

I. FOLLOW-UP INFORMATION ON THE IMPLEMENTATION OF RECOMMENDATIONS MADE AT PREVIOUS CYCLES OF THE UPR CONCERNING PEOPLE WITH DISABILITIES

1. This submission contains follow-up information on the implementation of recommendations set out in Reports of the Working Group on Hungary [A/HRC/18/17 and A/HRC/33/9]. For a list of repeated and specific recommendations, see the table presented in the endnote.ⁱ In this submission the assessment of and comments on the implementation of recommendations are thematically clustered as follows:
 - (a) Women with disabilities and their healthcare-related decision-making;
 - (b) Education for children with disabilities;
 - (c) The right to vote of persons with disabilities;
 - (d) Discrimination against persons with disabilities;
 - (e) Independent living for persons with disabilities.

Contributions to the above topics are based on repeated recommendations.

(a) Women with disabilities and their healthcare-related decision-making

2. In certain cases, women with disabilities can be subjected to forced sterilisation. The Health Act makes it possible to force women under full guardianship to undergo involuntary sterilisation based on a final decision of the Budapest Municipal Court.ⁱⁱ The court authorises such interventions where it finds that other methods of contraception are not possible or these are contraindicated for health reasons. The intervention of surgical sterilisation must not go against the will of the incapacitated person. However, (a) the law does not specify how the will and preferences of persons deprived of their legal capacity are to be taken into account in the procedure; (b) specifies that where a possible pregnancy would directly endanger the life, physical integrity and health of a person deprived of their legal capacity, the informed consent of the person concerned is not needed. Forcing somebody to undergo surgical sterilisation without free and informed consent constitutes a serious and irreversible interference with the right to physical integrity and is a serious violation of the reproductive rights of women with disabilities.
3. Involuntary contraception of women with disabilities is a widespread practice in institutions. Institutions for persons with disabilities “cannot handle pregnancy” and there are no/very few babies born inside such facilities.ⁱⁱⁱ Recently, reports of the Hungarian National Preventive Mechanism have revealed that women in institutions are forced to take contraceptives either against their will or even without their knowledge. It is common practice that institutional placement requires women formally or informally to take contraception as a condition of admission.^{iv}
4. Since recommendations made at the previous cycles of the UPR concerning the above topic have not been implemented, the authors suggest the following recommendations:

- **Revise the Health Act to ensure effective protection of women with disabilities against forced or non-consensual sterilisation;**
- **Amend all necessary legislation to ensure that women with disabilities are protected against forced contraception;**
- **Immediately prevent the practices of forced and non-consensual contraception of women with disabilities in institutional settings, including group homes.**

(b) Education for children with disabilities

5. The majority of children with high support needs (pupils with severe and multiple disabilities) are excluded from school education. As there is a lack of support for inclusion of children with disabilities in mainstream education, they are either home-schooled or provided education in institutions. Consequently, children requiring high levels of support face systematic segregation and disability-based discrimination in the field of education.
6. Empirical evidence shows that only one third of children with high support needs go to special schools, and the rest are educated outside public educational establishments.^v According to the National Public Education Act, children with high support needs must receive a minimum of 20 hours education per week.^{vi} However, research shows that in reality, two thirds of children with high support needs receive less than 20 hours of weekly education. Home-schooled children receive 6.6 hours per week on average, while children living in social care homes receive 7.62 hours per week.^{vii} Notwithstanding this, there is a lack of central strategic planning on how to enhance access to inclusive education in mainstream schools for all children with high support needs.^{viii}
7. Another systemic problem is the lack of support available throughout the school day for children with autism in mainstream schools. Children with autism who do not have intellectual disability are often excluded from mainstream schools because of the lack of inclusive support. Consequently, in practice, they are either forced to be home-schooled against their parents' will or sent to special schools.
8. The state interprets 'reasonable accommodation' in education in a narrow manner. Hence, legislation does not provide mainstream schools sufficient numbers of subsidised 'shadow teachers' to meet local children's special educational needs within inclusive settings. The state only subsidises one pedagogical assistant per 250 primary school pupils.^{ix} Furthermore, mainstream schools lack financial means to provide reasonable accommodation for children with autism throughout the school day (in class and during breaks).
9. Since recommendations made at previous cycles of the UPR concerning the above topic have not been implemented, the authors suggest the following recommendations:

- **Amend the National Public Education Act to ensure inclusive education for all children with disabilities including children requiring high levels of support;**
- **Create inclusive capacities within the mainstream education system for all children with disabilities including children requiring high levels of support.**
- **Amend all relevant legislation so that mainstream schools have the financial means to provide reasonable accommodations, including through the provision of sufficient and qualified 'shadow teachers', for children with special educational needs, including children with autism.**

(c) The right to vote of persons with disabilities

10. The Fundamental Law, the Civil Code and the Act on Electoral Procedure permit a judge to remove the right to vote from those with 'limited mental ability' allowing for the right to vote of persons with intellectual or psychosocial disabilities to be restricted if the person concerned has been deprived of their legal capacity. Challenging the Hungarian legislation, the UNCRPD Committee found in the case of *Bujdosó and others v. Hungary* that restriction of the right to vote pursuant to an individualised assessment constitutes discrimination on the basis of disability.^x
11. However, no effective measures have been taken to harmonise the Hungarian legal order with the UNCRPD. Furthermore, the Act on Electoral Procedure does not say explicitly that persons with all forms of impairment may use the assistance in voting by a person of their own choice.^{xi}

12. Since recommendations made at the previous cycles of the UPR concerning the above topic have not been implemented, the authors suggest the following recommendations:

- Amend the Fundamental Law and all related provisions to recognise the right to vote and the right to stand for election of all persons with disabilities without any individualised judicial evaluation of a person’s ability or capacity to vote, while recognising that all persons with disabilities may wish to use assistance in voting by a person of their own choice.

(d) Discrimination against persons with disabilities

13. The guardianship system gives rise to grave and systemic discrimination against persons with disabilities.^{xiii} In its recent inquiry report under the Optional Protocol to the UNCRPD concerning Hungary, the UNCRPD Committee stated that “[p]ersons with intellectual or psychosocial disabilities are subjected to direct discrimination by law, which allows for their placement under guardianship, on the basis of actual or perceived diminished ‘mental capacity.’”^{xiii}
14. The Government has not taken effective steps either to abolish substituted decision-making or to replace the guardianship system with supported decision-making that is in line with the UNCRPD and the UNCRPD Committee’s General Comment No. 1 on equal recognition before the law. Both ‘guardianship fully restricting legal capacity’ and ‘guardianship partially restricting legal capacity’ are based on substituted decision-making. The Civil Code states as a general rule that in order for the juridical acts of a person having partially restricted legal capacity to be valid in the categories of affairs specified by a court of law, the consent of their guardian shall be required.^{xiv} Thus, the guardian has a veto right. When it comes to ‘guardianship fully restricting legal capacity’, juridical acts made by an adult having fully restricted legal capacity are deemed null and void and their guardian is empowered to act on their behalf.^{xv}
15. The Act on Supported Decision-Making and the Civil Code make supported decision-making without restricting legal capacity available only for people who, due to a *minor* decrease in their ‘mental capacity’, need help in making decisions.^{xvi} The guardianship authority is mandated to implement supported decision-making which makes it institutionally dependent on the guardianship system (eg. professional guardians can be appointed as professional supporters), which is highly problematic since supported decision-making requires an enabling attitude towards persons with disabilities, while the guardianship system is based on a paternalistic approach and on substituted decision-making. Legislation allows ‘professional supporters employed in government service’ to provide supported decision-making for up to 45 persons simultaneously.^{xvii}
16. According to figures of the Central Statistical Office, the number of persons under ‘guardianship partially restricting legal capacity’ is consistently increasing and the number of persons under ‘guardianship fully restricting legal capacity is fluctuating (29,082 persons with disabilities were placed under guardianship fully restricting legal capacity in 2017, see chart in endnote).^{xviii} In contrast, only 167 persons were provided supported decision-making in 2017. Access to support which protects the rights of persons with disabilities is close to being illusory.
17. Another issue of concern is that persons with high support needs (persons with severe or multiple disabilities) often do not receive even basic medical treatment because (1) doctors and health care professionals are not able to communicate with them and thus unable to treat them properly, and/or (2) persons concerned supposed to travel hours to get any medical treatment. For example, only a few dentists undertake dental treatment of persons with autism in the country because persons with autism are considered to be problematic and, in many cases, dentists’ opinion is that their treatment is only possible with anesthesia. These circumstances lead to disability-based discrimination and result in the violation of Article 25 (c) of the UNCRPD. Furthermore, the Commissioner for Fundamental Rights has pointed out in his report No. AJB 672/2011 that the fundamental rights of those persons with mental disabilities who were considered severely violent

showing aggressive and/or auto aggressive behaviour were violated because they did not receive appropriate medical treatment which led to disability-based discrimination.

18. Since recommendations made at the previous cycles of the UPR concerning the above topic have not been implemented, the authors suggest the following recommendations:

- **Repeal sections 2:21 (Full restriction of legal capacity) and 2:22 (Juridical acts of adults having no legal capacity) of Act V of 2013 on the Civil Code and all related provisions of the same Act and other legislative measures as a matter of urgency;**
- **Take immediate steps to replace ‘guardianship partially restricting legal capacity’ with supported decision-making that is in line with the UNCRPD. In particular, ensure that amendments are brought to the system of supported decision-making to ensure that support is only offered on the basis of the choice of the person concerned, and gives effect to their will and preferences while preventing abuse; and that the system of support is institutionally independent.**
- **Take immediate actions to ensure the accessibility of appropriate health care for persons with disabilities as close as possible to their place of living, including in rural areas.**
- **Take immediate actions to provide proper and voluntary services to those persons with mental disabilities who are considered violent with respect to their right to health and human dignity.**

(e) Independent living for persons with disabilities

19. Under the previous review process, the Hungarian delegation claimed that “Hungary had a new principle on persons with disabilities providing protection for their independent living. The delegation recalled the amendment of the Civil Code, which reinforced the rights of persons with disabilities. The Convention on the Rights of Persons with Disabilities would be implemented with the best possible effort.”^{xxix} However, in practical terms, there have been few achievements in advancing the rights of persons with disabilities, including the right to independent living, in the country, as was found by the UNCRPD Committee upon adopting its report following an inquiry conducted under the Optional Protocol to the CRPD.^{xx}
20. Hungarian legislation does not protect the right to independent living for persons with disabilities. On the contrary, the Social Act explicitly allows for the admission of both children and adults with disabilities into social care institutions.^{xxi} There are several so-called care homes for persons with disabilities across Hungary that house 150-200 or even more residents. The biggest institution is a residential psychiatric care home in Szentgotthárd with a capacity for 734 persons.
21. The deinstitutionalisation strategy for 2019–2036 does not contain any moratorium on new admissions to social care institutions.^{xxii} While so-called “supported housing” facilities for 12 persons are being built all across the countryside to move persons with disabilities from care homes over 50 capacities to smaller housing arrangements (trans-institutionalisation), the Government does not prevent the institutionalisation of new residents into care home settings. In parallel with trans-institutionalisation, European Union Structural Funds are being spent on renovating large-scale rehabilitation homes and institutions for children, including children with disabilities.^{xxiii}
22. According to the Child Protection Act, children have the right to grow up with a family as a general rule. But children below the age of 12 who have severe disabilities are excluded from the general rule which prioritises the placement of children requiring alternative care with foster families instead of institutions.^{xxiv} This means that children with disabilities are disproportionately affected by institutionalisation and this results in discrimination on the basis of disability.
23. Persons with disabilities, either living in institutions or with their families, are prevented from being able to choose their place of residence on an equal basis with others. Community-based

services are neither available nor accessible for persons with disabilities. Reasonable accommodations do not exist at the community level to ensure inclusion; indeed, the legal concept is restricted to the field of employment alone.^{xxv} For example, persons with physical disabilities can improve the accessibility of their own homes only with a small amount of state support every ten years. However, each year less than 1% of those concerned avail themselves of the opportunity to use state support for accessibility-related alterations.^{xxvi}

24. Access to housing services in the community is difficult. Local governments do not mainstream disability specific aspects into their housing policies, and they do not keep records concerning the accessibility of social housing.^{xxvii} Lack of information on social housing is particularly concerning as people with disabilities often cannot afford buying or renting apartments as they are usually employed part-time resulting in lower incomes, often below the minimum wage. Consequently, many people with disabilities carry on living with their families because they cannot move out and start their independent life due to lack of accessible and affordable housing options.^{xxviii} People with disabilities are invisible in local housing policies and there is no strategy to address the housing challenges of people with disabilities who live with their families.^{xxix}
25. Access to basic social services which are essential to independent living is also problematic. Support services combine personal assistance and assistance in transport but only 10% of those who are entitled to support service have actually access to these services.^{xxx} Despite the long needed reform of support services there is still no plan for an accessible, available and affordable personal assistance service which is designed to be managed by persons with disabilities.
26. Public transportation is not always accessible and support services lack capacity to provide special transport services for persons with physical disabilities. Hence, the free movement of wheelchair users is limited. It is particularly concerning that the free movement of wheelchair users in the countryside is even more limited compared to those living in larger cities due to the lack of access-free transportation services.
27. The Living Independently in the Community advocacy group conducted a survey in 2019 on the needs of people with physical disabilities living in non-institutional settings concerning support services with a special focus on personal assistance. The results showed that support services are available only for 22% of the people concerned. Consequently, the majority of people with disabilities have to rely on informal assistance by family members, friends or volunteers. The responses also indicated that the current availability of support services (from 8am to 4pm on weekdays only) does not cover the needs of persons with disabilities for independent living.
28. According to the results, the most frequent reasons for the inaccessibility of personal assistance are the following:
 - lack of capacity of support services (9.3%);
 - persons with disabilities cannot afford the service (22%); and
 - lack of information (13.6%).
29. Since recommendations made at the previous cycles of the UPR concerning the above topic have not been implemented, the authors suggest the following recommendations:

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| <ul style="list-style-type: none">- Repeal Section 7(2) a) of Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship and offer children with disabilities requiring alternative care placement with foster families- Improve the availability, accessibility, affordability and sufficiency of proper social care, health care, educational and other services close to families.- Immediately impose a moratorium on new admissions to and any support for institutional settings for persons with disabilities, including supported housing, and implement deinstitutionalisation strategies in line with the UNCRPD, the UNCRPD Committee's general comment No. 5 (2017) on living independently and being included in the community by introducing, and the UNCRPD Committee's Inquiry Report on |
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Hungary, and a personal assistance service.

- **Keep records of accessibility-related developments in municipal rental housing stock and make them publicly available and available to persons with disabilities. Give priority to people with reduced mobility in existing rental housing tenders for accessible housing.**
- **Improve the accessibility of public transportation systems through buying wheelchair-accessible vehicles only and making stations barrier-free.**
- **Provide incentives for local stakeholders so that a wide range of service providers (local authorities, civil society organisations) take part in expanding community-based services, including personal assistance, in order for persons with disabilities to live independently in their communities.**
- **Introduce a personal budget system based on the needs of persons with disabilities so that persons with disabilities themselves can decide what community-based services they use.**

Endnotes

ⁱ Recommendations of the previous Reports of the Working Group on Hungary [A/HRC/18/17 and A/HRC/33/9] is attached as an Annex.

ⁱⁱ Section 187/B of Act CLIV of 1997 on Health.

ⁱⁱⁱ National Preventive Mechanism Report No. AJB-518/2020 on the visit to the Platán Integrated Social Care Centre of Bács-Kiskun County (2020), p. 1. [English summary available.](#)

^{iv} National Preventive Mechanism Report No. AJB-518/2020 on the visit to the Platán Integrated Social Care Centre of Bács-Kiskun County (2020), p. 1. [English summary available.](#)

^v Eszter Márkus, PR6: Elemző tanulmány a súlyos és halmozottan sérült gyermekek, tanulók ellátása jellemzőiről és javaslatok megfogalmazása az ágazati irányítási, jogszabályi és a fejlesztési környezet számára, MENTOR Informatika Kft. és ERUDITIO Oktatási Szolgáltató Zrt, Budapest, 2015.

^{vi} Section 15. § (3) of Act CXC of 2011 on National Public Education.

^{vii} See endnote v.

^{viii} The Ministry of Human Capacities failed to respond to HCLU's freedom of information request on how many new school places would be created within infrastructural development projects for the education of children with high support needs (registration number of response letter: 61390-1/2018/PERFO, 18 December 2018).

^{ix} Annex 4 of 326/2013. (VIII. 30.) Governmental Decree.

^x The UNCPRD Committee found that “an exclusion of the right to vote on the basis of a perceived, or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the Convention.” The Committee went on and concluded “that article XXIII, paragraph 6 of the Fundamental Law, which allows courts to deprive persons with intellectual disability of their right to vote and to be elected, is in breach of article 29 of the Convention.” The Committee added that: “Having found the assessment of individuals’ capacity to be discriminatory in nature, the Committee holds that this measure cannot be purported to be legitimate. Nor is it proportional to the objective to preserve the integrity of the State party’s political system.” See: CRPD/C/10/D/4/2011.

^{xi} According to Section 181 paragraph (1) of Act XXXVI of 2013 on Electoral Procedure, “Voters who cannot read or are prevented from voting by a physical impairment or any other cause may use the assistance of a person of their choice – or, for lack of such assistants, the joint assistance of two members of the polling station commission.” See: Section 181 paragraph (1) of Act XXXVI of 2013 on Electoral Procedure. [English translation available.](#)

^{xii} The UNCPRD Committee found that the system of guardianship constitutes grave and systemic violations of the rights under the UNCPRD as it profoundly affects the lives of a substantial number of persons with disabilities and it is “widespread and habitual, resulting from deliberate patterns of structural discrimination entrenched in legislation, policies, plans and practices, including resource allocation.” see: UNCPRD Committee: Inquiry concerning Hungary under article 6 of the Optional Protocol to the Convention. Report of the Committee. CRPD/C/HUN/IR/1. 17 September 2020: par. 108.

^{xiii} Ibid par. 75.

^{xiv} Section 2:20 (1) of Act V of 2013 on the Civil Code.

^{xv} Section 2:22 (1) of Act V of 2013 on the Civil Code.

^{xvi} Section 7(6) of Act CLV of 2013 on Supported decision-making and Section 1.3. and Section 2:38 (1) of Act V of 2013 on the Civil Code.

^{xvii} Section 7(6) of Act CLV of 2013 on Supported decision-making.

^{xviii} Persons under guardianship in Hungary (2012-2019):

Year	Persons under guardianship	Persons under guardianship fully restricting legal capacity	Persons under guardianship partially restricting legal capacity
2012	55 230	31 781	23 449
2013	56 151	31 670	24 481
2014	56 245	30 793	25 452
2015	56 515	30 023	26 492
2016	57 039	28 669	28 370
2017	57 983	29 082	28 901
2018	58 242		
2019	58 153		

Source: [Central Statistical Office](#). 2012 was the year of Hungary's first review by the CRPD Committee.

^{xix} Report of the Working Group on the Universal Periodic Review concerning Hungary (A/HRC/33/9) par. 108.

^{xx} UNCRPD Committee: Inquiry concerning Hungary under article 6 of the Optional Protocol to the Convention. Report of the Committee. CRPD/C/HUN/IR/1. 17 September 2020.

^{xxi} Sections 69-71 of Act III of 1993 on social administration and social benefits.

^{xxii} Government Decree 1295/2019. (V. 27.)

^{xxiii} EU tender call no. EFOP 2.1.1-16 supports refurbishment of institutions for children, including children with disabilities. These institutions can provide housing for up to 48 children; Call no. EFOP-2.2.3-16 provide sources to refurbishment or modernisation of large residential institutions providing 'rehabilitation' for people with disabilities, psychosocial disabilities, people with addictions and homeless people.

^{xxiv} Section 7(2) a) of Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship.

^{xxv} T. Mladenov and G. Petri (2019) Critique of deinstitutionalisation in postsocialist Central and Eastern Europe, Disability & Society; Nagy, Z. E., Z. Kondor, B. Panyik, A. Riz, and I. Sziklai (2017) Supported Living Services. Experiences of supported living services created during the first phase of deinstitutionalisation. Budapest, FSZK.

^{xxvi} On average, the amount awarded per application was 196,590 HUF (approx. 535 euros). Habitat for Humanity Magyarország, Annual report on housing poverty. 2020, p. 62. Available [here](#) in Hungarian.

^{xxvii} Habitat for Humanity Magyarország, Annual report on housing poverty. 2020.

^{xxviii} Participatory action research conducted by the Living Independently in the Community advocacy group in 2018. Available [here](#) in Hungarian.

^{xxix} Paragraph 7.2 of the Action Plan for the Implementation of the National Disability Strategy until 2022 only stipulates that "as part of support for people with disabilities to *stay in their families*, [emphasis added] programs should be launched for the accessibility of housing and the creation of barrier-free living environment." See: Government Decree 1187/2020. (IV. 28.).

^{xxx} According to the 2011 Central Statistical Office population census, there are 490,578 people with disabilities in Hungary. There are about 144,000 people with severe disabilities who are entitled to support services by the law. But only 13,306 persons – less than 10% of those eligible – had access to support services (Central Statistical Office, 2018).