting women with disability as women in the media and in economic, political and public life. The specific situation of women with disabilities are put on the agenda solely by non-governmental organizations, who do their best to provide programs and special model services for girls and women with disabilities. Financing these services and programs is, however, uncertain, typically project based.

It is an unfortunate fact that statistical data and research results on the situation of women with disability in Hungary are non-existent. The situation of persons with disability appears in more and more basic and applied research works as a topic, but surveys specifically about girls and women with disability are very rarely carried out, let it be about demographics, health care analysis, assessing their needs or their employment situation.
Implementation of the UN Convention on the rights of persons with disabilities cannot be realised if the specific issues of women with disabilities are not addressed.

Hungarian statutory provisions do not make a single reference to women with disabilities.

Disabled girls and women are not visible neither in the Hungarian disability related legislation nor in the legislation related to the equal opportunities of men and women.

Although National Disability Programme(Országos Fogyatékosügyi Program, OFP) recognises that women with disabilities are subject to multiple discrimination, no action plan has been developed to address this.

Also, the programmes of Hungary’s National Development Agency (Nemzeti Fejlszetési Ügynőkség, NFÜ) do not include any projects to improve the condition of women with disabilities. Neither programmes to boost equal opportunities for women, nor those aiming to bolster equal opportunities for persons with disabilities make specific mention of women with disabilities.

The Act on Equal Treatment has comprehensive provisions on the prohibition of direct and indirect discrimination, both before and during employment, as well as during the termination of employment. It has separate provisions on the prohibition of disability-related harassment at the workplace and requires non-discrimination in wages. Though female employees are separately protected, women with disabilities do not receive added protection.

According to independent reports, ill treatment and abuse is a common phenomenon in institutional care. As numerous international studies have found, women with disabilities are more vulnerable to sexual harrasment than other women. This holds true for women living in custodial institutions in particular. In spite of this, no national or institutional surveys have been conducted in this area at custodial institutions for persons with disabilities in Hungary.

Women with disability are in a multiple disadvantageous situation as expectant, pregnant women or mothers raising their children. It is not only so because certain fundamental support services like, for example, counseling to facilitate the bringing up of their children, education or practical support to help with infant’s care, the enhanced attention and support of the pediatrician or the district nurse, are not ensured to them, but also because, in the general opinion of health-care professionals, disabled parents are not suitable for giving birth to and taking care of and educating children. As a result of that, the health-care staff either openly or covertly tries to dissuade women with disability from starting a family in numerous cases without even having any concrete ideas about their self-supporting abilities or respecting their rights of self-determination, which is a severe violation of their human dignity. This fact is currently not supported by any research or court decisions, but professionals and activists working in the disability field regularly meet such cases and complaints.

As an example, it can be mentioned that the specific preparation of visually impaired mothers for child care started only a few years ago in Hungary, but this service is available in only one location in the entire country, namely at the Group of Primary Rehabilitation for the Blind within the National Institute of the Blind.

On the basis of the provisions of the Health Act (emergency and involuntary treatments) and Criminal Code (forced medical treatment), the involuntary treatment, including sterilisation, of women with psychosocial disabilities (psychiatric patients) can be delivered without the informed consent of the person concerned.

Women with intellectual disability almost never initiate their own sterilisation. In the decisive majority of cases, the application is submitted not by the person concerned but by their legal representative.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the “constructive dialogue” and address them in the “concluding observations”:

The Hungarian Government must ensure the effective involvement of women with disabilities and their representative organisations in the development of legislation, policies and decision making processes concerning them (also in accordance with Article 4(3) of the CRPD.

Set up action programmes that seek to improve the situation of women and girls with disabilities on such research that establishes the facts of the matter and actively involveswomen and girls concerned.

All legislations with respect to women and persons with disabilities should be reviewed to ensure that women with disabilities also become visible in mentioned legislation and that laws provide answers to solving problems specific to women with disabilities.

A national action plan should be drawn up in compliance with the UN Convention to improve the condition of women with disabilities.

National research should be conducted to survey the special needs of women with disabilities.

Government measures should be instituted to render women with disabilities visible in statistics on women and persons with disabilities.

30. Please provide information, disaggregated by sex, age, and ethnic origin, on the number of persons with disabilities and the percentage of the total population of Hungary they constitute, in accordance with data collected in the course of 2011 census.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Paras. 255.

What is the issue?

Although the analysis of the population census to be conducted in 2011 published on the HCSO Web site[45] prioritizes the issue of publishing the census results, it fails to address the issue of measures required to make disseminated census results accessible to persons with disabilities. The participation of persons with disabilities in 2011 cencus data collection and research were not ensured throughout the entire process.

The data gathered in the census of 2011 have not been processed therefore the statistics regarding people with disabilities are not available either. According to former censuses the number of people with disabilities increased: while in 1990 their number was 368,000 (3,5% of the population), in 2001 it has increased to 577,000 (5,7% of the population).

The 2011 census was not accessible for people with visual impairment who use screenreading software even though the Central Statistical Office initiated a consultation with a number of NGOs. The Equality Body

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[45] Theory-Methodology – Zoltán Szűcs, A 2011. évi népszámlálás és a területi statisztika (The 2011 Population Census and Areal Statistics).

(Egyenlő Bánásmód Hatóság, EBH) found that the authority violated the obligation of equal treatment because people with visual impairment could not fill in neither the hard copy nor the electronic form and therefore the authority did not guarantee the free choice regarding how they would like to fill in the form and they were dependent on the interviewers.

The authorities planned to carry out a post-census on the quality of life and demographical data of people with disabilities but due to the lack of financial resources this project has been cancelled. On the census people could answer the questions regarding their disability on a voluntary basis therefore the liability of the data all in all is questionable.

The Caucus notes with regret that there is very little reliable data available for disability-related planning. It is important that the programmes that enable the collection of relevant data be submitted to debate by DPOs, and be approved by the relevant authorities, with the observation of statutory deadlines.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the “constructive dialogue” and address them in the “concluding observations”:

Processed data must be made available through accessible information and communication technologies.

Dissemination of census results in formats appropriate for persons with disabilities (e.g. information and communications accessibility), should be available to ensure transparency of distribution of European Union funds. Hungary’s National Development Agency should make target group-specific statistics available, so that experts and those concerned may track what share of funds individual target groups received.

31. Please provide information on the possible progress made in appointing a national independent monitoring mechanism on the implementation of the Convention, as well as on the participation of organisations of persons with disabilities in the preparation of .the State Party's report, in accordance with the provisions of paragraph 2 of article 33 of the Convention.

Reference to the Initial Report of Hungary (CRPD/C/HUN/1): Para. 261.

What is the issue?

Hungary designated the National Disability Council (NDC) to promote, protect and monitor the implementation of the Convention. The National Disability Council is an advisory body consisting of representatives of ministries and organizations of persons with disabilities. Due to its legal status and composition, however, the National Disability Council does *not meet the criteria of independence* and proficiency that are outlined in Article 33 (2) of the Convention and the Paris Principles.
At the same time, according to the legislation on the Commissioner for Fundamental Rights, being in force from 1 January 2012, it pays special attention – especially with the help of ex officio proceedings – to promote, protect and monitor the implementation of the CRPD.

The NDC has not been functioning in the way and with the frequency prescribed by the relevant legal measures since May 2010 when the new government entered into power. Afterwards the member NGOs asked both in written and orally to convene the NDC but it never happened. In some occasions the leader of the Disability Department organised some informal consultations with the civil members with very short deadline, without real competencies and only in minor questions.

What are the solutions?

The Caucus proposes that the Committee highlight the following issues during the “constructive dialogue” and address them in the “concluding observations”:

The National Disability Council cannot be considered an independent mechanism, as it also represents the government. The National Disability Council should not be designated, as it is now, as the independent framework responsible for monitoring, because this is in conflict with the Paris Principles.Immediately designate or establish a CRPD compliant framework to promote, protect and monitor implementation of the Convention.

The document was compiled by the following members of the Hungarian Disability Caucus (in alphabetical order):

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Hungarian Association for Persons with Intellectual Disabilities (ÉFOÉSZ)
Hungarian Autistic Society (AOSZ)
Hungarian Civil Liberties Union (TASZ)
Hungarian Parliamentary Commissioner for Civil Rights (AJBH)
Mental Disability Advocacy Centre (MDAC)
Mental Health Interest Forum (PÉF)
National Federation of Disabled Persons' Association (MEOSZ)

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