



## RECOMMENDATIONS FOR HUNGARY UN Universal Periodic Review

Submitted by the Mental Disability Advocacy Centre (MDAC)

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### Introduction

The Mental Disability Advocacy Centre (hereinafter “MDAC”) is an international human rights organisation that uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide. MDAC’s vision is a world of equality, where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form.

MDAC respectfully submits the following written comments concerning Hungary for consideration by the Human Rights Council (hereinafter “the Council”) at its 25th Session of the Universal Periodic Review in accordance with the ‘Universal Periodic Review: information and guidelines for relevant stakeholders’ written submissions (Rev 17/03/2015). This report provides the Council with up to date information about the situation of children and adults with intellectual disabilities and/or psycho-social disabilities in Hungary in relation to the areas where people with mental disabilities face the most systemic and grave forms of discrimination and rights violations. MDAC’s submission will therefore outline the recent developments with regard

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to the rights to legal capacity, to vote and stand for election, to community living and to inclusive education of people with mental disabilities since Hungary's last UPR review. MDAC hopes that the present document will help the Council to evaluate objectively the merits of the measures taken by the Hungarian Government in order to comply with its international obligations under the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

As a preliminary remark it has to be noted that the Government continues to fall short on its obligations and commitments to guarantee choice, autonomy and the right to decide for people with mental disabilities and to release them out of institutions and into the community.

## 1. Monitoring of the implementation of the CRPD

The Hungarian Government still has not established any robust independent mechanism with the mandate of monitoring the implementation of the CRPD. Further, regular monitoring carried out by the Directorate General for Social and Child Protection—the Governmental Body responsible for oversight of services provided by social care institutions—is ineffective in revealing practices violating rights or amounting to torture and ill-treatment.

Recommendations:

- *Take immediate action to establish—as prescribed in Article 33(2) of the CRPD—an independent monitoring mechanism in line with the Paris Principles, which facilitates, protects and monitors the implementation of the CRPD in Hungary.*
- *Increase the effectiveness of regular monitoring visits carried out by State authorities in social care institutions and psychiatric institutions and take immediate legal action in cases of ill-treatment, torture, abuse or other human rights violations.*

## 2. Equal recognition before the law

The new Civil Code<sup>1</sup>—under the categories of full and partial restriction of the legal capacity of a person with “diminished mental capacity”—maintains the possibility of placing people with intellectual and psycho-social disabilities under plenary or partial guardianship, which is contrary to Article 12 of the CRPD. People placed under guardianship are denied the right to make legally valid decisions on an equal basis with others, thus they are discriminatorily deprived of their rights solely on the grounds of mental disability. People with disabilities whose legal capacity is fully restricted are deprived of the rights to marry,<sup>2</sup> make a will,<sup>3</sup> adopt children,<sup>4</sup> give and withdraw

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<sup>1</sup> Act V of 2013.

<sup>2</sup> Section 4:10(1) of the Act V of 2013 on the Civil Code.

<sup>3</sup> Section 7:11 and Section 2:22(1) of the Act V of 2013 on the Civil Code.

<sup>4</sup> Section 4:121(1) of the Act V of 2013 on the Civil Code.

informed consent for medical treatment,<sup>5</sup> access justice,<sup>6</sup> and choose a place of residence.<sup>7</sup> Since the beginning of the 1990s, the number of persons under guardianship has been increasing continuously; according to the most recent statistical data, by the end of 2014, there were 55,928 people under guardianship in Hungary, of which more than 30,000 were under plenary guardianship. This is one of the highest rates of guardianship per capita in Europe (596 per 100,000).<sup>8</sup>

The new Civil Code introduced supported decision-making, however, the availability of this service is limited to people who “due to a minor decrease in their mental capacity need help in dealing with some of their affairs and in making decisions”. This limitation violates Article 12 of the CRPD and goes against the prohibition of discrimination on the ground of disability. It is also problematic that in many ways this measure – similar to guardianship – also functions under the auspices of the guardianship authority. The result is that the guardianship authority appoints supporters, whose number is unreasonably limited to 2 people per person supported. A professional supporter is also allowed to provide assistance to 30 or, in certain cases, up to 45 people simultaneously.<sup>9</sup> This deprives the system of one of its core elements, the trust and personal relationship between the supporter and the supported person. In qualitative terms, the new system strongly resembles the pre-existing guardianship system. By maintaining substituted decision-making, Hungary’s guardianship system constitutes a serious and systemic violation of the rights of people with disabilities under Article 12 of the CRPD alone and in conjunction with Articles 5, 19 and 29.

Recommendations:

- *Amend the relevant sections of the Civil Code in accordance with the CRPD by abolishing plenary and partial guardianship immediately.*
- *Make supported decision-making a real alternative to substituted decision-making by providing legal recognition where it exists, including informal support arrangements, promoting it and making it available for all people with mental disabilities.*

### 3. Right to live independently and in the community

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<sup>5</sup> Section 15(2) of the Act CLIV of 1997 on Health. Section 16 (2) and Section 21 of the Act CLIV of 1997 on Health.

<sup>6</sup> Section 49(1)-(2) of the Act III of 1952 on the Code of Civil Procedure; Section 15 (7) of the Act CXL of 2004 on the General Rules of Administrative Proceedings and Services.

<sup>7</sup> Section 2:22(1) (3) of the Act V of 2013 on the Civil Code.

<sup>8</sup> Mental Disability Advocacy Centre, *Legal capacity in Europe: A call to action to governments and to the EU* (Budapest: MDAC, 2013), p. 22, available at [http://mdac.info/sites/mdac.info/files/legal\\_capacity\\_in\\_europe.pdf](http://mdac.info/sites/mdac.info/files/legal_capacity_in_europe.pdf) [accessed 21 September 2015].

<sup>9</sup> Section 7(5)-(6) of the Act CLV of 2013 on supported decision-making

According to the latest data of the Hungarian Central Statistical Office, around 25,000 people with disabilities are deprived of their right to live in the community by being placed in large long-term residential institutions. There is an intimate link between guardianship and institutionalisation. People under guardianship do not have the right to choose their place of residence. Guardianship is therefore used as a means to deny people with intellectual and psycho-social disabilities the choice of where and with whom they live, and to facilitate their placement in institutions where they are isolated from the society. According to recent findings of monitoring visits of the Ombudsman as OPCAT NPM, residents in such institutions are frequently subjected to forms of torture, ill-treatment and abuse.<sup>10</sup>

The Hungarian Government committed itself to the deinstitutionalisation of large residential social care institutions in 1998 and in 2011 the Government adopted its deinstitutionalisation strategy with a 30-year implementation period from 2011 to 2041. Hungary's deinstitutionalisation strategy has been financially supported by European Union Structural and Investment Funds. Through the deinstitutionalisation tender issued in 2012, 6 billion HUF (approximately 30 million EUR) was allocated for moving people with mental disabilities out of large institutions to smaller living centers, group homes or apartments. However, service user's involvement in the transformation process was insufficient. In addition, the alternative living arrangements offered provide congregate care and still reflect the institutional model, thus continuing the segregation of people with disabilities from society. Further, contrary to the CRPD, 214 million HUF from the European Union Structural and Investment Funds (approximately 750,000 EUR) have been spent on refurbishing existing institutions since 2008.

#### Recommendations:

- *Substantially reduce the 30-year time-period of the deinstitutionalisation strategy. Take immediate steps to close down large scale residential institutions within a reasonable time-period.*
- *Immediately stop spending funds on refurbishing existing institutions and building new, smaller institutions in which residents continue to be segregated and deprived of their right to live in the community.*
- *Reallocate existing financing to support independent living in the community for persons with disabilities, including through increasing the accessibility and availability of general public services, and developing individualised services in compliance with Article 19 CRPD.*

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<sup>10</sup> See Summary of Case report AJB-371/2015 on OPCAT Visit to the Therapeutic House of Debrecen (28 January 2015) available at <http://www.ajbh.hu/en/web/ajbh-en/opcat-reports>, and Case report on OPCAT Visit to the Closed Ward of the Centre for Psychiatry and Addictology of the Gusztáv Merényi Hospital available in Hungarian at <http://www.ajbh.hu/opcat-jelentesek> [both last accessed on 4 August 2015].

#### 4. Right to vote

Although the Committee on the Rights of Persons with Disabilities has already found that Hungary's restrictions on voting rights for persons whose legal capacity is restricted violates Article 12 and 29 of the CRPD, the law still allows such restrictions when a person is deprived of their legal capacity. According to the Fundamental Law of Hungary, the civil courts are required to assess the capacity to vote of those under guardianship.<sup>11</sup>

Recommendations:

- *Amend Article 70(5) of Hungary's Constitution, on the deprivation of the right to vote of persons under guardianship to ensure the right to vote for such persons. Incorporate the requirement of complex accessibility into the law on electoral procedure, ensuring that electoral procedures become barrier-free and accessible to persons with disabilities.*
- *Ensure that people with mental disabilities can enjoy their right to participation in political and public life on an equal basis with others by abolishing judicial authority to restrict the right to vote of those under guardianship and by ensuring access to voting procedures, facilities and materials.*

#### 5. Capacity-building of health care and social care professionals

- *Provide disability rights training for health care and social care professionals, with special regard to the rights of women and children with disabilities.*

#### 6. Right of children with mental disabilities to live in a family environment

Disability is one of the most common drivers of institutionalisation of children in Hungary. Due to the lack of appropriate community-based services, even those children with disabilities, who—with appropriate support provided to their family—could live with their own parents in the community are often placed in special or specific child care homes.

Children with disabilities entering the child protection system have even less chance to be placed in a family environment because of the discriminatory nature of the law and the lack of appropriate family care services. Since 2014, the Child Protection Act prohibits the placement of children below the age of 12 in care institutions. This provision, however, does not apply to children with mental disabilities, children with long-term illness and multiple siblings. The number of special foster parents who are trained to care for children with psycho-social disabilities and children using psychoactive drugs, and those who are trained to care for children with disabilities and children under the age of 3 are very low, due to the lack of appropriate and regular training. Therefore, children with intellectual and psycho-social

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<sup>11</sup> Section 24(2) of the Closing and Miscellaneous Provisions of the Fundamental Law of Hungary

disabilities who are abandoned or who have been taken out from their family continue to be automatically institutionalised, which goes against both the CRPD and the CRC.

#### Recommendations:

- *Introduce a moratorium on the placement of children with mental disabilities in residential social care institutions.*
- *Ensure that children with mental disabilities enjoy their right to live in a family and community environment on an equal basis with other children by providing appropriate community-based support to them and their families.*
- *Amend section 7(2) of the Child Protection Act that allows for the placement of children with severe and multiple disabilities under the age of 12 in institutions when being taken into care provided by the child protection system. Broaden the network of special and specific foster parents with whom children with psycho-social and intellectual disabilities can be placed when being taken into child protection care, by ensuring appropriate and regular training for foster parents.*

## 7. Inclusive education

Inclusive education is practically non-existent for children with disabilities in Hungary: even the very few mainstream schools which are ready to educate children with mental disabilities operate a system of integration as distinguished from full inclusion. Segregated education is still the most common practice of education of children with disabilities in Hungary, which not only isolates them from their peers, but also deprives them of a quality education, drastically limiting their future chances. Children with disabilities are frequently placed in segregated educational facilities following a diagnostic assessment of their cognitive capacities – an approach which is at odds with Article 24 of the CRPD.

#### Recommendations:

- *Ensure the enactment in national legislation of an enforceable statutory duty to desegregate education and a right to inclusive education, in particular by adopting a “no rejection” policy on school admissions, and creating a legal right to access reasonable accommodations.*
- *Take steps to require public authorities to eliminate segregated education within a fixed period of time. Draft a strategy for the introduction and implementation of inclusive education and provide adequate financial assistance for it.*
- *Provide appropriate training for teachers so that they become able to include children with special educational needs in mainstream classes and ensure that all children with special educational needs that have been included in a mainstream class are provided with appropriate individualised assistance.*
- *Abolish diagnostic assessments for children with disabilities that have the purpose of placing them in special schools, special classes or other segregated educational facilities. Instead, develop a human rights-based approach to individual educational planning that*



*identifies the specific supports that each child with a disability may require to enjoy their right to a quality and inclusive education.*