DISABILITY RIGHTS or DISABLING RIGHTS?

CRPD ALTERNATIVE REPORT

PREPARED BY THE HUNGARIAN DISABILITY CAUCUS

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About this report

The Hungarian Disability Caucus which is a non hierarchical collaborative network of Disabled Peoples Organizations and their allies has been working on the parallel civil society report in order to submit the same within the time period specified by article 35 of the CRPD.

The Caucus has been undertaking this exercise through an open consensus process. The Caucus has been following this process as an exercise of deliberative democracy and with the belief that the right of civil society participation requires informed, responsible and responsive deliberation on behalf of civil society members.

An alternative report is a tool for multi-layered advocacy. Writing a parallel report is not a goal in itself; it enables civil society to take stock of the actual situation; enables evidence based legislative and policy planning.

These complexities nevertheless require a number of activity components without which the report writing exercise remains an ineffective formalistic enterprise.

This report was compiled by the Hungarian Disability Caucus members.

Budapest, June 2010

Foreword

It borders on hypocrisy to cite *equal opportunities* in a country where there is no substantial dialogue between the state and civil society, where it is possible to consider the creation of opportunities but the legally binding means of enforcement are reserved to the state.

The ratification in 2007 of the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol was a decisive moment for Hungarian NGOs concerned with disability issues. Equally decisive is this moment, when the related shadow report is presented.

This is because with the Convention, civil society became empowered, receiving a frame of reference for those essential human rights without which a developing, democratic country is inconceivable in the 21st century. Albeit unwittingly, with the ratification the government gave credit to those NGOs/the part of the civil society that, when having access to the appropriate legal documents, can and will take part in the improvement of the citizens' living conditions, and participate in the legislative procedure (as exemplified by the codification of the act on Hungarian sign language).

Among other things, the writing of the shadow report enabled the Hungarian DPOs to develop their observations in close cooperation, and what with their combined membership numbering tens of thousands, it is safe to say they represented almost all persons with disabilities when creating their critique.

The NGOs' ultimate goal was to establish a permanent dialogue with the government, to demonstrate their professionalism in a field where they have the most direct competence.

I am convinced that the Hungarian DOPs have measured up to the task of actively participating in such decision making that concerns the citizens, something this shadow report will bear witness to. It also needs to be emphasized that social development can only be a reality in a country when professionals and politicians are ready to engage in public discussions, keep seeking opportunities for cooperation, and above all, acknowledge that decisions made without the parties' willingness to compromise may have serious and irreversible consequences.

In Hungary it is already possible to say *equal opportunities* without it sounding like a lexicon entry, or the slogan of a process that was initiated from above. In theory, the commitment to realize equal opportunities does exist, yet its practical manifestations are sporadic. There is still a lot to do, and this shadow report may become a new encouragement to continue the work that matters together.

Probably the best indicator of democracy is the extent to which the knowledge, power and resources of the civil society are reckoned with the extent to which the state reckons with the knowledge etc. This shadow report proves that Hungary travels in the right direction, because the DPOs were able to join forces and show that without their opinion it is impossible to fully understand the implementation of the UN Convention on the Rights of Persons with Disabilities in Hungary. May the Committee on the Rights of Persons with Disabilities, when studying the shadow report, feel the authenticity and power of this same union.

Dr. Ádám Kósa

President of the Hungarian Association of the Deaf and Hard of Hearing
Chair of the Disability Intergroup of the European Parliament

Organisations that took part in the preparation of the parallel report

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The Hungarian Autistic Society (AOSZ), established in 1988, is the only umbrella body in the field of autism in Hungary, with 53 affiliated organisations and over 1,300 individual members. Our legal aid service launches dozens of cases every year involving the infringement of the rights of autistic people. Throughout the monitoring of the CRPD implementation process, we are able to rely on those legal cases and the nearly 1,000 complaints received every year, made by persons living with autism and their families. AOSZ has been very active in the work of the Disability Caucus. Raising awareness among its members, AOSZ regularly distributes information on the rights of persons with disabilities as guaranteed by the CRPD, and promotes the implementation of the Convention with the participation of researchers, lawyers and civil advocates. As only less than one third of the persons living with autism have been diagnosed in Hungary, the realization of the Convention is of extreme importance for persons living with autism.

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The Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights, states that anybody may apply to the Ombudsman, if they have suffered injury as a result of the action of any authority or body performing a public service, or a decision taken in the course of action, or omission by an authority that has resulted in the infringement of their fundamental rights, or if a risk exists.

The Commissioner, Dr. Máté Szabó, launched a new working method and a way of thinking after his appointment in September 2007. He determines every year what topics are especially important for the society and for the enforcement of the rule of law and which have a particular significance from the point of rights and freedoms. In 2009 the Ombudsman had a special project dealing with the rights of persons with disabilities. In the frame of this project he published reports inter alia on the persons with disabilities' right to vote and their access to public transportation, the autistic persons' right to education etc. Although this project is finished, the Commissioner continues to work with and for people with disabilities, and takes part in the work of the Caucus. The Ombudsman's disability related reports are public and he also assists in the dissemination of the parallel report for the CRPD.

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Our goal is to provide support for children and adults living with intellectual and multiple disabilities to live a full, joyful life, with the greatest possible autonomy.

The Society opened a new centre in April 2008, which provides programs to prepare persons with disabilities for living independently, it offers assistance and counselling for parents along with organising community events. Professionals of

Csupaszívek Society provide counselling and administration in the field of medical, psychiatric, psychological, developmental, education, speech therapy and sexual problems.

Hungarian Association for Persons with Intellectual Disability (ÉFOÉSZ)

ÉFOÉSZ was established 30 years ago as an umbrella body for organisations concerned with the care and rehabilitation of people with intellectual disability in Hungary. Currently our organisation represents 50 member associations, 26 local branches and 22,000 individual members all over the country and we run 9 community based settings. One of the main goals of ÉFOÉSZ is to represent the interests of the people living with intellectual disability and their families at the national level and also in international organizations such as EDF, Inclusion Europe, and Inclusion International.

On the other hand, our objective is to support persons with intellectual disability in the field of equal rights and equal opportunities to be able to live independently, while actively participating in social life as visible citizens.

Most recently, ÉFOÉSZ has participated in the revision of the *Civil Code of Hungary*, focusing on supported decision-making for persons with disabilities. Among other issues, we plan to contribute to the CRPD parallel report in the field of legal capacity and equal recognition before the law.

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National Council of Disabled Persons' Organisations (FESZT)

FESZT is a cross-disability umbrella body and its members are the different national organizations of the persons with disabilities. FESZT started its work almost 20 years ago and its member organizations work for about 600,000 persons with disabilities. FESZT coordinates the advocacy and protection activity of its member organisations; it organizes common actions, programs and events for the improvement of the social inclusion of persons with disabilities. It also represents its members in the European and international organisations of persons with disabilities. FESZT is a full member of the National Disability Council which is the consultative body of the government.

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Voice of Soul Association (Lélek-Hang Egyesület)

The association is one of the biggest self-advocacy organisations of persons living with psychiatric diagnosis (primarily schizophrenia and depression). It is a fully user-run and user-controlled NGO that aims at equal opportunities for people who are or have been at the receiving end of mental health services. The empowerment of former and present „mental patients" is among its priorities. Voice of Soul is fighting for alternatives to conventional services that are based on the medical model. Autonomy and self-determination of people who have experienced emotional/spiritual/mental distress are basic values in Voice of Soul. We act as a catalyst in Hungary to help new user controlled groups. We are also active in the field of direct representation of recipients of mental health services at a national level.

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The Mental Disability Advocacy Centre (MDAC) advances human rights of children and adults with real or perceived intellectual or mental health disabilities. MDAC uses a combination of strategic litigation, legislation, policy advocacy and monitoring of human rights to promote equality and social integration. MDAC takes a proactive approach to advancing the rights of people with intellectual or mental health disabilities. Stigma and discrimination often leads to people with disabilities being isolated from their communities and exposed to human rights abuses. MDAC focuses on three clusters of human rights issues that are in most urgent need of change: autonomy and legal capacity, institutions and the community, and ill treatment and deaths. MDAC has been involved in several alternative reporting for various UN treaty bodies. In the preparation process of the CRPD parallel report, MDAC provide legal technical assistance, especially on the issue of equal recognition before the law (Article 12).

National Federation of Disabled Persons' Associations (MEOSZ)

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MEOSZ was established by people with physical disability in 1981 and it is still controlled by them. It is one of the largest and most powerful NGOs in our country, built up and working democratically. Within the 110 member associations 850 local groups are working throughout the country. The total number of individual members amounts to 190,000.

The goal of MEOSZ is to achieve equal opportunities and full participation in the society for all persons with physical disability living in Hungary by representing, protecting and promoting their interests and advocating for their rights. As a member of the National Council of Disabled Persons' Organisations (FESZT), MEOSZ has been striving together with three other national NGOs – the national federations of the blind, of the deaf, and of the mentally disabled persons – to achieve the same goal for people with disabilities.

MEOSZ has been a member of the Hungarian Disability Caucus since its foundation in May 2008, and is working closely with other members on the preparation of the CRPD parallel report.

Hungarian Association of the Deaf and Hard of Hearing, (SINOSZ)

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This group, which co-coordinates, together with MDAC and the Hungarian Disability Caucus, is a non-hierarchical network of civil society based on solidarity to help the effective implementation of the UN Convention on the Rights of Persons with Disabilities. SINOSZ can provide with access to their worldwide national assemblies (WFD and EUD) using the lessons learned and best practices on the Hungarian CRPD parallel report initiatives and can assist deaf researchers and the editors in the production of the civil society based reports and widely disseminating the report. Our motto is: 'Respect for the individual, inclusion in the community, change in the society'.

Hungarian Civil Liberties Union (TASZ)

The Hungarian Civil Liberties Union (TASZ) is a non-profit human rights watchdog NGO established in Hungary in 1994. TASZ is a law reform and legal defence public interest organisation, working independently of political parties, the state or any of its institutions. Its aim is to promote the case of fundamental rights and principles laid down by the Constitution of the Republic of Hungary and by international conventions. Generally it has the goal of building and strengthening the civil society and rule of law in Hungary and the CEE region. TASZ has been participating in the work of the Hungarian Disability Caucus since its foundation in May 2008.

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Abbreviations

National NGOs/DPOs

AOSZ The Hungarian Autistic Society • Autisták Országos Szövetsége
ÉFOÉSZ Hungarian Association for Persons with Intellectual Disability • Értelmi Fogyatékossággal Élők és Segítőik Országos Érdekvédelmi Szövetsége
FESZT National Council of Disabled Persons' Organisations • Fogyatékos Emberek Szövetségeinek Tanácsa
FSZK Public Foundation for the Equal Opportunities of Persons with Disabilities • Fogyatékos Személyek Esélyegyenlőségéért Közalapítvány
MEOSZ National Federation of Disabled Persons' Associations • Mozgáskorlátozottak Egyesületeinek Országos Szövetsége
MVGYOSZ National Association for the Blind and Visually Impaired • Vakok és Gyengénlátók Országos Szövetsége
PÉF Mental Health Interest Forum • Pszichiátriai Érdekvédelmi Fórum
SINOSZ Hungarian Association of the Deaf and Hard of Hearing • Siketek és Nagyothallók Országos Szövetsége
SVOE National Association of the Deafblind • Siketvakok Országos Szövetsége

International NGOs/DPOs

ACT Advocating Change Together
DPI Disabled People's International
DPI Europe Disabled People's International European Section
EDF European Disability Forum
EUD European Union of the Deaf
FIMITIC International Federation of Persons with Physical Disability
MDAC Mental Disability Advocacy Center
WFD World Federation of the Deaf

National institutions

ÁNTSZ National Center for Epidemiology • Állami Népegészségügyi és Tisztiorvosi Szolgálat
EBH Equal Treatment Authority • Egyenlő Bánásmód Hatóság
ELTE Eötvös Loránd University • Eötvös Loránd Tudományegyetem
IMEI Juridical and Observational Psychiatric Institute • Igazságügyi Megfigyelő és Elmegyógyító Intézet
IRM Ministry of Justice and Law Enforcement • Igazságügyi és Rendészeti Minisztérim
KSH Hungarian Central Statistical Office (HCSO) • Központi Statisztikai Hivatal
MeH Prime Minister's Office • Miniszterelnöki Hivatal
NEFE International Development Cooperation (IDC) • Nemzetközi Fejlesztési Együttműködés
NFÜ National Development Agency (NDA) • Nemzeti Fejlesztési Ügynökség
OBH Parliamentary Commissioner's Office of Hungary • Országgyűlési Biztos Hivatala
OBH-ÁJOB Office of the Parliamentary Commissioner for Civil Rights • Állampolgári Jogok Országgyűlési Biztosának Hivatala

OBH-OJB Office of the Commissioner for Educational Rights • Oktatási Jogok Biztosának Hivatala
OFT National Disability Council • Országos Fogyatékosügyi Tanács
OGYI National Institute of Pharmacy • Országos Gyógyszerészeti Intézet
SZMM Ministry of Social Affairs and Labour • Szociális és Munkaügyi Minisztérium

International Institution

IPU Inter-Parliamentery Union
ODA Official Development Assistance
OECD Organisation of Economic Co-operation and Development
OECD DAC Development Assistance Committee
OHCHR Office of the High Commissioner for Human Rights
UNICEF United Nations Children's Fund

National Laws

Alk. The Constitution • Alkotmány
Ebktv. Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities • Az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról szóló 2003. évi CXXV. törvény
Eütv. Act CLIV of 1997 on Health • 1997. évi CLIV. törvény az egészségügyről
Fot. Act No. XXVI. of 1998 on Provision of the Rights of Persons Living with Disability and Their Equal of Opportunities • A fogyatékos emberek esélyegyenlőségének biztosításáról szóló 1998. évi XXVI. törvény
Magyar jelnyelvi törvény Act CXXV of 2009 on Hungarian Sign Language and the use of Hungarian Sign Language • 2009. évi CXXV. törvény a magyar jelnyelvről és a magyar jelnyelv használatáról
OFP The Draft Resolution of the Parliament No 10/2006. (II.16.) on the New National Programme of Disability Affairs • Országos Fogyatékosügyi Program, vagy Új Országos Fogyatékosügyi Program – 10/2006. (II. 16.) OGY határozat az új Országos Fogyatékosügyi Programról

International laws

CEDAW Convention on the Elimination of Discrimination against Women
CRC Convention on the Rights of the Child
CRPD Convention on the Rights of Persons with Disabilities
OPCAT Optional Protocol to the Convention Against Torture

Introduction

The Republic of Hungary is an independent, democratic republic in Central Europe, with Budapest as its capital. Its population of 10,007,000 shows a constantly decreasing trend.

According to the most recent figures of the Central Statistics Office (KSH), there were 577,000 persons with disabilities in Hungary in 2001, constituting 5.7% of the total population. Their level of education was lower in 2001 than that of those without disabilities.[1] This educational disadvantage alone is very detrimental to the employment opportunities of persons with disabilities, but it is further aggravated by the inequalities between different parts of the country and different forms of settlements, because 68% of persons with disabilities live in villages or small towns.

Persons with physical disabilities formed the largest group of the disabled in 2001 (43.6%), whilst persons with mental disabilities, and the blind and partially sighted represented about 10% and 14.4%, respectively. The rate of those with other disabilities grew, when compared to 1990, from 6.7% to 21.6%. About 10% of all persons with disabilities have hearing impairment or a speech-related disability.[2]

The Republic of Hungary is a parliamentary democracy, based on the principle of popular sovereignty, and power is exercised under the rule of law. Parliament is the chief organ of popular representation, and its members are elected in every four years, in a mixed election system.

At the April 2010 elections, 386 Members of Parliament were given mandate.

Hungary has a social market economy, which is based on the dominance of private property, the freedom of economic competition, and the freedom of enterprise and property.

Hungary is a member of the UN since 1955, has an OECD membership since 1996, and became a part of the European Union on 1 May 2004.

The UN Committee on the Rights of Persons with Disabilities has a Hungarian member, György Könczei (until December 2010), while Mária Herczog sits on the Committee on the Rights of Children (until February 2011).

Hungary has given 22 members to the European Parliament, and the country is represented in the European Commission by László Andor, Commissioner for Employment, Social Affairs and Inclusion. MEP Dr. Ádám Kósa, member of the European People's Party, is the President of the Disability Intergroup.

Hungary is a member of NATO, and has been actively involved in the work of the Organization for Security and Co-operation in Europe ever since its inception.

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1. According to the census data, 32 percent of persons with disabilities did not finish primary school, and only 39 percent completed their primary education. Though this accounted for a considerable, 9 percent increase, it still lagged considerably behind the educational level of persons without disabilities. 25 percent had vocational training or the diploma of a secondary school, and 5 percent had a college or university degree. (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).

2. Resolution of Parliament 10/2006, p. 10.

Hungary became a member of the European Council in November 1990. In 2008, András Sajó followed András Baka as the Hungarian judge of the European Court of Human Rights.

The international conventions Hungary has signed are listed in a separate appendix of the alternative report.

Executive summary

Executive summary

1. The Republic of Hungary ratified the UN Convention on the Rights of Persons with Disabilities (henceforth: the Convention) on 20 July 2007, and became the second country in the world to do so. It was also the first to ratify the Optional Protocol of the Convention. The Convention entered into international force on 3 May 2008, becoming binding for the Republic of Hungary at the same time. In accordance with Article 35.1 of the Convention, by 3 May 2010 the Hungarian state was to prepare the state report that represents the implementation of the obligations undertaken.

2. In May 2008, the Hungarian organizations of persons with disabilities and their supporters decided to form a Disability Caucus for the purposes of making civil society's own, parallel report on the status of the rights of persons with disabilities vis-à-vis the Convention. Following the model of the International Disability Caucus, which was a key party in the negotiations towards the Convention, the Hungarian Caucus is a flexible, non-hierarchic association, based on solidarity and subsidiarity. It was in the course of an open consensual process between December 2009 and May 2010 that this parallel report was created.

3. Whilst aware of the delay in the state report, the Caucus decided on the adoption and publication of the parallel report, as a proactive step to further interaction between the government, civil society and the UN Committee on the Rights of Persons with Disabilities, and to increase thereby the efficiency with which the Convention is implemented.

GENERAL PROVISIONS

Article 1 **Purpose**

4. The two years, the Caucus notes with regret, that have passed since the coming into force of the Convention have not been sufficient for Hungarian legislation and policies to harmonize the prevailing concept of the person with disability with that of the Convention. Unlike the Convention, whose list of disabilities is illustrative, Act XXVI of 1998 on ensuring equal opportunities for persons with disabilities [1998. évi XXVI. törvény a person with a disabilityek jogairól és esélyegyenlőségük biztosításáról] (henceforth: Disability Act) employs an exhaustive definition, considerably restricting the circle of persons with disabilities, failing, for instance, to include psychiatric patients with (long-term) mental impairment. In its understanding of disability, the Disability Act employs the medical model, and prescribes a threshold criterion for the impairment. These too are incompatible with the Convention.

5. The Disability Act and Resolution of Parliament 10/2006 (16 February) on the new National Disability Programme [10/2006. (II. 16.) OGY határozat az új Országos Fogyatékosügyi Programról] (henceforth: Disability Programme) define social integration as their main purpose, whereas the Convention requires inclusion. Social inclusion is more than integration in that it also includes the requirement of reasonable accommodation for the personal needs of the person with disability. As the Disability Act provides only on social and economic rights, it assigns the objectives of enforcement and compensation for disadvantages to the system of progressive realization.

6. The Caucus proposes that legislation harmonize the definition of the person with disability with the Convention; the rights should be extended to include all rights and freedoms provided for in the Convention; legislation should exchange integration for social inclusion by amending the Disability Act and the Disability Programme, altering policies and raising awareness in society.

Article 2 **Definitions**

7. The Caucus welcomes Act CXXV of 2009 on Hungarian sign language and the use of Hungarian sign language [2009. évi CXXV. törvény a magyar jelnyelvről és a magyar jelnyelv használatáról], the first important new act the serves the implementation of the Convention. Recognizing Hungarian sign language as a language and the users of Hungarian sign language as a linguistic minority constitutes, together with the definition of accessible communication, an important step towards the social inclusion of deaf and blind persons and persons with hearing impairments.

8. The Caucus considers it a cause for concern that the concept of reasonable accommodation has still not been adopted by Hungarian legislation, policies and action plans. Discrimination against persons with disabilities often takes the form of denying reasonable accommodation. Unless it is recognized by law, the legal remedies for discrimination available in Hungary cannot be applied to one of the most frequent, disability-based forms of infringement.

9. The Caucus proposes that the concept and requirement of reasonable accommodation be included in the relevant law at the highest possible level, in the Constitution and Act CXXV of 2003, on equal treatment and the promotion of equal opportunities [2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról] (henceforth: Equal Opportunities Act). The concept of universal design, represented in the Disability Programme, should also be represented in those legal instruments that are affected by the Programme. The Government should take the necessary effective steps to change attitudes, to familiarize the public with the concept and requirement of reasonable accommodation and universal design.

Article 3 **General principles**

10. The Caucus welcomes the important steps taken by the Disability Programme towards the recognition of the principles of dignity, autonomy and independence. Representing the principle of supported decision-making as a horizontal principle reflects one of the most important shifts that the Convention has affected in the paradigm, the legal recognition of interdependent autonomy.

11. The Caucus appreciates the fact that both the Constitution and the Equal Opportunities Act provide for the prohibition of discrimination, the latter specifically naming disability-based discrimination. The prohibition of discrimination and the responsibility of favourable treatment are among the principles of the Disability Programme.

12. It is, the Caucus thinks, a cause for concern that instead of the Convention's principle of full and effective participation and inclusion, Hungarian law 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. The Caucus suggests that the failure of policies and programs is due to the fact that they prioritize integration, rather than inclusion.

13. The Caucus finds it regrettable that to this day, Hungarian law and policies consider persons with disabilities, above all, a burden for society. They do not actively respect the difference of the person with disability, nor do they recognize his or her value as part of human diversity. They attribute essential significance to the prevention of disability (which is understandable and justifiable on the level of national policy, but is negligible for the person who already has a disability), to normalization (which assumes that the norms of the major society are fully acceptable for persons with disabilities, denying thereby the possibility of the latter's difference), and to rehabilitation. The right to rehabilitation is an important right in the Convention as well, but making it a principle reflects the medical understanding of disability, which considers the "correction" of the individual, rather than the transformation of the environment, as a solution for equal opportunities.

14. The Caucus welcomes the recognition in Hungary of the principle of equal opportunities. It is appreciated that there has been a shift in recent years, in law, policies and programmes, from physical accessibility towards the principle of complex accessibility. The latter also includes the accessibility of information and communication technologies.

15. The equality of women and men is a principle of the Constitution, and is also provided for in the Equal Opportunities Act. There is, however, no law, policy or programme to define what this means for women with disabilities. The Disability Programme has recognized that women with disabilities are subject to multiple discrimination, but no action plan has been developed to eliminate it.

16. The Caucus considers it a cause for concern that Hungarian law and policies do not recognize the right of children with disabilities to preserve their identity, of which disabled identity is a part. Eliminating or correcting the disability is instead automatically considered to be in the best interest of the child.

17. The Caucus proposes that the Government develop, with the involvement of DPOs, effective programmes to make society at large aware of disability being a value. Instead of insisting on integration, such laws, policies and action programmes need to be developed and implanted that promote inclusion. Multiple discrimination should be represented in the Equal Opportunities Act so that effective legal remedy be available. Policies and programmes are needed that aim to counter the multiple discrimination of women with disabilities. The Government and civil society both need to act to make the public aware of the fact that children with disabilities have the right to preserve their identity. The Caucus urges the Government to create a new measure on legal capacity, along the principles of the new Civil Code that has not been put into force, which should introduce legal institutions that promote autonomy (supported decision-making, advance directive), and abolish plenary guardianship and guardianship with general limitations, which are incapacitating and prevent self-determination.

Article 4 **General obligations**

18. The present parallel report examines in detail the performance of the obligations. Here the Caucus wishes to make only a few general observations.
19. Of the rights of persons with disabilities, the Disability Act only concerns itself with the so-called social, economic and cultural ones, and accordingly requires that they be realized progressively, in accordance with the existing possibilities of the national economy. The Caucus wants to emphasize that all rights of persons with disabilities that are recognized in the Convention must be protected and furthered, including civil and political rights. The latter, together with non-discrimination, require immediate realization, irrespective of the existing performance of the national economy.
20. The Caucus does not consider the legally provided functions of the National Disability Council [Országos Fogyatékosügyi Tanács] sufficient for consultation with the civil society, a requirement emphatically provided for in the Convention. Other inclusive forums, such as the Caucus, must also be acknowledged and supported.

SPECIFIC RIGHTS

Article 5 **Equality and non-discrimination**

21. The Caucus must repeatedly give voice to its concern over the absence of the concept and requirement of reasonable accommodation from Hungarian law, policies and programmes. As a result, the available protection against discrimination does not provide legal remedy against one of the most widespread forms of discrimination based on disability.
22. The Caucus finds that in Hungarian law the requirement of equal treatment applies only to specific persons' legal relations, or of a specific subject matter. As a consequence, it fails to comply with the norm of the Convention both in its personal scope and subject matter.
23. The Caucus wishes to point out that of behaviour hazardous in its intent or effect, the current law only prohibits harassment. It does not cover, for instance, retribution or unlawful isolation, which are not uncommon against persons with disabilities.
24. The Caucus proposes that the legislation acknowledge the concept and requirement of reasonable accommodation at the highest level (Constitution, Equal Opportunities Act). The personal scope and subject matter of the Equal Opportunities Act must be extended in accordance with the Convention. Like harassment, retribution against, and the unlawful isolation of, persons with disabilities must also be prohibited.

Article 8 **Awareness raising**

25. The Caucus notes that several government-financed actions have been taken place in the field of raising awareness in society, and welcomes the participation of DPOs in the implementation of these actions. It is, however, a cause for concern that these programmes are isolated, which considerably lessens their efficiency.

26. The Caucus welcomes the fact that several goals and objectives for action have been identified in the framework of the Disability Programme. Regrettably, these remain on the level of generalities, and fail to comply with the ambitious goals of the Convention.

27. The Caucus considers it necessary to revise the Disability Programme, to harmonize the goals and objectives for action in awareness-raising with the Convention, and to develop the division of responsibilities with civil society.

28. The Government, the institutions and the private sector must, in cooperation with the DPOs, develop and implement awareness-raising programmes. These must cover, inter alia, the rights of persons with disabilities, mobility, equal access to mass communication, the information of parents, and the accessibility of public health campaigns.

Article 9 **Accessibility**

29. The Caucus welcomes the fact that in recent years legislators and policy makers moved away from a limited understanding of accessibility, as something purely physical, towards a comprehensive concept that includes the accessibility of information and communication technologies.

30. The Caucus finds it regrettable that there is no unified, objective system of registration that would represent the real situation. In its absence, we can only have fragmentary and haphazard information about the implementation of accessibility.

31. 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.

32. There are no regulations in the field of public procurement that would make the provision of accessibility a requirement.

33. The Caucus must give voice to its concern over the failure to observe the statutory deadlines to facilitate accessibility. Whilst public transport should be made physically accessible by 31 December 2010, a 2009 inquiry of the Parliamentary Commissioner for Civil Rights found that 81 percent of the carriages, 97 percent of the passenger cars and 90.3 percent 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.

34. Furthermore, the Caucus is concerned that laws and programmes that provide for accessibility do not specify available or planned resources, nor do they define sanctions for the violation of the rules.

35. The Caucus considers it imperative to introduce the concept and requirement of reasonable accommodation to Hungarian law. 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. Provisions of the law are needed that sanction failure to comply with the statutory deadlines to facilitate accessibility. 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.

Article 10 **Right to life**

36. The Caucus welcomes the fact that the right to life is a fundamental right in the Constitution, and that the life of a person with a disability receives the same constitutional protection as the life of any other citizen. It is a cause for concern, however, that the provisions of current law are discriminative with regard to foeti with disabilities when abortion is more readily allowed than in the case of foeti without disabilities. While Hungarian constitutional law does not acknowledge the foetus as a subject of law, it expressly provides for the protection of foetal life, recognizing what is a biological fact, namely that a born person's life is the continuation of foetal life.

37. The Caucus thinks it is a cause for concern that investigations into detained persons' death, whether de facto or de jure, in social care homes or residential institutions for psychiatric patients or persons with disabilities, are often non-public and fail to identify and impeach the responsible ones. According to the Caucus, this is a gross violation of the right to life of persons with disabilities.

38. The right to accept or refuse medical treatment is violated in the case of persons with disabilities who are under guardianship that affects legal capacity because they are prevented from exercising their right to medical self-determination.

39. The Caucus proposes that the act on the protection of foetal life should be amended so that the mother should have the right to request abortion in the case of a foetus with a disability only if it is incapable of living. If the foetus has a disability, the mother should be obliged to consult an expert panel on the available options. If necessary, the committee should have the right to offer state care for the newborn.

40. The Caucus proposes that the law should require independent and public investigations into the deaths of persons with disabilities who are restricted in their personal freedom.

41. Awareness-raising is needed to eliminate the prejudice that life with a disability is less valuable.

Article 11 **Situations of risk and humanitarian emergencies**

42. 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 emergency law.

43. 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, though even this lacks appropriate 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.

44. Regulation on, and the practice of, treating refugees do not enable the timely identification of the special needs of persons with disabilities, and do not require reasonable accommodation or personal assistance.

45. The Caucus thinks the Constitution should be amended so that persons with disabilities receive protection during emergency law, and related fundamental rights could not be suspended. 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.

Article 12 **Equal recognition before the law**

46. The Caucus finds it regrettable that the new rules on the legal capacity, which would have facilitated the implementation of Article 12 of the Convention, were not put into force; these would not only have abolished plenary guardianship and general partial guardianship, but would also have introduced the instruments of supported decision-making and advance directive to facilitate the exercise of the legal capacity.

47. The Caucus notes that the Hungarian law is compatible with the requirements of Article 12.1 as it acknowledges that every person, from the moment of birth, has legal capacity.

48. The current law has no instrument that would facilitate the exercise of legal capacity. A person with a disability affected in their decision-making capacity can be legally deprived of the legal capacity, delegating the exercise of that right to a guardian.

49. Precluding or generally limiting the legal capacity is in violation of the requirements of Article 12.4 inasmuch as these measures cannot be tailored to the person's circumstances, and do not respect the person's will and preferences.

50. The Caucus notes that the 2001 amendment of the Civil Code, when a new option was introduced to the chapter on the legal capacity, that of restricting it for certain types of cases, was an important step towards the new paradigm. At the same time, keeping plenary guardianship and general partial guardianship did not promote the currency of the new instrument. To this day, most orders for placement under guardianship involve the deprivation or the general limitation of the legal capacity.

51. Plenary guardianship and general partial guardianship are not only disproportionate and unnecessary interventions into the autonomy of the individual, but in practice fail to provide protection, and make the person with disability even more powerless.

52. The current law offers no assistance for persons with disabilities to exercise their right to property and to control their own financial affairs.

53. The Caucus urges legislators to set new rules for the legal capacity in accordance with the norms of the Convention. This should require at least the application of the relevant principles of the new Civil Code which was not put into force: 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.

54. Law should acknowledge that all adult persons capable of controlling their affairs, on their own or with assistance, have legal capacity.

55. 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.

56. The 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.

Article 13 **Access to justice**

57. The Caucus finds that it is a cause for concern that persons under guardianship – with a few exceptions – automatically lose their capacity to sue or be sued, and are thus excluded by law from access to justice.

58. This situation is further aggravated by the fact that the Act on Criminal Procedure prevents persons under guardianship from starting legal proceedings for assault without the agreement of their guardians. Assault is typically the kind of commission that persons with disabilities most often fall victim to.

59. Access to justice is further hindered by the delay in the availability of complex accessibility, prejudice and the lack of relevant knowledge on the part of those who work in justice.

60. The Caucus proposes that those working in justice should receive compulsory training in communication with persons with disabilities and the relevant methods of client care. The laws on procedures should be amended so that persons with disabilities, including those under guardianship, can have equal access to procedural acts. The complex accessibility of the justice system must be attained, and sanctions must be applied to those who fail to comply with the requirements.

Article 14 **Liberty and security of the person**

61. The Caucus welcomes the fact that the Hungarian Constitutional Court considers involuntary admission and placement in a psychiatric institution a measure that restricts personal liberty. The Caucus wishes to give voice to its concern over that fact that involuntary psychiatric treatment in practice often leads to confinement on the basis of disability, when only mental disorder needs to be proved for in-house treatment.

62. In the view of the Caucus, placement in a social or psychiatric institution, or a home for persons with disabilities, is also a restriction of personal liberty, because placement usually occurs at the request not of the person but of their guardian.

63. It is, in the view of the Caucus, a cause for grave concern that the law permits a court to place a person diagnosed with psychiatric disorder in a residential institution only because they are incapable of independent life without assistance.

64. The Caucus thinks that the involuntary treatment of perpetrators of "unsound mind" in the Juridical Observational and Psychiatric Institute [Igazságügyi Megfigyelő és Elmegyógyító Intézet, IMEI] severely violates the purpose and principles of the Convention, and fails to satisfy the requirement of reasonable accommodation.

65. 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.

66. The Caucus believes that it is critical that legislators set new rules for the legal capacity in accordance with the new Civil Code that was not put into force. Would-be judges and lawyers must receive training in the human rights aspects of involuntary psychiatric treatment. Both public and forensic mental health 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 parts of the population. The act 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.

Article 15 **Freedom from torture or other cruel, inhuman or degrading treatment or punishment**

67. 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.

68. The Caucus wishes to voice its concern over the restraining measures in psychiatry.

The law does not prevent the arbitrary application of restraining measures in psychiatry. There is no developed procedure for the review of the legality of such measures.

69. The restraining measures applicable in the IMEI are cause for particular concern because the relevant law considers only physical restraints to be constraints on freedom. Consequently, other measures that count as constraints at public psychiatric institutions (mechanical restraints, isolation, chemical restraints) appear as part of the therapy in the IMEI, and the person with disability who receives the therapy is ineligible for protection against these.

70. The Caucus wishes to point out that independent and regular monitoring to prevent torture and other forms of maltreatment is unavailable in those Hungarian institutions where persons with disabilities are detained, de jure or de facto. This is partly responsible for the fact that behaviours violating the prohibition of torture are not uncommon in these institutions.

71. The Caucus urges the Government to ratify the UN's Optional Protocol to the 1984 Convention Against Torture (OPCAT), which would require Hungary to establish a national prevention mechanism. Civil society should be involved in the work towards this mechanism. Violations of the law should be censured. Those working for the investigation authorities and justice should be sensitized to the issue.

Article 16 **Freedom from exploitation, violence and abuse**

72. The Caucus finds that the effective protection described in Article 16 is not available to Hungarian persons with disabilities.

73. The Caucus therefore urges legislators to 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.

74. The Caucus considers it necessary to amend the Criminal Code so that perpetration against persons incapable of self-defence or expressing their will become aggravated cases of other crimes as well. The stigmatizing terminology of the Act must also be revised.

Article 17 **Protecting the integrity of the person**

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

76. The Caucus considers it a cause for concern that the restriction of the personal freedom of those under involuntary psychiatric treatment automatically leads to the restriction of their medical self-determination.

77. It causes further concern that the representative of a patient with a limited capacity to act needs to give their consent only to invasive interventions. While psychiatric pharmacotherapy is not an invasive intervention, it is certainly intrusive, a serious intervention into the physical and mental integrity of a person.

78. The Caucus urges legislators to develop rules that provide effective protection for persons 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.

79. The Caucus urges the Government to ratify the OPCAT.

80. The requirement of informed consent must be supplemented with the absolute obligation of providing information that enables access for all.

81. It is necessary to review the rules of involuntary psychiatric treatment. Competent patients should be allowed to refuse psychiatric treatment even if they are confined.

Article 18 **Liberty of movement and nationality**

82. The Caucus considers it a cause for concern that persons with a limited capacity to act can acquire documentation for identification or travelling only with the consent of their legal representatives. This is in conflict with paragraphs *b)* and *c)* of Article 18.1.

83. It is a further cause for concern that adult persons with disabilities who have a limited capacity to act cannot apply for citizenship in person, only through their guardians.

84. The Caucus wishes to point out that the involuntary psychiatric treatment, or the placement in a residential institution of a person with a disability, at the request of their guardian violates the person's liberty of movement and their freedom to choose their place of residence.

85. The Caucus urges legislators to set new rules for the capacity to act in accordance with the principles of the new Civil Code which was not put into force.

86. The Caucus proposes that there be statutory requirements for those rules of residential institutions that regulate movement in and out of the institution to provide for the liberty of movement, offering the possibility of a leave every day.

Article 19 **Living independently and being included in the community**

87. The Caucus considers it a cause for concern that no real progress has been made, since the enactment of the Disability Act, in the replacement of large, total institutions with small residential homes and other community-based forms of residence, or in making community-based services available everywhere in the country. In 2008, about 23,000 persons lived in institutions for psychiatric patients and persons with disabilities, which is essentially the same figure as in 2000. Only about 1700 persons live in residential homes.

88. The Caucus thinks it is cause for particular concern that while Hungary spent, between 1998 and 2006, HUF 23 billion on the renovation of large institutions and the building of new ones, less than 1 billion was devoted, between 1998 and 2010, to the development of small residential homes. Considerable funds from the EU were devoted to the development of large institutions, and as late as 2009 the Government attempted to use such funds for this purpose, a plan it abandoned only after the protest of international and Hungarian NGOs.

89. The Caucus urges the Government to develop, in the course of a public debate and with the observation of statutory deadlines, a strategy for deinstitutionalisation.

90. The Caucus wishes to emphasize that when large institutions are replaced, the homes of psychiatric patients must also be considered, because the Convention acknowledges persons with long-term mental impairments as persons with disabilities, and hence the requirements of Article 19 also concern their institutions.

Article 20 **Personal mobility**

91. The Caucus welcomes the establishment and promotion of supporting services. It is however regrettable that these services are difficult to access in the countryside, and are only available during normal business hours. It is a cause for concern that the services, which prior to 1 January 2009 received state support (normative grants), have since then been obliged to apply for state support in a tender system.

92. The Caucus notes with regret that ill-considered legislation – about moped cars – has produced an obstacle for personal mobility. Previously usable without registration plates and licences, the owners of these vehicles now need to pay a registration fee and obtain a licence, which means the persons with disabilities concerned cannot use their moped cars to facilitate mobility.

93. The far too slow process of making transport accessible is discussed under Article 33.

94. The Caucus urges legislators to set and consistently apply sanctions to those who fail to meet their obligations in realizing complex accessibility in transport.

95. It is imperative to revise the legal framework of supporting services, including their financing.

Article 21 **Freedom of expression and opinion, and access to information**

96. The Caucus notes with regret that the institutions of public administration are still not prepared to serve clients with disabilities.

97. Persons with intellectual disability or hearing impairment are particularly disadvantaged in accessing information.

98. The Caucus welcomes the Act on Sign Language, which will ensure, gradually, equal access to information for persons with hearing impairment.

99. The Caucus believes that it is necessary to shape public awareness to earn widespread acceptance for the idea that information and communication technologies can greatly further equal opportunities for persons with disabilities.

100. Policies and programmes must be created that provide for the training of professionals who are familiar with and capable of using accessible communication methods and technologies.

Article 22 **Respect for privacy**

101. The Caucus wishes to emphasize that this right is closely related to Articles 19 and 23.

102. The Caucus wishes to give voice to its concern over the fact that persons with disabilities who are under plenary guardianship are hindered by law in exercising their individual rights and the right to the protection of their personal data, because they cannot act on their own against infringements of these rights.

103. The life conditions of large institutions restrict dwellers in exercising their right to privacy.

104. The Caucus urges the Government to create new legislation on the legal capacity in accordance with the principles of the new Civil Code that was not put into force.

105. To eliminate the anomalies of life in large institutions, the Caucus proposes that Article 19 be implemented consistently, and large institutions be replaced with community-based services.

106. For the effective protection of the special data of persons with disabilities, the data management regulations of social services providers must be reformed. This reform must ensure that those concerned can always – irrespective of their legal capacity – exercise their right to assert their claim.

107. Awareness raising is needed to ensure that persons with disabilities are regarded not as passive recipients of services who are in need of excessive care, but as individuals with free will whose decisions about their life and privacy must be respected.

Article 23 **Respect for home and the family**

108. The Caucus wishes to point out that there are legal, financial, service-related, physical and attitudinal obstacles to persons with disabilities living in their own homes and founding families.

109. Persons under guardianship are particularly powerless and are also restricted by law. Persons under plenary guardianship cannot marry or practise their parental rights. Persons under partial guardianship can marry only with the agreement of their guardian. Persons under guardianship cannot adopt children, nor can they make a decision about, or have any influence on, offering their children for adoption.

110. The problems of sterilization for purposes of family planning are discussed in Paragraph 78.

111. The Caucus urges the Government to create new legislation for the legal capacity, in accordance with the principles of the new Civil Code that was not put into force.

112. Accessible programmes are needed to educate persons with disabilities about independent life.

113. The right to live in a family and in one's own home must be incorporated into policies and action plans that concern adequate work and income, life in a family setting, and family support networks.

114. Awareness raising and the elimination of prejudices is inevitable to enable the sustainable exercise of the right to live in a family.

Article 24 **Education**

115. The Caucus notes with regret that apart from a few commendable model experiments, education is not inclusive in Hungary.

116. The Caucus welcomes the fact that education is now compulsory even for children with multiple disabilities. Public primary and secondary education is free.

117. The Caucus notes with concern that 70.4 percent of persons with disabilities have only had primary education (the same ratio is 49.5 percent for the major society), and 32 percent of them have not even finished primary school.

118. Only 5 percent of persons with disabilities have attended an institution of higher education. The Caucus welcomes the fact that the Act on Higher Education declares the right of a student to receive a service that respects their disability: exams and the possibility to prepare for them must take into account any disability. Students with disabilities are entitled to an additional four terms of state support.

119. The Caucus urges the Government to develop a strategy for the introduction of inclusive education, and provide the financial resources necessary.

120. The Government must take appropriate measures to ensure that non-specialist educators are trained and prepared for the additional responsibilities that occur with the introduction of inclusive education.

121. The Government must take appropriate measures to ensure that education institutions not only meet the requirements of accessibility, but are also inclusive.

122. The National Basic Curriculum should be reviewed to include the requirements of inclusive education.

123. Appropriate measures must be taken that oblige the local government to take over the responsibility of another one if necessitated by the compelling needs of at least one student with special needs.

Article 25 **Health**

124. The situation of persons under guardianship with regard to informed consent, and non-consensual psychiatric treatment are discussed in Paragraphs 76 and 77.

125. 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.

126. The Caucus must also voice its concern over the fact that the requirement of costless or affordable services – particularly medical aids – is not met.

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

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

129. The Caucus calls upon the Government to take effective measures to make access to the services costless or affordably.

130. Healthcare workers must receive compulsory training in skills related to patients with disabilities, and in particular to the special needs of women with disabilities.

131. The Caucus calls upon the Government to 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.

Article 26 **Habilitation and rehabilitation**

132. The Caucus notes that the basic elements of regulation are available, but these are not synchronized, and consequently their effectiveness is low. Coordination is particularly missing among the various sectors responsible for programmes of habilitation and rehabilitation, such as healthcare, education, social and labour affairs.

133. The Caucus welcomes the activity of the civil society in the maintenance of peer counselling networks, but regrets to point out that these receive no targeted financing.

134. It is a cause for concern that alternative supporting technologies are almost unknown in rehabilitation.

135. The Caucus welcomes the system of rehabilitation benefit, introduced in 2007, but has concerns with the fact that several key elements are still missing, which results in little or no integration or reintegration into the labour market.

136. The Caucus welcomes the changes that have taken place in the past two years in the training of rehabilitation specialists. Yet it will take a few more years before the result of the work of these professionals, who have earned secondary and tertiary qualifications, can be witnessed.

137. The Caucus urges the Government to develop a unified concept for rehabilitation, and a law on rehabilitation that provides for the systematic operation of a network of the current disjointed institutions, and defines the principles of financing.

138. The Disability Programme should allocate more resources for rehabilitation.

139. The Government should create legislation about peer counselling networks, including their financing, and about the use of alternative supporting technologies in rehabilitation.

Article 27 **Work and employment**

140. The Caucus considers it a cause for serious concern that the employment rate of working-age persons with disabilities does not reach 10 percent. It is also discouraging that this rate has not grown since the Convention came into force, but became even worse, due to the cuts in support.

141. The Caucus wishes to call attention to the fact that persons under plenary guardianship have not been able to enter into contracts of employment in recent years, because the Ministry of Social Affairs and Labour maintains that persons who do not have legal capacity cannot enter into such agreements even with the consent of their guardians.

142. The Caucus welcomes the fact that the value of the rehabilitation contribution was considerably increased as of January 2010, which encourages employers with more than 20 employees to meet the requirement of filling 5 percent of the positions from this segment of the labour market.

143. It is a cause for concern that the requirement of reasonable accommodation is absent from the national legislation of employment.

144. The Caucus urges the Government to create new legislation for the legal capacity, in accordance with the principles of the new Civil Code that was not put into force.

145. Legislation must represent the requirement of reasonable accommodation in law.

146. The Government must develop an employment strategy to increase the rate of employment.

Article 28 **Adequate standard of living and social protection**

147. The Caucus wishes to point out that there is insufficient data on the social status of persons with disabilities. It proposes that such surveys be launched.

148. The Caucus finds it a cause for concern that persons whose disability is not severe and are excluded from the labour market have no income at all.

149. The Caucus wishes to point out that there is only limited support for the housing of persons with disabilities. There is a need for a legal environment that supports independent living and housing.

150. The Caucus is concerned that without substantially raising the invalidity pension and the invalidity allowance, independent life becomes impossible, and persons may need to be placed in institutions for financial reasons.

Article 29 **Participation in political and public life**

151. The Caucus urges the Government to remedy the breach of the Convention caused by the fact that persons under guardianship automatically lose their right to vote. This requires the amendment of the Constitution, election laws and provisions on the legal capacity in accordance with the principles of the new

Civil Code which did not enter into force. This, incidentally, is something that Hungary has been obliged to do by a recent decision of the European Court of Human Rights.

152. The Caucus notes with regret that the complex accessibility of elections has not been realized, and calls upon the Government to take the appropriate measures in legislation, policies and programmes to ensure accessibility.

153. The Caucus calls upon the political parties to take into consideration, during their election campaigns, the special communication needs of persons with disabilities.

Article 30 **Participation in cultural life, recreation, leisure and sport**

154. The Government should take all appropriate measures to ensure that persons with disabilities have equal access to mainstream sport and culture, both as recipients and active participants. This requires, inter alia, the provision of complex accessibility, the shaping of social attitudes and the revision of financing.

155. The Caucus wishes to point out that supporting the specific sport activities and cultural life of persons with disabilities is not in conflict with the purpose of inclusive society, thus such support is necessary (e.g. disability sports, disability cultures, deaf culture).

BOYS, GIRLS AND WOMEN WITH DISABILITIES

Article 6 **Women with disabilities**

156. Girls and women with disabilities are subject to multiple discrimination. The Caucus welcomes the Disability Programme's acknowledgement of this fact, but notes with regret that no action plan has been developed to eliminate multiple discrimination.

156. The Caucus wishes to point out that while it is necessary to incorporate the cause of women and girls with disabilities in the mainstream cause, it is not sufficient to do so. Disability-related laws, policies and programmes must be gender-sensitive, which cannot be realized without taking into consideration the difference of women and girls with disabilities.

157. The Caucus considers it important to found any action programme that seeks to improve the situation of women and girls with disabilities on such research that establishes the facts of the matter and actively involves the women and girls concerned.

Article 7 **Children with disabilities**

158. The Caucus urges the Government to take all appropriate measures that assist children with disabilities to exercise their developing abilities. The views of a child with disability in matters concerning him or her must be heard and taken into consideration. The child must be provided with appropriate assistance to express their views. All this must be regulated in legislation on procedural law and family law.

159. The social system responsible for the representation of children's right must be reinforced. Those working in the system must be educated about the rights and needs of children with disabilities.

160. Children with disabilities must be acknowledged in policies and legal mechanisms as a multiply disadvantaged group.

161. The state should appropriately support families raising children with disabilities to ensure that the families stay together. Subsidiary protection must be provided when necessary, to prevent the placement of the child in an institution.

SPECIAL PROVISIONS

Article 31 **Statistics and data collection**

162. 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.

163. The participation of persons with disabilities in data collection and research must be ensured throughout the entire process.

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

165. To ensure the transparency of the distribution of resources from the European Union, the National Development Agency must make available target group-specific statistics in accessible formats.

Article 32 **International cooperation**

166. The Caucus calls attention to the importance of the participation of civil society, particularly the organizations of persons with disabilities, in international cooperation. It calls upon the Government to support such activities.

167. The Caucus suggests that the Government measure the effectiveness of its international aids, evaluate the projects ex ante and ex post, and assess impact, particularly on equal opportunities and the environment, with the involvement of all concerned.

Article 33 **National implementation and monitoring**

168. The Caucus finds the current solution insufficient. It proposes that more focal points be designated: the Disability Department (Fogyatékosságügyi Főosztály), the National Equal Opportunities Network (Országos Esélyegyenlőségi Hálózat) and the Equal Rights Authority (Egyenlő Bánásmód Hatóság) should also be involved.

169. The National Disability Council appears to be an adequate coordination mechanism.

170. The National Disability Council should not be designated, as it now is, as the independent framework responsible for monitoring, because this is in conflict with the Paris Principles. The Caucus proposes that the Parliamentary Commissioner for Disability be established, and in the interim, national implementation should be monitored by a disability section within the Parliamentary Commissioner‘s Office for Civil Rights.

The treaty specific document

SEGMENT OF THE TREATY-SPECIFIC DOCUMENT SUBMITTED TO THE COMMITTEE RELATING TO GENERAL PROVISIONS OF THE CONVENTION

Purpose

ARTICLE 1

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include[1] *those who have long-term physical, mental, intellectual*[2] *or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.*

PERSONS WITH DISABILITIES IN HUNGARIAN LAW

There is no standard definition of disability and of the person with a disability in Hungarian law. The different measures operate with different definitions. 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 esélyegyenlőségük biztosításáról, Fot.]
- Act CXXV of 2003, on equal treatment and the promotion of equal opportunities [2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról, 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]

Of these, only the **Fot.** contains a definition of disability:
"Article 4. For the purposes of this act
a) a person with a disability: a person who is fully or severely deprived of his or her sensory – particularly visual –, aural, locomotory or mental capacities, or is considerably limited in his or her ability to communicate, and this is a source of permanent disadvantage for his or her active participation in society."

There are several reasons why this definition does not comply with the provisions of the Convention:
i) It provides an exhaustive list, unlike the Convention, which gives examples, in line with an understanding of disability that is in the process of development;
ii) The Hungarian act does not consider *psychiatric patients with (permanent) mental impairment* persons with disabilities;
iii) The Fot. relies on a *medical model* of disability, in that it attributes the disadvantages of disability and reduced social participation to the unavailable capacities of the person.
iv) It prescribes a *threshold criterion*, in that the impairment must be severe or complete for the person to be covered by the law. The Convention does not recognize such a threshold, does not differentiate between "light" and "severe" disabilities with regard to the right for non-discrimination.

1. The authentic versions, among them the English, provide examples of persons with disabilities ("include..."). The Hungarian translation ("fogyatékossággal élő személy minden olyan személy") gives the false impression that the list is exhaustive, which makes the wording excluding, and thus contrary to the Purpose of the Convention.

Naturally, the exclusive quality of the understanding of disability with which the Fot. operates has a direct effect on other relevant measures, disability policies and action plans. Thus it is only with regard to disabled persons that measures and policies aim to replace the many residential institutions with modern services, and no such requirements exist for the institutions of psychiatric patients.

The principles of the Fot. systematically differ from those of the Convention because the Hungarian act is based on the medical model of disability.[3]

PURPOSES

The Fot. defines the purpose of disability-related action (legislation, policy work, action plans) in Hungary:

"Article 1. The purpose of this act is to define the rights of persons with disabilities, and the means to enforce these rights, as well as to regulate the complex rehabilitation that is to be rendered to persons with disabilities, and to ensure through these that persons with disabilities have equal opportunities, can live independently and can actively participate in society."

The act discusses the rights of persons with disabilities in these fields:
- Environment;
- Communication;
- Equal access to public services;
- Transport;
- Support services, aids and equipment.

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2. 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.

3. See this in more detail in the discussion of Article 3.

Equal opportunities are to be provided in the following fields:
- Healthcare;
- Education, training;
- Employment;
- Dwelling, inclusion in the community, independent living;
- Culture, sport.

A special emphasis is given to the right to rehabilitation and to disability benefits.

Comparing these purposes with those of the Convention it is conspicuous that *the Hungarian act completely disregards civil and political rights, and recognizes only very special, social and economic rights.*

The distinguished role of rehabilitation and the length at which disability benefits are regulated are in accordance with the medical-charitable model, but are alien to the human rights and social approaches. Furthermore, since it only deals with economic-social rights, the act places the objective inside the *doctrine of progressive realization:*
"Article 2.5 The state shall ensure that the rights of persons with disabilities shall be enforced, and that the institutions compensating the disadvantages of persons with disabilities shall be operated, in accordance with the existing possibilities of the national economy."
This bias of objectives is reflected in the OFP as well, though some of its elements already show the effects of the Convention (which was still being negotiated when Parliament passed the OFP).

Effective between 2007 and 2013, the program has the following objectives:
- Objectives related to rehabilitation;
- An agenda to change attitudes in society;
- Improving the life quality of persons with disabilities and their families;
- Encouraging persons with disabilities to actively participate in society;

SUMMARY

Clearly, the Fot. and the OFP envision a society that integrates persons with disabilities – to the extent permitted by the economy. They seek to achieve this integration with the complex rehabilitation of the disadvantages of persons with disabilities, with compensation by means of aids, support services and disability benefits: through the normalization of the persons concerned.

This approach is at variance with the objectives of the Convention, whose aim is a society that includes persons with disabilities, and requires the reasonable accommodation of their individual needs.

While it prohibits discrimination and encourages inclusion, it recognizes and respects the difference of life with a disability. It guarantees equal dignity whilst acknowledging this difference. To achieve this, society needs to be changed or "rehabilitated" more than the individual with a disability.

RECOMMENDATIONS

- The definition in Fot. of the person with a disability should be harmonized with Article 1 of the Convention. The definition should be as inclusive as that of the Convention. It is the social model of disability that should appear in the definition.
- The rights should be extended to include all basic liberties and human rights. Progressive realization is justifiable only in the case of economic-social rights; civil and political rights, as well as non-discrimination, must be realized immediately.
- Instead of integration, social inclusion should be the focus of the efforts.

Definitions

ARTICLE 2

For the purposes of the present Convention:
"Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;
"Language" includes spoken and signed languages and other forms of non spoken languages;
"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;
"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;
"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

COMMUNICATION AND LANGUAGE

The most immediate result of the ratification of the Convention was the drafting and passing of **Act CXXV of 2009 on Hungarian sign language and the use of Hungarian sign language** [2009. évi CXXV. törvény a magyar jelnyelvről és a magyar jelnyelv használatáról].[1] The legislative intention was to harmonize the Hungarian legal environment with the needs of persons with hearing impairment and deaf-blind persons. The act provided for the recognition of Hungarian sign language as a language, and the community of Hungarian sign language users as a linguistic minority.

The same act defines the concept of accessible communication, amending **Act XXVI of 1998, on ensuring equal opportunities for persons with disabilities** [1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról, Fot.]:

"Fot. Article 4. *(i) accessible communication:* communication is accessible when the message can be perceived and interpreted by all participants of the communicative situation – particularly persons with visual, aural, mental or communication impairments –, and when all personal and objective requirements to provide and interpret feedback are available."[2]

The act on sign language lists the following special communication systems used by persons with hearing impairment and deaf-blind persons:
- tactile sign language;
- Hungarian sign language;
- finger alphabet;
- tactile signing;

1. The Act can be downloaded: http://www.fszk.hu/fszk/tudastar/jogszabaly/hazai/A_jelnyelvi_torveny_angolul.pdf

2. Act No. XXVI. of 1998 on the Provision of the Rights of Persons Living with Disability and their Equal of Opportunities. http://text.disabilityknowledge.org/The-Law.htm

- visualizing Hungarian speech;
- writing down Hungarian speech;
- Lorm alphabet;
- tactile fingerspelling;
- Braille;
- tactile version of Braille;
- tactile lipreading or Tadoma.

DISCRIMINATION BASED ON DISABILITY

Article 8 of **Act CXXV of 2003, on equal treatment and the promotion of equal opportunities** [Az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról szóló 2003. évi CXXV. törvény, Ebktv.][3] prohibits all forms of discrimination based on any real or assumed disability. It also prohibits discrimination based on a real or assumed health condition, thereby compensating to some extent for the discriminatory understanding of disability in the Fot. *Hungarian law, however, 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 accommodation.

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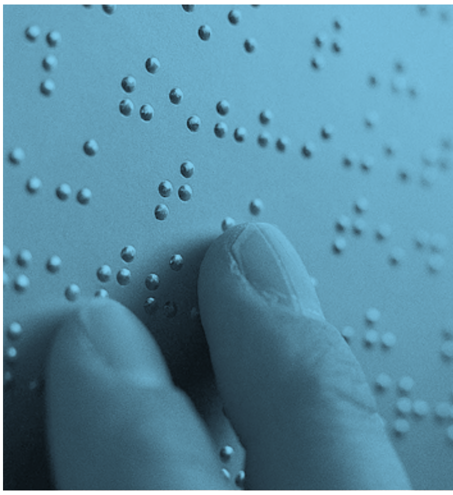
[3] http://www.egyenlobanasmod.hu/data/SZMM094B.pdf

REASONABLE ACCOMMODATION



The concept and requirement of reasonable accommodation is missing from not only the antidiscrimination act, but the whole of Hungarian law as well. At present, reasonable accommodation is a technical term and content used only by disability activists and a few professionals, and typically absent from policies or programmes.

UNIVERSAL DESIGN

Thanks probably to the influence of the Convention, which was being negotiated at the time of drafting the **National Disability Programme** [Országos Fogyatékosügyi Program, OFP], the latter lists universal design among its basic principles:[4]
"The principle of *universal design* means that the needs of persons with disabilities should be met not by transforming the world that surrounds us (built and artificial environment), but by taking these needs into consideration already in the phase of design, so that the resulting environment be accessible for persons with disabilities."

RECOMMENDATIONS

- The principle of "reasonable accommodation" should be included in the Constitution.
- The principle of "reasonable accommodation" should be included in Act CXXV of 2003, on equal treatment and the promotion of equal opportunities.
- The principle of universal design should appear in the relevant legislation.
- The government should take measures to ensure that society quickly become aware and cognizant of the above terms.

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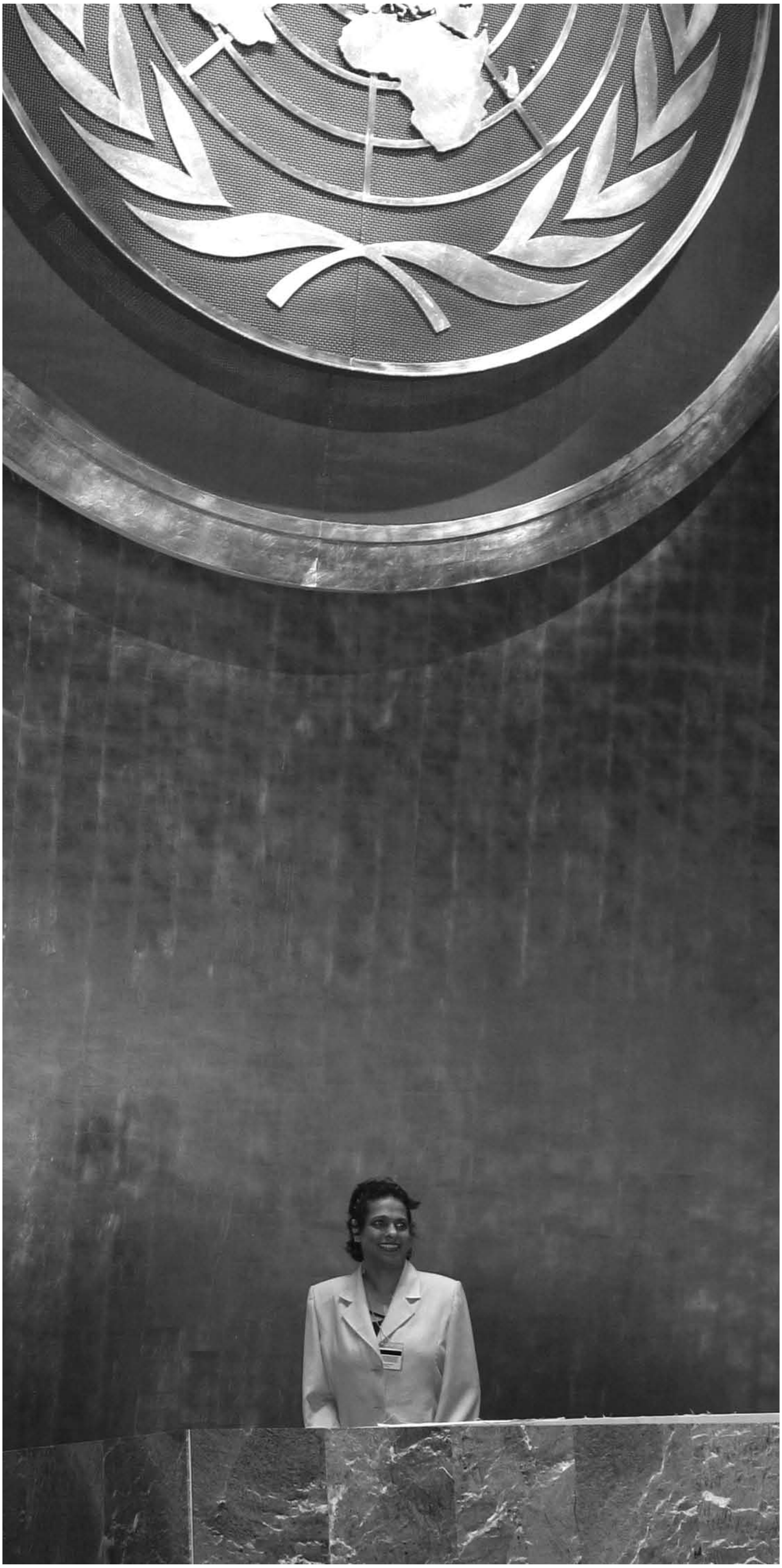
[4] OFP, Chapter I: http://www.szmm.gov.hu/main.php?folderID=1295



General principles

ARTICLE 3

The principles of the present Convention shall be:

a) *Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;*

b) *Non-discrimination;*

c) *Full and effective participation and inclusion in society;*

d) *Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;*

e) *Equality of opportunity;*

f) *Accessibility;*

g) *Equality between men and women;*

h) *Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.*

DIGNITY, AUTONOMY AND INDEPENDENCE

The dignity of the person is a fundamental right that is recognized by the Constitution, and which the Constitutional Court has interpreted as an absolute right, together with the right to life. The preamble to **Act XXVI of 1998, on ensuring equal opportunities for persons with disabilities** [1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról, Fot.] confirms this with regard to persons with disabilities, but fails to put forward anything more.[1] With the most recent amendment of Fot., independent living has become one of the areas of action. As regards autonomy, the **National Disability Programme** [Országos Fogyatékosügyi Program, OFP] emphasises that the principle of supported decision-making.

"*…must prevail in all general rules and regulations (e.g. guardianship, wardship). The principle of supported decision-making, as opposed to substitute decision-making, means supporting persons with disabilities in their decision-making, in accordance with their individual capacities, to the full extent possible, covering all possibilities. To satisfy this principle, the Government must provide the necessary resources to help persons with disabilities to create a network for supported decision-making.*"[2]

Therefore, persons with disabilities are not subjects of charity, but they are the owners of rights. Persons with disabilities are not ill; rather they are individuals who assume responsibility for their own lives. They are not dependants but consumers who can work. They are people who do not wish others to make decisions for them that concern their lives, because they are capable of doing so themselves.

Accordingly, every effort should be made to support persons with disabilities so that they can take part in the definition and implementation of the measures. *According to the principle of self-determination, people with disabilities are, within the limits of their capacities and opportunities, free to make decisions about their lives. Independence means self-determination about personal movement, time, property, and one's own body.* For the principles of self-determination and respect for human

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[1] Act No. XXVI. of 1998 on the Provision of the Rights of Persons Living with Disability and their Equal of Opportunities, http://text.disabilityknowledge.org/The-Law.htm

[2] OFP, http://www.szmm.gov.hu/main.php?folderID=1295

dignity to be satisfied, *"whenever support is provided, persons with disabilities must be enabled to make their own decisions about life objectives, the way they want to reach them, the human and moral values they want to attain. Support must not divest persons with disabilities from what they can do and accomplish independently."*[3]

[3] Ibid.

NON-DISCRIMINATION

For the Constitution and **Act CXXV of 2003 on equal treatment and the promotion of equal opportunities** [2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról, Ebktv.], see the discussion of Article 5. The OFP lists among its principles the prohibition of negative discrimination and the responsibility of favourable treatment.

FULL AND EFFECTIVE PARTICIPATION AND INCLUSION IN SOCIETY

While the purpose of Fot.[4] does include the promotion of the social participation of persons with disabilities, it does not require completeness and effectiveness. It mentions inclusion only in a limited sense, with regard to the freedom to choose place of residence, the right to independent life, and the need to replace care in large institutions with other solutions,[5] referencing Article 19 of the Convention.[6]

[4] Article 1.

[5] Article 17.

[6] Article 17.5.

Rather than full and effective inclusion, the OFP makes integration its principle.

The principle of integration postulates that persons with disabilities can, in the course of their everyday lives, make and maintain contact with other people and with the broadest range of social and economic institutions (e.g. in education, social care and child welfare, employment, sport, culture). The provision of conditions for contact includes raising the awareness of society (social inclusion), providing specific conditions for physical mobility (making public transport and the built environment accessible), the use of the necessary communication devices and technology (e.g. accessible web pages for people with visual disabilities, sign language interpretation, easy-to-understand language and pictograms). To satisfy the principle of integration, traditional, in-person modes of making and maintaining contact can be supplemented with the use of modern technology (Internet access, e-mail, mobile phones), and modern methods (telework, distance learning). Special care is to be made and support is to be provided to ensure that persons with disabilities can maintain regular contact with their family, especially when using health, education, social and child protection services. To improve social integration, accessing support should result in making and maintaining more extensive and intensive contacts. Action that leads to the interruption of social contacts and to exclusion should be avoided, and when necessary, sanctioned. All measures and professional principles that result in unfair segregation should be reviewed.[7]

[7] OFP, Chapter I.

This interpretation restricts the meaning of inclusion to awareness in society. Without the acknowledgment of the right of persons with disabilities to *reasonable accommodation*, integration fails to meet the Convention's requirements for social inclusion.

RESPECT FOR DIFFERENCE AND ACCEPTANCE OF PERSONS WITH DISABILITIES AS PART OF HUMAN DIVERSITY AND HUMANITY

In this form, the principle does not appear in Hungarian law. This, we believe, has to do with the still prevailing dominance of the medical model of disability. This becomes particularly obvious when we identify those principles that are named in Hungarian law, but are absent from the Convention, which has abandoned the medical model:

- preventing disability
- normalization
- rehabilitation.[8]

Difference appears only as a special need, without the satisfaction of which persons with disabilities cannot exercise their rights in the same manner as others, or which limits their participation in society.

EQUAL OPPORTUNITIES

The principle is present in both the Fot. and the OFP.

ACCESSIBILITY

In recent years, the approach that concentrated solely on physical accessibility has given way to the acknowledgement that accessibility is a complex principle. Beside the requirements of European Union grants, the Convention has also been responsible for legislation reflecting this turn.
The Fot. explains access for all thus: "*a public service is accessible for all if all persons, particularly persons with locomotory, visual, aural, mental or communicational disabilities, can use it independently – to a degree corresponding to their capacities – , and this use is not prohibited by physical obstacles, or other obstacles that make the service unreliable, difficult to understand or perceive; also, it must be ensured that the building housing the accessible public service is physically accessible for all, its part open to the public easy to access, as well as to leave in case of an emergency, and that all objects and facilities in the building, as well as the services, can be used properly by all.*"[9] These provisions, however, apply to public services only. Passed in 2006, the OFP details the actions to be taken to satisfy this principle.

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[8] OFP, Chapter I.

[9] Fot. 4.§ (h)

EQUALITY BETWEEN MEN AND WOMEN

The Constitution and the Ebktv. both require that men and women be treated equally. What this means in the case of women with disabilities, however, is not specified in statues, policies or programmes.[10] This is all the more regrettable because legislators have come to realize that women with disabilities are subject to multiple discriminations.[11] The conclusion they draw from this, however, is that "consequently it is an important principle to design specific measures in view of individual needs."

RESPECT FOR THE EVOLVING CAPACITIES OF CHILDREN WITH DISABILITIES AND RESPECT FOR THE RIGHT OF CHILDREN WITH DISABILITIES TO PRESERVE THEIR IDENTITIES

Act XXXI of 1997 on the protection of children and guardianship administration [1997. évi XXXI. törvény a gyermekek védelméről és a gyámügyi igazgatásról, Gyer.] recognizes respect for the evolving capacities of children (Article 8.1–3). Article 6.3 of the Gyer. states: "*Children with disabilities and children who are permanently ill have the right to special care that promotes the development of their capacities and personality.*"

In theory, the child's right to preserve their identity can be derived from this. The theory hardly succeeds in practice, however, because in a society that considers disability merely as a burden and a drawback, decisions towards ending the disability, and thus the disabled identity, is considered to be in the benefit of the child. Consider, for instance, cochlear implants.

RECOMMENDATIONS

- Raise awareness about the difference between integration and inclusion. Legislation and policies should depart from the principle of integration towards inclusion.
- "Multiple discrimination" should be provided against in *Act CXXV of 2003 on equal treatment and the promotion of equal opportunities* (Ebktv.), and such provisions should be included in disability policies and programmes.
- Policies and programmes should be developed to counter multiple discrimination against women with disabilities.
- Raise awareness about the right of children with disabilities to preserve their identities.
- The awareness that disability is a value should be raised in all levels of society.
- The new Civil Code, which was developed with the participation of persons with disabilities and their NGOs, and which contains such new rules for legal capacity (the capacity to act) that respect the dignity and autonomy of the person, should be put into force immediately.

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[10] See the discussion of Article 6

[11] OFP, Chapter I.

General obligations

1. *States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:*
a) *To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;*
b) *To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;*
c) *To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;*
d) *To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;*
e) *To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;*
f) *To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;*
g) *To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;*
h) *To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;*
i) *To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.*
2. *With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.*
3. *In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.*
4. *Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.*
5. *The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions.*

Elsewhere, this Report gives a detailed account of the extent to which the Republic of Hungary has fulfilled its general obligations under Article 4, and provides detailed recommendations about what needs to be done. Here we discuss only a few serious and systemic problems.

SECTION 2

Act XXVI of 1998 on ensuring equal opportunities for persons with disabilities [1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról, Fot.] applies a progressive realization to the implementation of the rights of persons with disabilities: "*The state shall ensure that the rights of persons with disabilities shall be enforced, and that the institutions compensating the disadvantages of persons with disabilities shall be operated, in accordance with the existing possibilities of the national economy.*"[1]

These provisions reflect the fact that the Hungarian public, and consequently the legislation and the policies, consider the disability issue a problem for social policy, and forget about civil and political rights, and the obligations for non-discrimination. These latter need to be resolved immediately.

SECTION 3

Persons with disabilities are involved in legislative and policy planning primarily through the **National Disability Council** [Országos Fogyatékosügyi Tanács, OFT]. What with the exclusivity of the OFT's composition, this fails to provide for effective participation.[2]

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 are not involved systematically at all.

RECOMMENDATIONS

- The government should ensure that the civil and political rights of persons with disabilities are respected, and that the non-discrimination obligations are fulfilled, on the levels of both legislation and policies.
- 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.

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[1] Fot., Article 2.5.

[2] On the composition of the OFT, see in Hungarian: http://www.eselyegyenloseg.hu/main.php?folderID=21203. The OFT is composed of representatives of governmental bodies and non-governmental organizations, such as national organizations of Disabled Persons, of the Blind and Visually Impaired, the Deaf and Hard of Hearing, Persons with Intellectual Disability, and The Hungarian Autistic Society.

b)

SEGMENT OF THE REPORT RELATING TO SPECIFIC RIGHTS

Equality and non-discrimination

ARTICLE 5

1. *States Parties recognize that all persons are equal before and under the law and are entitled, without any discrimination, to the equal protection and equal benefit of the law.*
2. *States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.*
3. *In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.*
4. *Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.*

In Hungary, legislation governing equality and non-discrimination occurs on three levels. First, the Constitution of the Republic of Hungary stipulates prohibition of discrimination as a general mandate of the law. Second, Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities provides more detailed guidance for Hungary's entire legal system with respect to interpreting this mandate. It also establishes the **Equal Treatment Authority** [Egyenlő Bánásmód Hatóság, EBH] as the body authorised to investigate cases where the equal treatment is violated. Third, numerous sectoral laws (Labour Code, the public education and higher education act, etc.) set forth detailed provisions with respect to implementing the mandate.

The Constitution of the Republic of Hungary proclaims equal recognition before the law and the prohibition of discrimination. There is a broad range of Constitutional Court decisions with respect to these fundamental constitutional principles which are widely accepted. *"The Constitutional Court has pointed out: people are not actually equal, there are significant differences among them – for instance with respect to their financial situation, state of health,... age, gender, occupation – which lawmakers and those who implement the laws must take into consideration."*[1]

In its decision 61/1992. (XI. 20.) AB, the Constitutional Court held "the state as public authority and as legislator shall guarantee equal treatment for all persons residing in its territory. In this context it shall not treat the said differently on the basis of race, colour, gender, language, religion, political or other view, national or social origin, financial, birth or other status. The prohibition set forth in Article 70/A (1) of the Constitution of the Republic of Hungary shall be applicable not only to human and fundamental civil rights, but said prohibition – in the event that discrimination violates the right to human dignity – shall extend to the entire legal system."[2]

Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities [Az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról szóló 2003. évi CXXV. törvény, Ebktv.], established a multi-pronged claim assertion mechanism for a party suffering legal injury by providing a clear-cut definition of direct discrimination and establishing the Equal Treatment Authority (EBH), which is responsible for investigating complaints of discrimination. The traits protected by law include disability, and in recent years there have been numerous investigations

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1. Justification

2. In Hungarian: [ABH 1992. 280, 281.].

of disability-related matters. *In 2009: six out of fourteen investigated cases yielded a decision finding violation of law, four cases were settled, in one case the procedure was terminated, and in three cases no legal injury was found.*[3]

Under Hungarian legislation, the requirement of equal treatment can only be applied to legal relationships with limited personal and material scope. Further provisions of said legislation also set forth detailed sectoral rules, and they no longer extend the personal-object effect to the legal relationships of stakeholders in the public sphere, and, with respect to the private sphere, to legal relationships including a public component.

Therefore, the Ebktv fails, despite its broad personal and material scope to comply with those set forth under the UN Convention. Additionally, the Ebktv., provides a detailed definition of actions violating the equal treatment principal, and it stipulates sanctions within the law's purview. Actions violating the Ebktv are:: indirect and direct discrimination, harrassment, retribution, and unlawful segregation.

The statute's definitions largely comply with the Convention's requirements, Moreover, regulation includes, in compliance with the Convention, the allowance of favorable treatment. However, unlike the Convention which unequivocally prohibits any endangering behaviours ("which has the purpose or effect" of violation of the equal treatment principle), under the Ebktv such definition is limited only to harrassment.

In her study, EBH's chairwoman highlights that "compared with the Convention, the Ebktv (1) has a limited material effect; (2) it does not contain provisions with respect to reasonable accommodation; and (3) favorable treatment is subject to more stringent conditions".[4]

The six-member Advisory Board affiliated with EBH, initiated a *legislative modification* to codify the reasonable accommodation requirements for persons with disabilities.

Among its fundamental principles, Hungary's **National Disability Programme** (Országos Fogyatékosügyi Program, OFP)[5] emphasizes that "the principles of prohibition of negative discrimination and the duty of favorable treatment are principles that must be observed in all areas of society. No negative discrimination is allowed against people with disabilities, no treatment that is prejudicial to them and no exclusion are allowed, they must not be restricted in their access to public goods that are easily accessible to other people due to their disabilities. Since people with disabilities because of their condition can exercise their rights – which they are equally entitled to- less than others without disabilities because of their condition, it is fair and justified to provide them with certain advantages."

LEGISLATION IN PRACTICE

The actual realization in practice of legal declarations and the institution of legal guarantees, reveal a far more nuanced picture. Individual government measures

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3. http://www.egyenlobanasmod.hu/index.php?g=cases.php

4. Dr. Judit Demeter: "A Fogyatékossággal élő személyek jogairól szóló egyezmény és az ahhoz kapcsolódó Fakultatív Jegyzőkönyv kihirdetéséről szóló 2007. évi XCII. törvény és az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról szóló 2003. évi CXXV. törvény elemzése [Analysis of Act XCII of 2007 on the promulgation of The Convention on the Rights of Persons with Disabilities and Optional Protocol and Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities].

5. Parliamentary resolution 10/2006. (II. 16.) OGY on Hungary's new National Disability Program

and action plans, lack the necessary consideration to the needs of persons with disabilities and to the requirement of equal opportunity.

The **National Council of Federations of People with Disabilities** (FESZT), the alliance rallying the organisations of persons with disabilities, protested in an open letter on 26 November 2008, because the 2009–2010 action plans as announced, do not contain elements important to disability related issues. The action plans does not consider matters of prevention, access on an equal basis, universal planning, and the principle of Nothing About Us Without Us. In its response, Hungary's National Development Agency emphasized that the issue of equal opportunity is a horizontal criteria, to which they pay prioritized attention, during the evaluation of tenders.

In 2009, Hungary's P**arliamentary Commissioner (Ombudsman) for Civil Rights** devoted special attention to the situation of persons with disabilities and investigated the assertion of their fundamental rights, within the framework of a project titled Different With Dignity.

In 2009, the Ombudsman responded to a complaint by a student with a a hearing problem[6] and launched an investigation of foreign language proficiency examination procedures. The Ombudsman found: „the methodology of foreign language proficiency examination procedures infringes on legal security because is not unified, information about examinations is inadequate, it is not accessible, and it does not comply with the criterion of being easily understandable." In response to the Ombudsman's request, the head of the Language Examination Accreditation Center requested accredited examination centers to incorporate into their internal by-laws and make public in their informational materials, the type of assistance they offer to persons with disabilities. This was done to ensure that persons with disabilities are able to participate in foreign language proficiency examinations on an equal basis with others.

The Ombudsman also investigated changes in the regulations governing the social employment; these legislative underpinnings were enacted by the Hungarian Parliament in 2009.[7] *The new statutory measures*[8] *make the situation of a certain generation of persons with altered work ability significantly more difficult, or downright impossible by discriminating with respect to working people aged 55 and over, who are cared for in social welfare institutions.*

In 2009, the Ombudsman conducted, *ex officio*, a comprehensive investigation of the assertion of the constitutional rights of persons with disabilities at the **Judicial Monitoring and Psychiatric Institute** [Igazságügyi Megfigyelő és Elmegyógyító Intézet, IMEI], the Central Hospital of the Tököl Penitentiary (Bv.), and the Chronic Rehabilitation Section of the Nagyfa Penitentiary Institute.[9] *The Ombudsman found infringements with respect to the right to human dignity, the principle of equal opportunity, the prohibition of discrimination, the right of children to special protection and care, the right to life, and the right to legal security.* On September 19, 2009, the Ombudsman's staff conducted an on-site investigation at IMEI

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6. Report of the Parliamentary Commissioner for Civil Rights on case number AJB 1989/2009. In Hungarian: www.obh.hu/allam/jelentes/200901989.rtf

7. Case number AJB 6540/2009.

8. As of 1 January 2010, an employment contract for so-called development-preparatory employment can only be concluded provided the person cared for is under 55 years of age. The other form of the employment subsidy program for persons with disabilities, work rehabilitation is only possible under the decree provided the person cared for is under 62 years of age. The previous normative funding system was replaced by the tender system.

9. The report can be found in Hungarian: http://www.obh.hu/allam/jelentes/200901161.rtf and at the Central Hospital of the Tököl Penitentiary. At IMEI, the Ombudsman found that men and women, but not underage youth, were treated separately. The investigation also found the following: (1) patients under forced treatment and under temporary forced treatment wore uniforms,[10] (2) convicted inmates and inmates under preliminary custody wore hospital attire, and (3) inmates referred for pre-forced treatment tests, who are suspected to have a personality disorder wore uniforms during the day and pajamas at night." Finally, in several hospital departments as many as 18-20 patients live in a ward. Therefore, the prohibition of discrimination is violated among the inmate population. In addition, the Tököl facility violates the equal opportunity principle because its bathrooms are not accessible.

In 2009 the Ombudsban launched, *ex officio*, an investigation regarding **exercizing of the right to vote** for persons with disabilities in response to NGO reports.[11] In his report he found that „*with respect to persons with disabilities electoral procedures, establishments and materials are inadequate, are not accessible, and do not comply with the criterion of being easily understandable. These problems cause infringements to the right to general, equal, and direct vote by secret ballot; as well as with respect to the prohibition of discrimination; and the equal opportunity principle. Furthermore, it fails to comply with Article 29 of the UN Convention on the Rights of Persons with Disabilities which guarantees persons with disabilities the right to participate in political life and public affairs.*"

The Ombudsman's authority does not extend to establishing non-compliance and the issuing recommendations around the deprivation of the right to vote for persons who are under guardianship or in prison because this is governed by the Hungarian Constitution.

In 2009, the Parliamentary Commissioner for Civil Rights investigated **access on an equal basis to public transportation.** The Ombudsman stated, "*until access on an equal basis is realized, it must be made possible for persons with disabilities to use public transit systems in the most independent manner possible, similar to the conditions of other passengers*"[12] According to the Parliamentary Commissioner, the right of

> Additionally, individual provisions are discriminatory. For instance the rates used by the **Budapest Transit Company** (BKV Zrt.) are discriminatory because they mandate validating two tickets instead of one when using „midibus", a service for persons with physical disability. Under a government decree this service is supposed to be fully subsidized for persons with severe disabilities. Another form of discrimination is that the hours of this service is limited compared to other transit services.
> The Ombudsman has requested "Budapest's Municipal Government to take the necessary measures with a view to BKV Zrt. discontinuing the discriminatory fares applied to its midibus service"[13] *The information for persons with physical disability on BKV's Web site since 31 December 2009 still contains the discriminatory provisions:* "You may use our service by validating 2 tickets for a single trip within Budapest's administrative district, with one accompanying person who is allowed to travel free of charge; the season ticket or travel pass is not valid on these services. You can also purchase tickets from the bus driver. The bus service is available work days from 6 a.m. to 9 p.m. along a route co-ordinated in advance within Budapest's administrative districts. The 'door-to-door' special midibus service is also available on Saturdays."[14] *Discrimination is even more blatant if we consider the situation in light of the ratio of BKV's accessible vehicles.*

[10] As set forth under Article 84 (3) a) and Article 83 (6) of Law-Decree No. 11 of 1979 on the Execution of Punishments and Measures Bv. Tvr.)

[11] Report of the Parliamentary Commissioner on Civil Rights on case number OBH 2405/2009.

[12] „Elhúzódó akadálymentesítés, esélyegyenl_tlenség a közlekedésben [Delayed Accessibility, Lack of Equal Opportunity in Transit]": http://www.obh.hu/allam/aktualis/htm/kozlemeny20100104.htm

[13] Report of the Parliamentary Commissioner on Civil Rights on case numbers AJB 1792/2009, AJB 1799/2009, AJB 5477/2009, AJB 5629/2009.

[14] http://www.bkv.hu/mozgaskorlatozott/index.html (2010. 03. 27)

persons with disabilities to right to move and reside freely and to self-determination is also being infringed upon. The principle for legal security is violated when deadlines for the removal of barriers to accessibility are delayed.

PROGRAMS IMPLEMENTED BY NGOS

The "*Stand Up for Yourself*" program which ran from December 1, 2007, to November 30, 2008, had a goal to eliminate discrimination against persons with intellectual disability, persons with multiple disabilities, and persons with autism.[15] The program continued in 2009, and it was made more effective when the Complex Anti-Discrimination Legal Aid Service was established with the **Hand in Hand Foundation** as its operational center.

[15] Implementing organizations: Hand in Hand Foundation, Symbiosis Foundation, The Hungarian Autistic Society. For more information about the program: http://www.kezenfogva.hu

Additionally, on December 11, 2009, the **De juRe Foundation** organized "*Accessible Motherhood*," a training conference on asserting self-interest. The conference focused on the obstacles faced by parents with disabilities in starting a family and raising children due to their special situation, and on mothers' re-integration into the labor market.

RECOMMENDATIONS

- "reasonable accomodation" should be incorporated into the appropriate provisions of the Hungarian Constitution
- "reasonable accomodation" should be incorporated into Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities.
- Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities, should be extended in its scope to bring it into compliance with the UN Convention on the Rights of Persons with Disabilities.
- The prohibition of behaviors having the purpose or the effect of violation of the equal treatment principle should be extended to behaviors aside from harassment, including indirect and direct discrimination, retribution and unlawful segregation.

Awareness-raising

ARTICLE 8

1. *States Parties undertake to adopt immediate, effective and appropriate measures:*
a) *To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;*
b) *To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;*
c) *To promote awareness of the capabilities and contributions of persons with disabilities.*
2. *Measures to this end include:*
a) *Initiating and maintaining effective public awareness campaigns designed:*
(i) To nurture receptiveness to the rights of persons with disabilities,
(ii) To promote positive perceptions and greater social awareness towards persons with disabilities,
(iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;
b) *Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;*
c) *Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;*
d) *Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.*

At present, the Republic of Hungary promotes these objectives through those large advocacy organizations that represent the interests of persons with disabilities (DPOs). *While there have been several publicly funded actions to shape public awareness, there is still no definite, independent concept in this regard:* only goals and objectives for action have been defined in the **New National Disability Programme.** The document contains general suggestion like providing support for the media and the advocacy organizations of persons with disabilities "for programmes promoting public awareness," or declarations like "at all levels of education information must be provided on disabilities as corresponds to the given age group"[1] – which is hardly fulfilling the ambitious objectives of the Convention.[2]

On 8 November 2007, the **Ministry of Social Affairs and Labour** (SZMM) and the **Mental Disability Advocacy Centre** (MDAC) jointly organized a conference, entitled *The Convention on the Rights of Persons with Disabilities in Hungary* [A fogyatékossággal élő személyek jogairól szóló egyezmény Magyarországon]. It sought to involve NGOs and government bodies in the task of *identifying those legislative and practical responsibilities that Hungary faces after the ratification of the CRPD.* As a conclusion, the conference put forward recommendations that may serve as the foundation for legal reform.

Raising awareness was among the objectives of the programmes of the **Hungarian Association of the Deaf and Hard of Hearing** [Siketek és Nagyothallók Országos Szövetsége, SINOSZ] in 2007–2010, including the deaf community's access to information on its rights and cultural values. The programme also included the promotion of such prerequisites of the desired paradigm shift as increasing the sense of empowerment and developing civil consciousness. It is more valuable and

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[1] 10/2006. (II. 16.) OGY határozat az új országos fogyatékosügyi programról, III. Fejezet 2.2. pont [Decision of Parliament 10/2006 (16 February) "On the New National Disability Programme," Chapter III, Article 2.2] The document is available at: http://www.szmm.gov.hu/main.php?folderID=1295

[2] Dr. Ádám Kósa, Dr. László Gábor Lovászy, Ph.D.: A fogyatékossággal élő személyek jogairól szóló egyezmény értékelése és kritikája a jelnyelvhez kapcsolódó jogok vonatkozásában [A review and critique of the Convention on the Rights of People with Disabilities with respect to rights related to sign language], SINOSZ, 2008. p. 9.

efficient for the individual if instead of a medically-based identity, their sense of community is promoted, the connecting power of sign language is emphasized, and their self-esteem and sense of belonging to a community of sign language users are encouraged.

On 7 December 2007, SINOSZ and the European Union of the Deaf held an international conference in the Hungarian Parliament. Celebrating the 100th anniversary of SINOSZ, *Independent Living – The Road from New York to Budapest* examined the UN Convention on the Rights of Persons with Disabilities, which the Republic of Hungary signed in New York on 30 March 2007, and ratified on 20 May 2007. The speakers and participants included representatives of the Hungarian government, Hungarian and foreign NGOs, persons with disabilities, legal experts, and persons with a personal experience of the development of the UN Convention and its significance for society.

As part of its 2008 program, *On the road to equal opportunity to access* [Úton az egyenlő esélyű hozzáférés felé], SINOSZ considered the UN Convention as the foundation for advocacy work: the organization felt strongly committed to the task of highlighting those provisions of the Convention that concern the deaf and the need to establish the relevance of law to individuals. With a series of programs, SINOSZ attained a broad social consensus for the implementation of the Convention. With strong lobbying activity, it initiated the fact-finding analyses that are necessary for the *harmonization of Hungarian law*. A special emphasis was given to the involvement of the media, as a result of which the number of fact-finding reports on the life of persons with hearing impairment grew considerably. Another beneficial result is that the number of people applying to sign language courses sharply increased in the second half of 2008.

The cooperation of **Advocating Change Together** (ACT), an American disability advocacy group, and the Employment Rehabilitation Research Group of the **Gusztáv Bárczi Special Education Faculty of the Lóránt Eötvös University of Sciences** (ELTE GYFK) resulted in the world's first Travelling Exhibition on the History of Disability,[3] first opened between 4 December 2007 and 28 January 2008. In addition to 27 large installations, the exhibit also featured a 30-minute "action movie," the powerful work of disability rights activist Cheryl Marie Wade, who wanted to rouse and empower people with disabilities, to heighten their self-respect. At the venue, persons with intellectual disability were provided leaflets with a simplified version of the explanatory signs, while the blind had access to MP3 players with narrative descriptions of the view. The display, which seeks to lay bare the worn-out stereotypes that persons with disabilities have to face, can act as an efficient means of reshaping deep-set attitudes in society. In 2008, the exhibition travelled through most of the county capitals in the country, and was on view for two weeks in the building of the European Council, Strasbourg, in October – November 2008.

In 2008, ELTE GYFK's Free School of Disability Studies focused on, besides subjects in disability studies, on certain themes of the 2006 UN Convention. Lectures by renowned Hungarian and foreign experts concerned such subjects

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[3] http://moodle.disabilityknowledge.org/course/category.php?id=6

in light of the CRPD as the situation of women with disabilities, rehabilitation practices in Hungary, the influence of the Convention on the life of deaf and blind persons, and major issues of the implementation of the Convention in Hungary.

The disability rights activists who were invited by MDAC and SINOSZ to the latter's headquarters on 5 May 2008 unanimously agreed that civil society needed to join forces for the efficient implementation of the Convention, and should do so in a non-hierarchic structure that is based on solidarity. The members defined the long-term goals of the resulting Caucus as preparatory work towards, and the production of, an independent shadow report, and the exchange of information. Their first joint action was the presentation of their consensual position on the national monitoring of the Convention. They agreed that a concerted, efficient media strategy was needed so that the goal and subject of the CRPD could be conveyed to society at large.

HASÉ, a monthly magazine for the deaf and hard of hearing, devoted a series to the UN Convention, methodically discussing the provisions that are relevant for the deaf and hard of hearing, in the hope of starting the processes that are necessary to raise the community's awareness of its rights.

SINOSZ facilitates the popularization and application of the UN Convention in Hungary with an educational handbook. Based on the 2007 publication of the University of Minnesota Human Rights Center, *Human rights. Yes! Action and Advocacy on the Rights of Persons with Disabilities*, the 373-page Hungarian version[4] interprets the articles of the CRPD, and offers exercises to assist the understanding and implementation of the Convention. The whole manual can be downloaded in pdf format from the website of SINOSZ, and a sign language version of the glossary it contains is also available.

On 25 September 2009, SINOSZ held an international conference under the title *Human rights. Yes!* The event provided an opportunity for activists, human rights advocates, educators and decision makers to learn about the manual, to share ideas and enter into collaboration for the purpose of bringing the Convention closer to persons with disabilities, their families, those who work with them, and to society at large.

An abstract of the manual *Human rights. Yes!* has been prepared in English and Hungarian, and this handout and the manual itself are now available at professional events/programs organized by SINOSZ and others.
In 2009 SINOSZ had a bus designed which it sent on a **road show** in the country, bringing the news of the UN Convention to the deaf communities, together with the spirit of accessibility. Also intended to raise public awareness, it first appeared in Bonyhád and Szekszárd, on 23 September 2009, at an event during Citizen Participation Week. The three-day event was opened by MEP Dr. Ádám Kósa.

SINOSZ has entered into a cooperation agreement with **Pannon Halláscentrumok Ltd.** to participate in the campaign of PHONAK, *Hear The World* campaign – which is supported by renowned public figures and artists the world over –, and

[4] **4.** SINOSZ Emberi jogok. Igen! Képzési kézikönyv adaptált változat, June 2008, ISBN 978 963 06 6708-1 http://www.sinosz.hu/sites/default/files/EmberiJogok_0.pdf
More on the orginial English language handbook: http://www1.umn.edu/humanrts/edumat/hreduseries/TB6/index2.html

to highlight the "equality for all" principle of the UN Convention.

SINOSZ's *Look Around* [Nézz körül] is a program that seeks to influence the social perception of persons with hearing impairment, tries to shape public awareness, highlights the values of deaf culture, and attempts to reproduce and develop empowerment in the future generations of the deaf.

Every year, we are present at Sziget Festival, where we have a pavilion inside Ability Park. The Festival offers a chance to present ourselves and the UN Convention to a typically young, colourful crowd.

As a result of multi-stage consultations initiated by the **Prime Minister's Office** (MEH) and efficient cooperation on the part of NGOs, a *standardized glossary on disabilities* was created. In 2008, the MEH started a campaign to highlight the presence in society of people with disabilities, in which SINOSZ was an active participant. The films, which had nearly 100 appearances in the media, were also uploaded to youtube.com.

> One of the important responsibilities of the **Parliamentary Commissioner for Civil Rights** (OBH-ÁJOB) is to increase the public's awareness of persons with disabilities, and to promote the protection of the interests of people with disabilities by raising the general issue and suggesting possible solutions, thereby facilitating efficient redress for individual complaints and grievances. As part of the project series called *Human Dignity without Barriers* [Emberi méltóság korlátok nélkül], in 2009 the OBH-ÁJOB launched a program it called *Different with Dignity* [Méltóképpen másképp], to identify the rights that persons with disabilities have, together with those they expect in the 21st century, and to find possible solutions. The program included three workshops, *Public life – with a difference* [Közélet – másképp] on 27 April 2009; *Private life – with a difference* [Magánélet – másképp] on 3 June; and *Closed doors – open issues* [Zárt ajtók – nyitott kérdések] on 12 November. As a result, instructions on how to file a complaint are now available in sign language on the website of SINOSZ, which also offers a link to the website of the OBH.

Throughout its fifteen years history the OBH has carried out several investigations whose results and consequences now need to be reviewed. Communication barriers, disability benefits, the difficulties of parking, the situation of those living in residential institutions, accessibility problems, employment issues, the very existence of persons and children with disabilities in families, the unprepared state of educational institutions: these all pose questions that need to be solved. *Of more than 46,000 complaints filed at the OBH in the past decade,*[5] *only 400 concerned some kind of disability issue* (0.8 percent of all cases), and only a few had some bearing on the deaf community.

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[5] General Guide to the Parliamentary Commissioner's Office: http://www.obh.hu/allam/eng/index.htm

Jointly published by ELTE GYFK, Eötvös Publishers and the Disability Knowledge Base Foundation [Fogyatékosságügyi Tudásbázis Alapítvány], the first two issues of the periodical *Fogyatékosság és Társadalom* [Disability and Society] were published in 2009, in a length of 100 and 120 pages, respectively. Beside the now poignant absence of relevant Hungarian professional and academic forums, the new organ was also necessitated by the novel perceptions, multidisciplinary quality and diverse methodological solutions of what is by now a full-blown science which nonetheless constantly produces new approaches and results.

On 16 November 2009, the Research Council of ELTE GYFK celebrated Hungarian Science Day with *Special Education – Disability Studies – Rehabilitation* [Gyógypedagógia – Fogyatékosságtudomány – Rehabilitáció], a conference whose chief goal was to initiate a dialogue between theoretical and practical experts working in diverse disciplines, so that scholars' and professionals' views on disability-related issues, their objectives and activities could be compared and submitted to a critical analysis.

On 10 September 2009, Radio Q 99.5 launched its interactive program, *Equally – The equal opportunities magazine* [Egyenlőre – esélyegyenlőségi magazinműsor]. The frank, objective and exoteric studio discussions, telephone interviews and reports concern the day-to-day life of persons with disabilities and/or social disadvantages. Its main topics are integration, accessibility, sports, education from early development to adult education, legal aid, equal access, employment, current news of interest, information from organizations, and program guides.

It is also up to you to make life easier for people with disabilities, and to further their efficient integration [Rajtad is múlik a fogyatékkal él_k mindennapjainak megkönnyítése, a hatékony integrálásuk] is the title of the 2010 public service campaign of **Mediaunio Foundation** [Médiaunió Alapítvány], which emphasises the individual's responsibility for the efficient social integration of persons with disabilities.

RECOMMENDATIONS

- The goals and objectives for action that are already defined in the New National Disability program should be reviewed; the division of tasks with NGOs should be worked out;
- Ministries, institutions and private sectors should cooperate with DPOs and the persons concerned to develop awareness-raising and educational campaigns about disabled persons' equality before the law;
- The system of formal education needs to be reformed: human rights should be treated more extensively in the curricula, with a special emphasis on the rights of persons with disabilities;
- Measures should be taken to ensure that persons with disabilities, their families and professionals working with them are aware of, and educated about, the possibilities of mobility;
- Campaigns and orientations which are compatible with the Web Accessibility Initiative (WAI) should be offered about the accessibility of mass media;

- Parents should be informed, and their attitudes influenced, about the availability and practical usage of policies and laws that guarantee early education, inclusive education, “reasonable accommodation” and lifelong learning for children with disabilities;
- Legislative and other actions should be taken to ensure that public health campaigns can be accessed by persons with disabilities;
- Actions should be taken to raise the awareness of persons with disabilities about the possibilities of preventing infectious diseases like AIDS or H1N1, and to make such knowledge available in accessible formats, including sign language and Braille;
- General habilitation and rehabilitation programs should be developed for persons with disabilities in the fields of health service, employment, education and social services, including early intervention and peer support, and the availability of these services and programs everywhere in the country should be ensured.

Accessibility

ARTICLE 9

1. *To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:*

a) *Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;*

b) *Information, communications and other services, including electronic services and emergency services.*

1. *States Parties shall also take appropriate measures to:*

a) *Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;*

b) *Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;*

c) *Provide training for stakeholders on accessibility issues facing persons with disabilities;*

d) *Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;*

e) *Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;*

f) *Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;*

g) *Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;*

h) *Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.*

PRECEDENTS AND THE CURRENT SITUATION

Accessibility ("hozzáférhetőség") as a comprehensive term only gained acceptance in Hungary during the past few years. The previously used term was *akadálymentesítés*, meaning elimination of barriers; however, even experts mostly used this term to mean physical accessibility.

Presently, there is no nationwide data available on the level of accessibility – to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public – because systematic surveys have not been carried out. There is currently only one survey in progress and it is specifically aimed at the accessibility of tourist facilities. This survey, which is financed by a grant from the **Motivation Foundation** [Motiváció Alapítvány] relies on the contribution of member organizations and activists from the **National Federation of Disabled Persons' Associations** [Mozgáskorlátozottak Egyesületeinek Országos Szövetsége, MEOSZ].

According to empirical data and surveys carried out in recent years by the regional organizations of MEOSZ, *the national average for the physical accessibility of buildings open to the public is greater than 55 percent.* However, this distribution varies greatly between towns and villages. Though there are only estimates in this regard access in a comprehensive sense, which includes *information and communication accessibility*, is at a far lower level.

The realization about comprehensive accessibility only began in 2007, mainly in developments financed from EU grants, due to the implementation of this criteria into the application for EU grants.

CHARACTERISTICS OF THE HUNGARIAN LEGAL ENVIRONMENT

As a result of the robust lobbying and advisory activity of MEOSZ, the requirements and technical rules on physical accessibility became part of the laws on building procedure and the detailed rules of implementation[1] relatively early, even before the UN Convention was ratified. These regulations first offered recommendations for the physical accessibility of newly constructed buildings. Next, the Act defined the term of a public use buildings and the minimum accessibility features that should be introduced. Due to the intensive advocacy and technical work of MEOSZ and the development of the legal environment, more modern requirements were added. The regulation's effect was extended to include new buildings as well as reconstructions and renovations. The detailed rules moved closer to comprehensive accessibility, which is how accessibility is now understood in building-related regulations.

Act XXVI of 1998, on ensuring equal opportunities for persons with disabilities [1998. évi XXVI. törvény a fogyatékos emberek esélyegyenlőségének biztosításáról, Fot.], is very important in developing accessibility legislation. This Act defined compulsory accessibility criteria not only for new buildings, but existing public use buildings as well which are not fulfilling the accessibility criteria and set a deadline to fulfil these requirements. *The 2009 amendment of Fot. defined the concept of equal access. Accordingly, three issues within equal access need to be considered: equal access to services, equal access to the building, and equal access to information.* The act also introduced the *possibility of initiating court action* against those who fail to observe the regulations.[2]

To facilitate the interpretation of the concept of equal access, the Ministry of Social Affairs and Labour (Szociális és Munkaügyi Minisztérium, SzMM) commissioned a publication.

The provisions of the Fot. can be divided into two classes with regard to its binding force. Chapter II refers to the rights of persons with disabilities. Similar to paragraph 1 of the Convention's Article, it applies an approach based on substantive rights. On the other hand, Chapter III. discusses equal opportunity as an aim. The text itself of the act, however, barely observes the differentiation that follows from the structure – making the act as a whole more lenient than exacting.

[1] Az épített környezet alakításáról és védelméről szóló 1997. évi LXXVIII. törvény [Act LXXVIII of 1997 on the formation and protection of the built environment]. Az országos településrendezési és építési követelményekről (OTÉK) szóló 253/1997. (XII. 20.) Korm. rendelet [Government Decree 253/1997 (20 December), on national settlement development and building requirements.]

According to Chapter II, *persons with disabilities have the right to accessibility with regard to the urban environment, communications, transport, and supporting services and aids, as well as the right to equal access to public services.* Compared to Article 9.1 of the Convention, this list does not include accessibility in the workplace, which is mentioned only in Chapter III. *While the Convention does not specify the exact actions which must be taken, it only identifies the areas in which action shall occur. Fot. cannot be considered to meet the criteria of "appropriate measures" – as specified in the Convention – because in reality the rights that the text outlines for persons with disabilities remain mere promises.*

Regrettably, a lack of support and funding prevented public building managers, including the government and municipalities, to meet the accessibility deadlines originally prescribed in the law. Between 2006 and 2009, amidst massive media attention, MEOSZ brought and won all of the **test cases** against violators of the deadline. Furthermore, MEOSZ organized several demonstrations, with the participation of thousands of persons with disabilities and stroller-using mothers, to speed up the accessibility process.

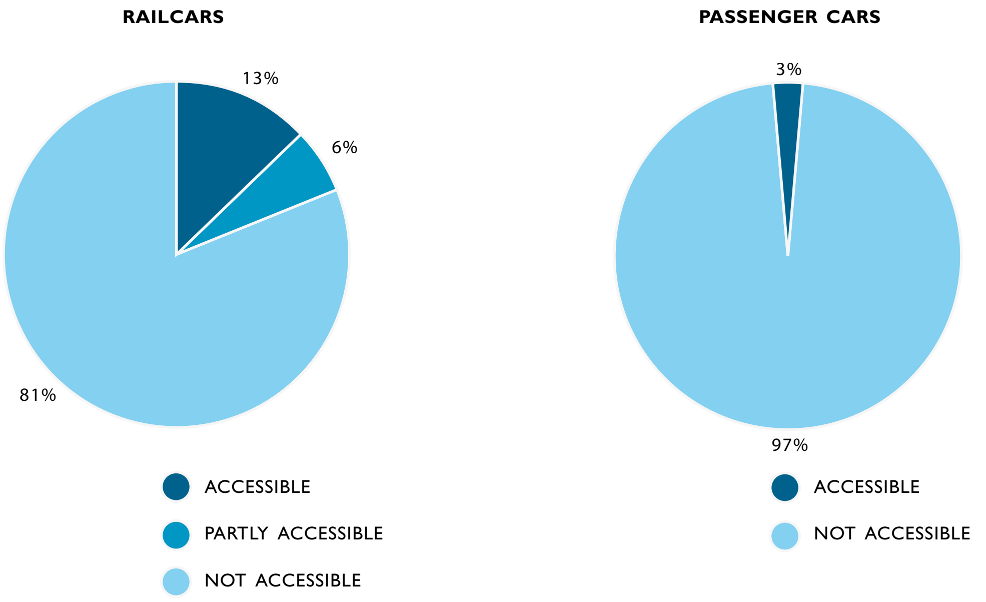
The Fot. defines deadlines for the measures to be taken only with regard to *equal access to public services*, though even the minister's explanation notes that earlier legal deadlines have passed without any result. It seems then that this measure fails to guarantee the realization of disability rights. In certain fields, the Fot. refers to other regulations, which concretize the rights included in the parent act, and otherwise increase its normative power.

> 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 chiefly 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 Fot. will not be met.* This delay is especially evident in public transport systems.

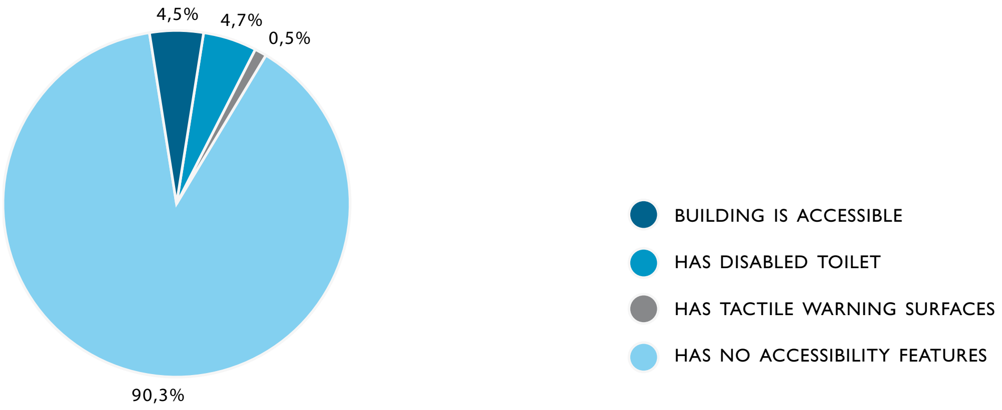
In 2009, the **Parliamentary Commissioner for Civil Rights** [Állampolgári Jogok Országgyűlési Biztosának Irodája, OBH-ÁJOB] launched an investigation about *the conditions of public transport, including rail transport, in the capital and the country.*[2] Furthermore, a comprehensive investigation was carried out on how new 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 follow.

[2] 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

Proportion of wheelchair-accessible carriages presently operated by MÁV-Start Inc. (Zrt.):

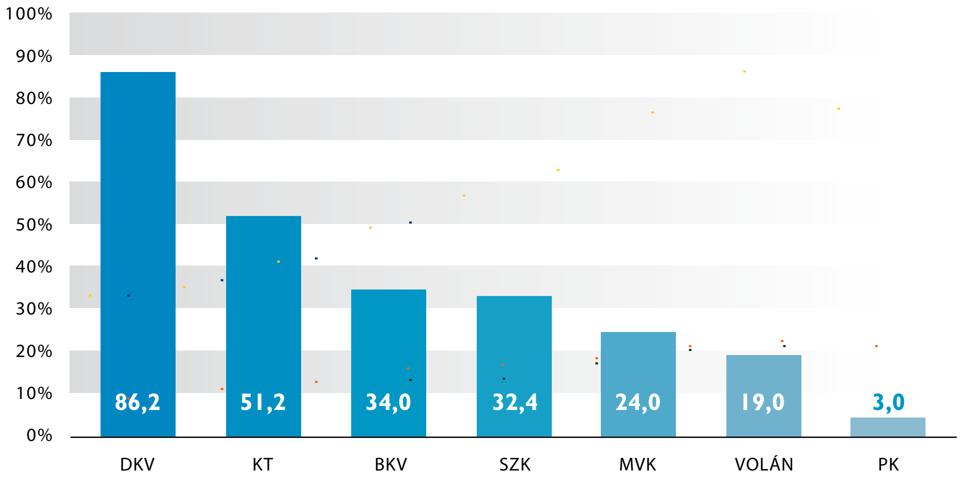


Indicators of passenger facilities, according to MÁV-Start Inc. (Zrt.):



Low-floor vehicles at various service providers

Debreceni Közlekedési Zrt. (DKV)
Kaposvári Tömegközlekedési Zrt. (KT)
Budapesti Közlekedési Zrt. (BKV)
Szegedi Közlekedési Kft. (SZK)
Miskolc Városi Közlekedési Zrt. (MVK)
Volán
Pécsi Közlekedési Zrt. (PK)



The figures alone indicate that service providers will not be able to observe the deadline stipulated in the Act and ensure complete accessibility in public transport by 31 December 2010.

In regards to public transport, the above-mentioned investigation of the OBH-ÁJOB found that *"the exact measures that ensure equal access for all have not been specified (...) and that there is need to prepare a regulation which defines minimum criterias. This should define, in a comprehensive manner, the fundamental conditions that all disability groups require to be able to use public transport, so that the dignity and self-determination of persons with disabilities can be guaranteed."* The OBH-ÁJOB recommended that *"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."* Until complete accessibility is ensured in public transport, temporary solutions must be found to facilitate equal access for persons with disabilities.

The OBH-ÁJOB has initiated several investigation about the **accessibility of the underground,** and found that *for passengers with hearing disabilities the accessibility features are lacking in several respects.* The city originally wanted to introduce the departure light signal on the new vehicles which it had long wanted to purchase. Due to the lack of resources it postponed the purchases, and adding the feature to the existing cars they want to keep in service in the long run became the preferred option. However, obtaining the necessary authority approvals and implementing the modifications takes considerable time, and the additional light signals cannot be installed on the underground cars before 1 January 2011. The deadline specified in the act was 1 January 2010.[3]

The DeJure Foundation for the Rights of the Disabled [DeJure Alapítvány a Sérült Emberek Jogaiért] initiated several legal cases about the accessibility of public spaces and transport. Its accessibility-related programmes in 2009–2010 included informing public servants about accessibility; producing and disseminating information publications and brochures in Braille; making their own website first blind-friendly, and then completely accessible for the deaf, the hard of hearing people and persons with intellectual disability.

Almost all accessibility-related technical specifications and standards are available,[4] in fact most of them date prior to the ratification of the UN Convention. There are existing technical specifications about the dimensions and information material for chair lift devices, and for the technological parameters of public communications devices (public phones), including access by the hard of hearing and wheelchair users. There is also an EU regulation in effect on the accessibility of electronic communication systems, web pages, and regulation on buses used in local public transport.

Equal access to information and communications

The UN Convention stipulates that in their attempt to ensure comprehensive accessibility, state parties *"shall take appropriate measures to ensure to persons with disabilities access (...) to information and communications, including information and communications technologies..."*

[3] The OBH-ÁJOB's report on case AJB 1461/2010 can be found in Hungarian at www.obh.hu/allam/jelentes/201001461.rtf

[4] The accessibility of the vehicle of public transport, for instance, is regulated by A közúti járművek forgalomba helyezéséről és forgalomban tartásának műszaki feltételeiről szóló 6/1990. (IV. 12.) KÖHÉM rendelet [Decree 6/1990 (12 April) of the Ministry of Transport, Communications and Energy, on the technical requirements for the operation of road vehicles].

> ” With regard to communications, the provisions of Fot. are merely indicative, not enforceable, which can be considered a serious defect. (This is also indicated in the minister's explanation for Article 7 of the Act.)

ÉFOÉSZ's easy to read communication activity

The **Hungarian Association for Persons with Intellectual Disability** [Értelmi Fogyatékossággal Élők és Segítőik Országos Érdekvédelmi Szövetsége, ÉFOÉSZ] has work towards accessible communication in two main categories. First, the Association itself produces easy to read information sources. Second, it helps other organizations and institutions to be able to prepare their own material or prepares this material for them.

Important publications in 2007–2010 that employ the easy to read method:
Támogass, hogy dönthessek – Az én életem az én választásom [Support me so that I can make my own decisions – My life, my choice] – an easy to read summary of the provisions of the new Civil Code[5] on legal capacity; *Európai Parlamenti Választások* [Elections to the European Parliament] – an easy to read publication on the election procedure; an easy to read version of the Convention on the Rights of Persons with Disabilities, as well as a workbook to facilitate the understanding of the Convention.

Subtitling television programs

Act I of 1996 on radio and television broadcasting [A rádiózásról és televíziózásról szóló 1996. évi I. törvény] only requires the subtitling of ethnic minority television programmes. *In general the Act has no provisions on subtitling or on the*

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[5] The new Civil Code has not come into effect.

principle of equal access in connection with persons who have hearing impairments. **Act LXXIV of 2007 on the rules of broadcasting and digital switchover** [A műsorterjesztés és a digitális átállás szabályairól szóló 2007. évi LXXIV. törvény] only mentions on one occasion the rights of persons with disabilities, when stating that one of the principles and objectives of the act is "*to take into consideration the needs of disabled and low-income users in the course of digital switchover.*"

> On the other hand the **National Disability Programme** [Országos Fogyatékosügyi Program, OFP] discusses subtitling in greater detail, when referring to the principle of equal access: "at least one news programme per day on all national television channels should be transmitted in a format accessible for the deaf and hard of hearing, by using subtitling and/or a sign language interpreter – using the means of media regulations."[6]
> The implementation of access to communication was very slow to start, and is still not at the desired level. Between the autumn of 2007 and the summer of 2008, the Ministry of Social Affairs and Labour provided nearly HUF 100 million in support for the subtitling of television programmes that are broadcast nationally. By the next year, the available funds were cut by about a half.[7] According to the Hungarian Association of the Deaf and Hard of Hearing [Siketek és Nagyothallók Országos Szövetsége, SINOSZ], this cut is responsible for a 67 percent drop in the availability of the service.

In 2008, SINOSZ developed recommendations for the modification of the Act on the Electronic Media, with regard to subtitling and sign language interpretation. SINOSZ sought to ensure that television channels broadcast their programs with subtitling at least 3-4 hours daily, therefore the act should require an initial minimum of four hours of subtitled programming, with a 6-10 percent annual increase of this ratio. Their demand for sign language interpretation has been satisfied, and now all reports and announcements on and for the deaf community feature sign language interpretation.

The Association has prepared a **set of proposals** for measures to improve the quality of live of persons with hearing impairment, which it sent to the makers of the Budapest Disability Action Plan [Fővárosi Fogyatékosságügyi Cselekvési Program].

Enacted on 9 November 2009, the **Act on Hungarian Sign Language** *requires public service and national television channels to provide, as of 1 July 2010, subtitling and sign language interpretation for public announcements and news programmes*, and for at least a daily two hours of films, children's and youth programmes, and programmes for persons with disabilities. Following the British and Dutch model, between 2011 and 2014 this rate must be raised by two hours annually, and from 2015, subtitling or sign language interpretation is to be provided for all programmes.[8]

On its accessible website, SINOSZ has provided **access to electronic public services,** which helps the principle of equal access to succeed in the use of public services. There are sign-language instructions that call the user's attention to the availability of e-administration, and its benefits are emphasized in easy to read descriptions. As a result, the number of e-administration users is increasing.

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[6] 10/2006. (II. 16.) OGY határozat az új Országos Fogyatékosügyi Programról [Resolution of Parliament 10/2006 (16 February) on the new National Disability Programme], p. 25.

[7] Funds from 2007–2009 changed as follows:
December 2007: 100.000.000 HUF
November 2008: 55.000.000 HUF
October 2009: 24.000.000 HUF
Source: Ministry of Social Affairs and Labour at www.szmm.gov.hu. Only in Hungarian.

[8] 2009. évi CXXV. törvény a magyar jelnyelvről és a magyar jelnyelv használatáról [Act CXXV of 2009 on Hungarian Sign Language and the use of Hungarian Sign Language].

As the non-professional and professional participants of a round-table discussion organized by the **Nonprofit Media Centre** [Nonprofit Média Központ] and the **Institute of Applied Communication Science** [Alkalmazott Kommunikációtudományi Intézet] pointed out, one of the most important problems that disabled users of the media experience, beside their representation therein, is the limited availability of Hungarian programming, what could be called unequal "access to content." A member of the Civil Workshop [Civil Műhely] gave an example: 80% of the programmes he watches come from the BBC, the remaining 20% are only Hungarian programmes owing to the scarcity of programming with subtitles or sign language interpretation in the Hungarian channels.

As required by the law, Hungary has a mid-term National Disability Programme and a short-term Government Action Plan, which specifies deadlines for the implementing actions. Yet, it fails to *specify available or future financial ressources or sanctions in case responsible ministries violate these rules.* As a result, the governments continue to breach legal provisions that are in effect, fail to plan funding for implementation, and lack appropriate government coordination that could ensure compliance with the regulations.

AVAILABLE LEGAL REMEDIES

- Though the current Civil Code [Polgári Törvénykönyv] provides for the enforceability of legal rules by allowing individuals or groups, including advocacy organizations, to take legal action in case individual rights are violated, few such cases have been initiated to date. The

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10. Vakok perelik az OTP-t a bankautomaták miatt. Sérültek.hu, 2005. december 2. http://www.fogyatekosportal.hu/index.php?option=com_content&task=view&id=411&Itemid=2&lang=

most numerous and effective were the 19 test cases which were brought by MEOSZ, and were all won, for non-compliance with deadlines to implement accessibility. It is also important to note the successful legal action taken by the Hungarian Federation of the Blind and Partially Sighted [Magyar Vakok és Gyengénlátók Országos Szövetsége, MVGYOSZ] to make ATMs accessible for blind users.

- It is possible to initiate legal action in case of non-compliance with the accessibility provisions of the Act on Building. This violation can be sanctioned with a fine from the building authority. The owner can be ordered to terminate the infringement or even to demolish the building. However we are unaware of such cases as due to the intervention of MEOSZ or other DPOs, the owners and the building authorities always managed to remedy the violation in an extra-judicial proceeding.
- The Act on Equal Treatment[9] can be applied to cases when there is a failure to provide accessibility. It allows through administrative actions to sanction or to order the termination of the detrimental results caused by direct or indirect discrimination. Even though there have been few proceedings based on this claim, it lacks significance.[10]

LEGISLATIVE MEASURES REQUIRED BY THE UN CONVENTION BUT NOT TAKEN TO DATE

- Hungarian law does not provide for the principle of *reasonable accommodation*. MEOSZ pointed out at the 10 October 2008 public hearing of Parliament, that term of reasonable accommodation used in the Hungarian legislation in effect is not in harmony with the term according to the UN Convention, and proposed the principle to be introduced. The expert panel of the Equal Rights Authority [Egyenlő Bánásmód Hatóság, EBH] has discussed and recommended this proposal to the government.
- Despite the efforts of MEOSZ, in public procurement procedures it is still not required by law to ensure accessibility.

> ” Since the ratification of the UN Convention, Hungary has not improved the guarantees that ensure accessibility for persons with disabilities.

RECOMMENDATIONS

- A set of rules on reasonable accommodation should be introduced to Hungarian law (perhaps by amending the Act on Equal Treatment), since the current law does not consider the lack of reasonable accommodation as a discrimination based on disability, and does not even define the principle of reasonable accommodation.

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[9] 2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról [Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities].

[10] The decision of the Equal Rights Authority (Egyenlő Bánásmód Hatóság, EBH) on case 1340/2008 and EBH 418/2007 can be found at http://www.egyenlobanasmod.hu/index.php?g=english.htm.

- An objective system of registration should be introduced in the field of accessibility. This system should represent the current situation, and should serve as a future indicator when implementing the UN Convention.
- 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.
- Barriers to accessibility in public transport should be identified and eliminated by securing financial resources and by appointing responsible persons. Until all public transport is accessible, temporary solutions should be found to allow equal access for persons with disabilities.
- Accessibility for persons with disabilities should be a requirement in the Act on Public Procurement.
- The National Disability Programme and the government's short-term Action Plan should identify and allocate resources to realize accessibility.
- NGOs should receive financial support so that they can increase their capacity to enforce legal requirements.

Right to life

ARTICLE 10

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

PREJUDICE

Whatever the position of law, prejudice is so prevalent in Hungary that the dominant opinion in society is that the families of children and adults with disabilities are not obliged to care for the family member with disability. Since those children who are not accepted by their families often fall ill in the institutions and miss motherly love, their chances of recovery, indeed of survival in the first years, is far worse than those of their peers who live with their families. In effect, their *right to life is violated.*

The same prejudice that makes people consider a person with disability inferior, allows parents to withhold their agreement to perform certain operations in situations where the threat to their children's life is indirect, not direct. In cases of direct threat to life, healthcare providers must act to save the life of a person with disability irrespective of the will of the person's caregiver, guardian, or parent. The only exception is when the informed person with disability has made or signed a statement of consent, prescribed in legal proceedings, about those health conditions when he or she does not want his or her life to be sustained.

HUNGARIAN LAW GUARANTEES AND SUPPORTS THE RIGHT TO LIFE OF ALL PERSONS, INCLUDING THOSE WITH DISABILITIES

According to the Constitution and the consistent practice of the Constitutional Court (Alkotmánybíróság),[1] *the right to life and the right to human dignity are the most important fundamental rights in Hungarian law.* Every person in the Republic of Hungary, consequently those as well who live with disabilities, have the inherent right to life. It is in relation to this right that the Hungarian regulations of abortion, euthanasia and the death penalty must be examined.

Act LXXIX of 1992, **on the protection of fetal life** [1992. évi LXXIX. törvény a magzati élet védelméről], *however, raises concerns about its compatibility with this provision.*

The act on the protection of fetal life provides for abortion in the case of a medically presumed defect of the fetus with the following conditions:

- *until week 12, if the fetus is medically presumed to be suffering from a serious disability or other damage (on the basis of current professional judgement of the doctor);*
- *until week 20 – or week 24 if the diagnostic procedure is prolonged –, if the likelihood of genetic or teratological abnormality is at least 50 percent;*

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[1] Cf. Article 54.1 of the Constitution, and the decisions of the Constitutional Court 23/1990. (X. 31.) AB határozat, 64/1991. (XII. 17.) AB határozat.

- *the pregnancy can be terminated at any time if there is proof of an abnormality that precludes life after birth."* [2]

The Constitutional Court has treated extensively on the issues of abortion and the protection of fetal life. Its position, asserted in several decisions,[3] is that *"legally a fetus is not a person, not a subject of law"*. This is not to say, however, that fetal life does not enjoy constitutional protection. As human life that is conceived and in the process of development, the fetus is also entitled to the non-absolute protection that the state provides to humans under the requirement of the right to life.

The provisions of the act can be considered seriously discriminative with regard to fetuses with disabilities.

If the fetus has a degree of disability, abortion is more readily permitted. This is an arbitrary differentiation between normal and disabled fetuses, and hence between the rights to life of persons to be born. Though Hungarian constitutional law does not consider the fetus as a subject of law, and does not acknowledge its right to life, it does provide for the constitutional protection of fetal life,[4] recognizing what is a biological truth, namely that the life of a person born is the continuation of fetal life.

Following this logic, the provision of the right to life without discrimination requires that no arbitrary differentiation be made between fetuses on the basis of the lack or presence of disability.

Experience substantiates this argument in that the imperfection of intrauterine tests often leads to incorrect diagnoses, thus healthy fetuses may also fall victim to the laxity of abortion rules.

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.

The provisions of **Act CLIV of 1997 on health** [1997. évi CLIV. törvény az egészségügyről, Eütv.] on **passive euthanasia** provide for the right to refuse treatment in two cases.

The first is regulated by Article 20.2: *"A patient shall be required to refuse the provision of any care the absence of which would be likely to result in serious or permanent impairment of his health, in a public deed or in a fully conclusive private deed."*

The second case is when life-saving or life-sustaining intervention is refused, as regulated by Article 20.3. Patients with limited or no disposing capacity are

[2] Emberi jogok. Igen! A Fogyatékossággal élő személyek jogai – Képzési kézikönyv [Human rights. Yes! Action and Advocacy on the Rights of Persons with Disabilities]. Siketek és Nagyothallók Országos Szövetsége, Budapest, 2009, p. 105. The text references Article 6 of Act LXXIX of 1992, on the protection of fetal life.

[3] 64/1991. AB határozat [Decision of the Constitutional Court 64/1991].

[4] 48/1998. AB határozat [Decision of the Constitutional Court 48/1998].

particularly protected by the act. In their case, care the absence of which would be likely to result in serious or permanent impairment of their health cannot be refused; should the patient refuse care, "*the healthcare provider shall institute proceedings for obtaining the required consent from the court. The attending physician shall be required to deliver all medical care necessitated by the patient's condition until the court passes its final and absolute decision*" (Article 21.1).

"The Constitutional Court abolished the **death penalty** in 1990, as something that unconstitutionally restricted the essential content of the right to life and human dignity."[5] The Constitutional Court pointed out in its decision that the right to life and human dignity as a right to absolute values should restrict the state's authority to impose criminal penalties (ius puniendi).

The right to life is closely linked to other rights as well, like the right to a healthy environment and health rights.

In observing the right to life, the state must take appropriate measures to guarantee the right to life of persons in detention or otherwise restricted in their personal freedom. Furthermore, the state is particularly obliged to initiate an efficient and public investigation if a person restricted in their personal freedom dies.[6]

Such an approach to the right to life is of particular importance in relation to persons with disabilities, as death is not uncommon in welfare and psychiatric institutions, with investigations that are often non-public and fail to identify and prosecute those responsible.

> In 2001, the **Parliamentary Commissioner for Civil Rights** [Állampolgári Jogok Országgyűlési Biztosa, OBH-ÁJOB] initiated an investigation into a series of fires in a psychiatric institution, one of which led to the death of a patient. A man aged 35 and in a conservatorship that precluded his competency was placed in a locked net bed for the night, whence he could not be rescued. The investigation found that *"the patient could not have been placed in the net bed, and that crowdedness and staff shortage posed an immediate threat to the right to life of patients and employees."* [7]

At present, the success of these rights is restricted by the difficulty and occasional impossibility of enforcement – cases often take years – the lack of guarantees for the victims, and the absence of supportive attitude.

For services supporting the right to life, see the discussion of Article 28.

SUMMARY

In Hungary, the right to life of persons with disabilities is legally guaranteed in many respects, while there are other aspects where the law fails to provide appropriate guarantees, either because the existing measures are inappropriate or because legal instruments are essentially incapable of providing guarantees in the given field.

[5] Emberi jogok. Igen! p. 105 (only in the Hungarian version).

[6] Akkoc v. Turkey /EctHR, 2294/7/98, 10 October 2000; Edwards (Paul and Audrey) v. The United Kingdom /EctHR, 4677/99, 14 March 2002..

[7] Emberi jogok. Igen! p. 105 (only in the Hungarian version).

Above all, we have considered those risks to secure life that are due to the limitations of law.

Those provisions of the act on the protection of fetal life that apply to foeti with disabilities can be considered seriously discriminative.

The right to refuse medical care (euthanasia) is provided to all Hungarian citizens – except those 70,000 who live under guardianship. The right of people in detention is violated.

The right to life and dignity is also essentially infringed upon, indirectly, by several other factors, acts and deficient services, but these, with the exception of disadvantage due to prejudice, are discussed in Article 28 on social protection.

RECOMMENDATIONS

- The act on the protection of foetal life should be amended so that the mother should have the right to request abortion in the case of a foetus with a disability only if it is incapable of living. If the fetus has a disability, the mother should be obliged to consult an expert panel on the available options. If necessary, the committee should have the right to offer state care for the newborn.
- *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.
- We propose that law should require independent and public investigations into the deaths of persons with disabilities who are restricted in their personal freedom.

Situations of risk and humanitarian emergencies

ARTICLE 11

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

In Hungary, law under state of emergency is primarily governed by provisions set forth in paragraphs A–E, Article 19 of the **Constitution of the Republic of Hungary.** These detailed provisions are stipulated under **Act CV of 2004 on Defense and the Hungarian Army (Hvt.).** The Constitution recognizes three forms of law under state of emergency namely "state of national crisis," "state of emergency," and "state of danger." It is noteworthy that the Hvt. does not set forth any kind of regulation to guarantee the protection of social groups in diverse disadvantageous situations including the persons with disabilities in the event of a state of emergency. However, the Constitution does define those sets of fundamental rights which may not be suspended even under such conditions. With regard to persons with disabilities, this provision (paragraph [4] of Article 8.) can be described as deficient. However, this provision states as the - fundamental rights which may not be suspended the prohibition of gender and ethnicity-based discrimination and the protection of children and women (Articles 66–68). However, it fails to mention the protection of persons with disabilities and the prohibition of discrimination against them. The only provision that specifically mentions persons with disabilities is the following.

> Article 70/E. (1) Citizens of the Republic of Hungary have the right to social security; they are entitled to the support required to live in old age, and in the case of sickness, disability, being widowed or orphaned and in the case of unemployment through no fault of their own.
> (2) The Republic of Hungary shall implement the right to social support through the social security system and the system of social institutions

The Hungarian wording of this provision, uses the term for disability, "rokkant," which is hard to accurately interpret within Hungarian disability rights terminology. However if the term is identical with the Hungarian term for "disability pensioner" ("rokkantnyugdijas,") it actually covers only a very narrow circle of persons with disabilities.

The Act LXXIV of 1999 on the Management and Organization for the Prevention of Disasters and the Prevention of Major Accidents involving Dangerous Substances *(Disaster Act)* includes further provisions regarding the law under state of emergency. It assigns the responsibility for protection and the elimination of the consequences during disasters to diverse bodies, organizations and defense systems (disaster management agencies, professional local government fire departments, business organisations, the Hungarian Army, law enforcement bodies).

Neither Hungary's Constitution, 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.[1]

Only the Code of Conduct[2] drafted for professional, public official and civil servant staff of official disaster management bodies makes particularsets forth reference to the needs of persons with disabilities and the prohibition of discrimination. However, 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 at risk in a situations 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.

This Article of the Convention further requires States Parties to institute measures which ensures suitable conditions are provided for persons with disabilities at places of asylum and refugee camps.

Hungarian refugee affair regulations about procedures on are set forth in **Act LXXX of 2007 on Asylum** [a menedékjogról szóló 2007. évi LXXX. törvény], and it includes a separate provision with respect to persons requiring special treatment.[3] The Basic Principles governing Act LXXX of 2007 stipulate the obligation for legislative and law implementing bodies to devote special attention, in providing services and, in the course of asylum procedure, to persons who have special needs due to their individual situations. Government Decree 301/2007. (XI. 9.) on the Implementation of Act LXXX of 2007 on Asylum stipulates that it is the asylum authority's responsibility to investigate during admission procedures – if necessary with assistance from doctors and psychologists – whether regulations pertaining to persons requiring special treatment are applicable. With respect to accommodation, the provisions only stipulate that the asylum authority *"shall provide separate accommodation at the reception centres for persons requiring special treatment in justified cases"*.[4]

On the other hand, nonetheless, numerous criticisms have been directed at asylum procedures in Hungary and especially at refugee camps. **The ombudsman in one of its investigations**[5] carried out at the refugee camps in Debrecen called

[1] Based on informal disclosure of National Directorate General for Disaster Management

[2] Source: National Directorate General for Disaster Management (only in Hungarian)

[3] A person requiring special treatment: ,,a vulnerable person, in particular, a minor, unaccompanied minor, elderly or disabled person, pregnant woman, single parent raising a minor child and a person who has undergone torture, rape or any other grave form of psychological, physical or sexual violence and has special needs because of his/her individual situation." (Article 2 [k], Act LXXX of 2007 on Asylum)

[4] Article 4, Government Decree 301/2007. (XI. 9.) on the Implementation of Act LXXX of 2007 on Asylum

[5] Case number OBH 3339/2008.

attention to *deficient legal regulations and the inadequate number of trained staff* caring for refugees. With respect to the children who make up the majority of reception station residents, the investigation found that "*they need special treatment, for example psychological services, psychotherapy, which they do not receive at the Debrecen establishment. Only three social workers address the needs of our hundred camp residents.*"

The United Nations High Commissioner for Refugees' (UNHCR) 2008 AGDM report[6] reached in similar conclusion, criticizing the under-funding and understaffing of the system, emphasizing that
"*what makes the new arrangement dysfunctional is the fact that the system has been split into several subsystems that are not properly interconnected. Certain functions are not performed at all.*" It drew special attention to the fact that „*for one, there is no mechanism to identify persons with special needs at an early stage.*"

SUMMARY

In conclusion, we can say that there are significant deficiencies in Hungarian legal provisions with respect to persons with disabilities in disaster situations, states of emergency and states of humanitarian emergency. Furthermore these problems continue to grow because the system is underfunded.

[6] „How Refugees and Asylum Seekers Experience Life in Central Europe," UNHCR, 2008 AGDM Report, p. 19.

RECOMMENDATIONS

Urgent measures must be taken to bring Hungarian regulations and practice into compliance with the terms set forth in this Article of the Convention, namely:

- Appropriate amendment of Hungary's Constitution 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;
- Hungary's National Disaster Protection Code, and disaster management regulation and systems should include regulations to provide for the needs of persons with disabilities;
- Hungary's asylum regulations should be modified to include a provision for the real accommodation needs of persons with disabilities, and be accompanied by substantial additional financing;
- New stipulations should be added to Hvt. regulations with respect to law under state of emergency at a time of national crisis to guarantee the rights of persons with disabilities;
- A provision should be added to Paragraph (4) Article 8 of Hungary's Constitution stipulating protection for persons with disabilities and prohibiting discrimination against them;
- Paragraph (1) Article 70/E. of Hungary's Constitution should be extended to cover persons with disabilities.

Equal recognition before the law

ARTICLE 12

1. *States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.*
2. *States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.*
3. *States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.*
4. *States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.*
5. *Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.*

THE HUNGARIAN TRANSLATION OF THE ARTICLE AND THE RATIFICATION OF THE CONVENTION

Intent on early ratification, the Republic of Hungary was among the first to sign the Convention and the Optional Protocol. Between March 2007, when the Convention was signed, and July, when it was ratified, the various ministries assessed the relationship of Hungarian law and the Convention, because a pronounced clash was considered problematic. During this review, Article 12 was found to be a source of conflict.

The **Ministry of Justice and Law Enforcement** (Igazságügyi és Rendészeti Minisztérium, IRM) stated that "*legal capacity*" in Article 12.2 should be translated as "jogképesség," or else the current Hungarian law and the legislative intention would be in conflict with the Convention. At informal consultations, the experts of NGOs[1] argued that "legal capacity" should be translated, in all paragraphs of the article, as "jog- és cselekvőképesség" [legal capacity and capacity to act]. Following the Vienna Convention on the Law of Treaties,[2] they based their argument on the interpretation of the purpose of the Convention, its negotiation history, and authentic versions. They also made use of the reports on the Convention of the UN High Commissioner for Human Rights.[3]

To delay the ratification by raising objections about Article 12 was not in the interest of the civil coalition, so the NGOs did not object to the translation that is now in effect. *By employing the conjunctive "illetőleg," which means "and/or," the Hungarian version of Paragraph 2 of Article 12 is difficult to interpret, and requires further interpretation.*

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[1] Then being formed with the intention to work on the implementation of Article 12 and the reform of the provisions of the Civil Code on the capacity to act, the civil coalition was represented at these consultations by the Mental Disability Advocacy Centre (MDAC) and the Hungarian Association for Persons with Intellectual Disability (Értelmi Fogyatékossággal Élők és Segítőik Országos Érdekvédelmi Szövetsége, ÉFOÉSZ).The consultations took place in April and May 2007.

[2] Vienna Convention on the Law of Treaties, 1969. http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

THE UNFINISHED RE-CODIFICATION OF THE CAPACITY TO ACT IN HUNGARIAN LAW

In 1998, the government issued a decree in which it committed itself to the re-codification of the **Civil Code** (polgári törvénykönyv, Ptk.). In 2001, the sections relating to the capacity to act and guardianship were modified, and the institution of *restricting the capacity to act for types of cases* was added to the existing *plenary guardianship* and *guardianship with general limitations*, with the intention to better serve the principle of proportionality. With the 2001 amendment, the government and the expert committee working on the re-codification of the Civil Code considered the modification of the provisions on the capacity to act accomplished.

NGOs advocating the rights of *persons with mental and psycho-social disabilities*, however, found the 2001 changes insufficient. Restrictions according to case types were slow to be adopted in practice, and most of those who were newly placed under guardianship were placed under plenary guardianship or guardianship with general limitations. As a result of a disagreement between ministries over the interpretation of the law,[4] *those persons with psycho-social disabilities who live in large institutions, most of the under plenary guardianship, were denied the possibility to be employed.* This stirred civil society: consultations about, and research into, the question of guardianship began.

The investigation that the **Mental Disability Advocacy Centre** (MDAC) carried out in several East European countries to establish how the various systems of guardianship conform to international principles of human rights, also covered Hungary. The report[5] that compared current Hungarian law with the European Council's recommendation on the legal protection of incapable adults[6] and Article 12 of the Convention was presented at an international conference in 2006. According to the report, *in the case of most indicators, Hungarian law failed to comply with the 1999 (4) recommendation of the European Council, and was even less in harmony with Article 12 of the Convention.* The denial of the capacity to act or its plenary restriction does not satisfy the principles of necessity and proportionality. Persons under such guardianship automatically lose the capacity to exercise their most fundamental rights. Hungarian civil experts and leading international experts at the conference were outspoken about the necessity to carry out a radical reform on the relevant provisions of Hungarian law. In contrast, the IRM stated that it considers the task performed with the 2001 changes.

In the spring of 2007, DPOs and human rights NGOs formed a **civil coalition** to ensure that these reforms were effected with the ongoing re-codification of the Civil Code. Based on Article 12 of the Convention and international best practices, the coalition made a consensual agreement on a number of principles, which were the foundations of their legal experts' proposals towards *a new chapter of the Civil Code on the capacity to act.*

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[3] Gábor Gombos et al.: "Bizonyítási kísérlet és kommentár a 12. cikkelyhez, avagy a cselekvőképesség problémája" [An Attempted Argument and Commentary to Article 12 or the Problem of Legal Capacity]. Fogyatékosság és társadalom, Vol. 1, Issue 1, Summer 2009. (Only in Hungarian.)

[4] The disagreement concerned whether persons under plenary guardianship can enter into contracts of employment (with the consent of their guardians). The Ministry of Social Affairs and Labour (Szociális és Munkaügyi Minisztérium, SZMM) held that this was possible, while the IRM disputed this position.

[5] Guardianship and Human Rights in Hungary I. MDAC, Budapest, November 2006. http://www.mdac.info/documents/Hungary%20report_comprehensive_English.pdf

[6] Recommendation No. R (99) 4 of the Committee of Ministers to Member States on Principles Concerning the Legal Protection of Incapable Adults. http://www.coe.int/t/dg3/healthbioethic/texts_and_documents/Rec%2899%294E.pdf

The chief normative principles were the following:

- Revoke the institutions of plenary guardianship and guardianship with general limitations;
- Case- and case type-specific restriction as the last resort if less restrictive solutions prove insufficient;
- The difference of communication can in no way justify the restriction of the capacity to act;
- Introducing instruments that support and do not restrict the exercise of the capacity to act (supported decision-making, advance directive).

The second volume of MDAC's study on guardianship[7] was introduced in June 2007. At the conference, the IRM informally stated to have revised its position, and being open towards the civil proposal of re-codifying the capacity to act. The civil coalition sent the unified version of its proposal to the IRM, which *restated the provisions of the new Civil Code on the capacity to act*, in the course of intensive consultations about the civil proposal that took almost two years.

While the **Supreme Court** [Legfelsőbb Bíróság] and the **Codification Committee** [Kodifikációs Bizottság] were strongly opposed to the revocation of plenary guardianship from the start, they usually stayed away from the informal consultations, denying the authors of the new version the possibility to argue for their position. Despite such resistance, on 12 September 2009, Parliament enacted the new Civil Code, with new provisions on the capacity to act. The President of the Republic sent back the Act to Parliament for further consideration, though not on the grounds of any conflict with the Constitution. He objected to its coherence, and the manner in which it was written and accepted. On 9 November 2009, Parliament passed the new Civil Code again, and this was promulgated by the President.[8]

The Ptk. itself has no provisions on its coming into force; this is regulated by the act on the coming into force and implementation of the Civil Code (Ptké.).[9] The Ptké. was passed by Parliament on 15 February 2010. The President sent it back to Parliament for further consideration, essentially with the same argument he used in the case of the Ptk. At the same time, he noted that "*these defects are regrettable, because the Civil Code contains welcome innovation, like the rethinking of the provisions on the capacity to act.*"

Parliament passed the Ptké. again, and it was promulgated on 2 March. It states that Book Two ("Persons"), which has the provisions on the capacity to act, and Book One, which includes the general provisions, are to come into force on 1 May 2010, while the rest of the Civil Code is to come into force on 1 January 2011. After the Ptké. was promulgated, a member of parliament submitted a proposal to the Constitutional Court that the act be repealed. Those who apply the act, he argued, had insufficient time to prepare for the changes, and he also objected to the provision that different parts of the Code were to come into force at different times. The organizations of the civil coalition submitted a **counter-statement,**[10] disproving the claim that there was insufficient time to prepare by giving a detailed account of the steps the ministries and NGOs took to prepare the prospective appliers of the act.

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[7] Guardianship and Human Rights in Hungary II. MDAC, Budapest, June 2007. http://www.mdac.info/documents/Hungary%20report_comprehensive_English.pdf

[8] A polgári törvénykönyvről szóló 2009. évi CXX. törvény [Act CXX of 2009, on the Civil Code].

[9] 2010. évi XV. törvény a polgári törvénykönyvről szóló 2009. évi CXX. törvény hatálybalépéséről és végrehajtásáról [Act XV of 2010 on the coming into force and implementation of Act CXX of 2009 on the Civil Code].

[10] Summary in English: http://www.mdac.info/en/polgari-torvenykonyv-hatalybalepese-civil-osszefog

On 26 April 2010, the Constitutional Court voted eight to one to repeal those provisions of the Ptké. that concerned the coming into force of the Ptk.

In its statement, the civil coalition emphasized that *about 80.000 adults under guardianship had justifiably expected, since November 2009, their status under civil law to change on 1 May 2010. Their legal certainty was jeopardized by the decision of the Constitutional Court.* They will remain citizens without the capacity to act for an uncertain period, and cannot even be certain that those provisions on the capacity to act that Parliament accepted and published will ever come into force.

CAPACITY TO HAVE RIGHTS ("JOGKÉPESSÉG")

From the moment of their birth, every person has legal capacity, is the subject of rights and responsibilities. In this respect, there is no difference between the current and the new Civil Code. Hungarian law, in other words, complies with the requirement of Article 12.1. Practice also meets the principle because every person born alive, irrespective of any disabilities, is entered into the register of births, which is to say their identity is acknowledged, they are a person before the law.

THE CAPACITY TO ACT ("CSELEKVŐKÉPESSÉG")

A. Current provisions

A person's psycho-social disability ("pszichés állapot") and mental disability ("szellemi fogyatkozás") *enable the court to place the person under a guardianship that prevents the person from exercising their capacity to act, if the person's ability to conduct their affairs is diminished permanently and considerably.* Persons under plenary guardianship cannot act – apart from immaterial affairs of everyday life –, but their guardian will act for them. The principles of the guardian's action are not provided for by the law. *Such substitute decision-making contravenes Paragraphs 3 and 4 of Article 12, because divesting someone of their capacity to act cannot be considered an instrument that supports the exercise of legal capacity (the capacity to act).* It does not respect the person's will and choices. In practice, a professional guardian may have more than 100 persons under their guardianship.[11] Under such circumstances, it is impossible to know and follow the will and choices of every person under guardianship.

Current law makes the *general restriction of the capacity to act* possible. In such cases, the person under guardianship and the guardian must act together. In case of a disagreement, the guardianship authority will decide. Though in theory this type of guardianship requires that the person under guardianship be involved in the making of decisions that concern him or her, the global nature of the restriction contravenes the principle of proportionality, and thus cannot be considered an instrument that helps the exercise of the capacity to act.

[11] The largest residential institution in Hungary is in Szentgotthárd. It is home to 720 psychiatric patients, who are, almost without exception, under guardianship, mostly under plenary guardianship. Half of them have professional guardians. For years, the municipal government in charge employed two professional guardians, until a few years ago, when a third was employed.

Since 2001, *it is possible to restrict the capacity to act for types of cases.* On such occasions, the person under guardianship can act in cases specified by the court only together with the guardian (in case of a disagreement, the guardianship authority will decide), whilst they have the right to act on their own in all other cases. While there are no reliable nationwide data, what is available indicates that it took years for the courts to accept the new instrument. Placement under plenary guardianship or guardianship with general limitations is a simpler process, which may account for the ongoing dominance of these two institutions.

Current Hungarian law recognizes no instrument that would help the exercise of the capacity to act without restricting or denying it.

B. The new Civil Code (not in force)

Plenary guardianship and guardianship with general limitations are revoked. According to the transitional provisions, those who were under plenary guardianship prior to 1 May 2010 were to be placed under guardianship with general limitations upon the coming into force of the new Civil Code, and within five years, the court was to establish whether they have the capacity to act, or in what types of cases they required guardianship.

The new Act introduced *supported decision-making*, which does not affect the capacity to act. It is an instrument based on trust, which helps the exercise of the capacity to act in accordance with Article 12.3 of the Convention, and which the court is not to prescribe but to acknowledge and legalize. With this, the new Ptk. reinterpreted the concept of the *capacity to act: every adult person who is able to conduct their affairs on their own or with help is deemed to have the capacity to act.* Such interpretation is in harmony with the norm of Article 12.

The legislators were also mindful of those who do not have access, because of their isolation, to the trustful relationships that enable *supported decision-making*. These persons include those who have live in institutions for extended periods. They were to have access to the instrument of the *professional supporter*, which again does not affect their capacity to act. It differs from supported decision-making in that it is not based on a trustful relation, and is prescribed by a court of law.

The *advance directive* is another new instrument. This enables a person still in full possession of their capacity to act to provide for future occasions when their disability prevents them from making competent decisions. The advance directive can be disregarded only in exceptional cases.

When solutions that do not affect the capacity to act are proven to be insufficient, it is possible to restrict the capacity to act for certain types of cases. For the action of the person under guardianship to be valid in those types of cases that the court specified, the guardian's approval is needed. In case of a disagreement, the guardianship authority will decide. As opposed to earlier rules, the guardian is appointed by the court. Another new provision is that *the guardian must act not by promoting the "best interest" of the person under guardianship, but by respecting their will and choices.*

In exceptional cases, when the guardian cannot interpret the communication of the person under their care even with the help of an expert, the court may authorize the guardian to act independently in the given cases. Even in such cases, the guardian must act in accordance with the values of the person under their care.

A person under guardianship may also authorize their guardian to act for them in recurring matters. On such occasions, the guardian acts, in effect, as a permanently authorized proxy, which is in harmony with the principles of acknowledging the capacity to act of a person with disabilities, and respecting their will.

PROCEDURAL SAFEGUARDS

A. Current law

The general rule is that the court must review the guardianship decision at least every five years, but there are provisions that *allow the court, on the basis of expert opinion, to forego further reviews*. This is particularly frequently resorted to in the case of persons with intellectual disabilities. It is a solution that is obviously in conflict with the provisions of Article 12.4.

Current law has no provisions on the conflict of interests. Not infrequently, a family will launch a guardianship procedure with a view to securing the property of a family member with disability. It is a welcome fact that those living in institutions cannot have the director and staff of the institution for their guardians.

Current law does not define the principles that a guardian must observe when making substitute decisions. Thus, in practice guardians apply the principle of an assumed "best interest," which is substituting their own values for, rather than learning, the values of the person with disability. This is in complete opposition to the provisions of Article 12.4.

B. The new Civil Code (not in force)

The review of the guardianship decision cannot be foregone, and must be carried out in at least every five years.
There are still no detailed provisions on the conflict of interests in the new Act.

In compliance with Article 12.4 of the Convention, the new Ptk. requires that the guardian act by respecting the will and choices of the person with disabilities.

RIGHT TO PROPERTY AND ASSISTANCE TO CONTROL FINANCIAL AFFAIRS

A. Current law

The current law offers no help in these fields to persons with disabilities. On the contrary, the guardianship that serves protection divests the person of their capacity to act and delegates it to the guardian (plenary guardianship), or requires joint decision-making (guardianship with general limitations). *Property and financial affairs form one of those types of cases which are specified in the Ptk. as justifying the restriction of the capacity to act.* Furthermore, those assistances that are available for persons who are not under guardianship can be accessed by persons under guardianship only on the initiative, or with the approval, of the guardian.

B. The new Civil Code (not in force)

Supported decision-making may also concern issues of property and finances, providing such help to persons with disabilities that does not affect their capacity to act. The new Act also provides for the making of advance directives on issues of property and finances.

The new provisions on restrictions concerning issues of property and finances require the guardian to take into consideration and follow the will and choices of the person under guardianship; to act in accordance with the known values of the person under guardianship.

RECOMMENDATIONS

- Adopt provisions on the capacity to act like those of the new Civil Code, and make them effective as soon as possible. Law must revoke plenary guardianship and guardianship with general limitations, and must present alternatives that do not involve the restriction of the capacity to act. The restriction of the capacity to act must be a last resort, and should only be applied for concrete cases or types of cases, and even then joint decision-making should be prescribed.
- The legal understanding of the capacity to act should be restated so that every adult person who is able to conduct their affairs on their own or with help shuold be deemed to have the capacity to act.
- Encourage, support and finance model programmes that popularize supported decision-making.
- The capacity of DPOs to provide or facilitate supported decisions should be developed.
- Supporters should be educated, their activity monitored.
- Increase the awareness of the judiciary, the civil service and society at large of persons with disabilities being persons with abilities, who have will and can make decisions when helped.

Access to justice

ARTICLE 13

1. *States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.*
2. *In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.*

Under the **"equal protection formula" of the Constitution** of the Republic of Hungary, Article 70/A. (1) sets forth that *The Republic of Hungary shall respect the human rights and civil rights of all persons in the country without discrimination on the basis of race, color, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever.* Paragraph (2) stipulates that *The law shall provide for strict punishment of discrimination on the basis of Paragraph (1).*

Hungary's Constitution formulates equality before the law as equality before court of law as follows: *In the Republic of Hungary everyone is equal before the law and has the right to have the accusations brought against him, as well as his rights and duties in legal proceedings, judged in a just, public trial by an independent and impartial court established by law.* (paragraph [1], Article 57.) This means that in both procedure before court of law and, generally speaking, in the course of jurisdiction, rules of law must be applied without any discrimination whatsoever. Similarly to the Constitution, individual rules of procedure, too, must comply with the constitutional mandate of *equality before court of law.*

Act No. XXVI. of 1998 on Provision of the Rights of Persons Living with Disability and their Equality of Opportunity [A fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról szóló 1998. évi XXVI. törvény, Fot.] is the first statute which sets forth the kind of assistance persons with disabilities must be provided to enable them to lead independent lives, to manage their own affairs themselves, to have access to knowledge and information on an equal basis with others. Article 4 (f) (fa) of Fot. provides that *"all public authority activity constitutes public service – including law enforcement, governmental and all other public administration as well as justice administration activity."*[1]

ACCESS TO JUSTICE – FROM A THEORETICAL PERSPECTIVE

Implementation of access to justice can be subjected to scrutiny from several perspectives: from a theoretical viewpoint on the one hand, focussing on the extent to which accessibility to persons with disabilities is available, and, on the other, taking a practical, a technical approach.

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[1] Emberi jogok. IGEN! [Human Rights. Yes!], A fogyatékossággal élő személyek jogai képzési kézikönyv [Action and Advocacy on the Rights of Persons with Disabilities], SINOSZ, Budapest, 2009. pp. 198–199. Only in Hungarian version.

With regard to the *theoretical approach* it is necessary to examine whether or not the possibility exists for persons under plenary or partial guardianship to participate directly or via authorised proxy in legal proceedings. With certain exceptions under effective legislation – for instance in legal proceedings with respect to personal status, or asserting personal rights – the guardian acts on behalf of persons limited in or deprived of their legal capacity. In practice this means that it is contingent on the guardian's decision whether or not a given civil law claim goes to trial.

> Two significant things follow from the Convention's provisions: (1) persons with disabilities have the same right to participate in justice administration proceedings (either as a party to litigation or as another participant of proceedings). The Convention's wording makes it clear that this is the States Parties' immediate obligation, which is not contingent on social and cultural factors, social welfare capabilities. (2) it is Hungary's responsibility to ensure that the participation of persons with disabilities not be a mere formality, but effective and genuine co-operation.

Hungarian legislation governing legal capacity entails total deprivation of procedural rights, thereby contradicting the requirement of necessity and proportionality. Deprivation of the right to act on one's behalf in legal proceedings can, for instance, give rise even to a situation whereby a marriage is dissolved without even a hearing granted to a person under guardianship. “In the case of psychiatric patients, the court often waives their hearing in the course of guardianship procedure on the grounds that their hospital treatment and health condition renders this impossible. The law provides the court discretionary powers with respect to waiving the opportunity to obtain the view of a person placed in such procedure himself/herself in the event the court deems that there is an insurmountable obstacle therefor.”

Numerous provisions of *procedural laws* are restricting, and thus persons with disabilities with limited legal capacity are also deprived of participation in public administration procedure.

Provisions of the law with respect to private prosecution in **criminal procedure** set forth that the guardian has the right to decide whether or not to go to court with respect to matters involving light bodily harm and violation of the secrecy of correspondence. “*It is our experience that light bodily harm is an offence typically perpetrated against large numbers of persons with psycho-social disability living in community, but an even greater number are victimised in residential institutions. However, taking legal action is contingent on the guardian's consent, without his/her taking action it is not possible to go to court of law.* In other procedures involving public prosecution, a person under guardianship cannot file motions, and, further, the law, citing “physical or intellectual disability,”[2] expressly excludes hearing witnesses about whom the court believes that correct testimony cannot be expected.”[3]

One of the core principles of the law governing **Civil Procedure** sets forth that “*upon request court of law – in cases set forth in statutory provision – provide legal aid so that a party to legal procedure be able to go to court to protect his/her rights and legal interests.*”[4] This wording runs contrary to the principle of “*effective access to justice*”

[2] Article 81 (1) (c), Act XIX of 1998 on the Code of Criminal Procedure [1998. évi XIX. törvény a büntetőeljárásról]

[3] 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

[4] Article 7 (1), Act III of 1952 on the Code of Civil Procedure [1952. évi III. törvény a polgári perrendtartásról]

set forth in the UN Convention on the Rights of Persons with Disabilities, since "mechanisms must be incorporated into the institutional system of justice which automatically guarantee access to necessary assistance" and it should not be made contingent on the request of a person with disabilities that court of law provide him/her assistance in exercising his/her rights.

Hungary's Act on Legal Aid [2003. évi LXXX. törvény a jogi segítségnyújtásról][5] was adopted to establish an institutional system for socially disadvantaged persons, in which beneficiaries could receive professional legal counsel and legal representation in procedural law to assert their interests and to settle legal disputes. However, this solution has failed to take into consideration the needs of persons with disabilities, unless their need can be substantiated *based on income*. This mentality "fails to acknowledge the realisation that there can be other impediments to using legal services – for instance that the person seeking assistance lives in a residential institution, is suffering from a long-term psychiatric disorder, has problems communicating."[6]

Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities [Az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról szóló 2003. évi CXXV. törvény, Ebktv.] provides an opportunity for persons with disabilities and their families to obtain legal redress for injuries incurred with respect to the principle of equal treatment.

> "With funding from the European Union and the Hungarian Government, the **Hand in Hand Foundation** [Kézenfogva Alapítvány], **The Hungarian Autistic Society** [Autisták Országos Szövetsége], and the **Symbiosis Foundation** [Szimbiózis Alapítvány] have joined forces to launch the *"Stand Up for Yourself!" Anti-discrimination program* ["Ne hagyd magad!" antidiszkriminációs program], which fits into the implementation process of equal treatment legislation. In 2008, the programme's beneficiaries came from the following constituencies: persons with intellectual disability, autism, Asperger Syndrome, as well as persons with severe-multiple disabilities and their family members." Using the signal system established under the aegis of the programme, victims of discrimination were able to send their complaints to legal experts specialising in anti-discrimination law, who instituted diverse legal procedures in the complainants' interests. The project's outstanding success "inspired the Consortium to take the next step and craft a more advanced programme. Under the framework thereof, a **complex anti-discrimination network** was established embracing organisations serving the legal protection of and advocating for persons with intellectual disability, autistic persons, persons with visual, physical, and hearing disabilities." The partnering of legal aid services paved the way to the establishment, in the domain of legal protection for persons with disabilities, of a complex legal aid service embracing all disability groups, of a kind that has never before existed in Hungary.

HOW ACCESSIBLE ARE THE INSTITUTIONS OF JUSTICE?

Access to justice must also be examined with respect to the extent to which the institutions of justice administration are reachable and accessible.

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[5] Act LXXX of 2003 on Legal Aid [2003. évi LXXX. törvény a jogi segítségnyújtásról]

[6] Benkó Boglárka, Fiala János és Gombos Gábor: MDAC tanulmány a hazai jogszabályi környezet összhangjáról a CRPD-vel, az OFT megbízásából készített elemzés. 2008. http://e-oktatas.barczi.hu/moodle/mod/resource/view.php?id=59

The Fot. provides that persons with disabilities have the right to a built environment that presents no obstacles, can be perceived and is safe. By amending the Act, “law-makers, with equal opportunity for persons with disabilities in mind, set as their goal the establishment of access, on an equal basis, to built environment (removal of barriers thereto), access to information in the public interest, to public transportation, and, beyond support services and assistive equipment, to public services, including justice administration. What this means is that it is not enough to merely *make the built- environment (e.g. sidewalk), buildings (lift) accessible.* With a view to establishing equal opportunity, it is likewise pivotal to ensure access on an equal basis to the information and communications environment *(remove barriers to info-communications)*, as well as to all public services. Importantly, access may only be regarded as being on an equal basis provided if it presents no obstacles, can be perceived and is safe. With respect to complex removal of barriers to accessibility, the Fot. sets forth that in order to assist persons with physical, visual, hearing, speech and intellectual disabilities to attain access to and orientate around the premises of court of law, the prosecutor’s office, and law enforcement, lifts must be built, parking spaces, sidewalks, footpaths created, info-communications equipment installed, signage in Braille put up, as well as other tasks with respect to accessiblity must be performed.”[7]

HOW THE LAW WAS REALIZED IN PRACTICE

Hungary’s **Equal Treatment Authority** [Egyenlő Bánásmód Hatóság, EBH] and the **Office of the Parliamentary Commissioner** [Országgyűlési Biztos Hivatala, OBH] have adopted numerous decisions with respect to failure to comply with legally mandated accessibility requirements. “*Despite the goals set forth in rules of law, it must be pointed out that the majority of Hungarian justice administration bodies have, citing budgetary shortfall, provided accessibility only in part or not at all.* The Equal Treatment Authority’s resolution number 13/5/2005 EBH and the Equal Treatment Authority Advisory Board’s viewpoint number 10.007/3/2006. TT on the obligation to ensure accessibility were adopted with respect therefor.”

In 2007, the Hungarian Association of the Deaf and Hard of Hearing [Siketek és Nagyothallók Országos Szövetsége, SINOSZ] initiated talks with the **The National Council of Justice of Hungary** [Országos Igazságszolgáltatási Tanács Hivatala, OITH], which co-ordinates *implementation of the complex removal of barriers to accessibility* to the buildings of county and municipal courts. The OITH president has indicated that they welcome SINOSZ’s professional assistance, among others with respect to the professional planning of grant proposals, assessing the needs of their target group, and the selection of the means of complex removal of barriers to accessibility. SINOSZ has crafted a guide entitled *Pocket This!* in which it provides information to court employees on how they could help provide access on an equal basis to the institutional system of justice administration to litigants, lawyers, judges, witnesses who are deaf and hard of hearing.

[7] Emberi jogok. IGEN! [Human Rights. Yes!], A fogyatékossággal élő személyek jogai képzési kézikönyv [Action and Advocacy on the Rights of Persons with Disabilities], SINOSZ, Budapest, 2009, pp. 198–199

> By amending Fot. several times, the deadline for making already existing public buildings housing government bodies providing public service, including justice administration buildings, has been moved back from the prior deadline (1 January 2005) to 31 December 2013.

It is a recurring problem that the State's obligation with respect to ensuring accessibility is being put off via legislative amendments to modify the deadline therefor. **OBH case number 434/1998** found that *irregularities with respect to the constitutional rights of persons with physical disabilities have been ongoing for a long time, arise on an ongoing basis, and the elimination of situations conducive to discrimination is, despite the positive processes that have emerged, making slow and uneven quality progress.*"

OBH case number 5086/2005 also addresses the situation of persons with disabilities in criminal procedure. With respect to the investigated matter it can be

11. Emberi jogok. Igen! A fogyatékossággal élő személyek jogai. Képzési kézikönyv. SINOSZ, Budapest, 2009. 198–199. o.

stated that *the rights of persons with disabilities* – especially with respect to persons with intellectual disability – *are only narrowly asserted in courts of criminal procedure*, *indeed*, *in the event that they are in custody the said persons find themselves in an expressly disadvantageous situation compared with others.* One reason for this is the failure to harmonise legislation on criminal procedure and legislation on the rights of persons with disabilities. Over and above the lack of accessibility, an additional problem in the course of some procedures involves regulations governing the use of sign language interpreters. The access of persons with disabilities to justice can only be fully realised in its entirety via special training therefor of people working in the justice administration system.

RECOMMENDATIONS

- Mandatory special training should be introduced for employees of the justice administration system, the goal of which would be to teach them communications and customer service knowledge appropriate to the special situation of persons with disabilities, including persons with psycho-social disability.
- Hungary's legal aid legislation should be amended so that persons with disabilities be entitled to use services set forth by said legislation by virtue of their disability.
- The complex removal of barriers to accessibility should actually be implemented by the deadline set therefor.
- Procedural laws should be amended in the spirit of the UN Convention in order that persons with disabilities, too, be provided the opportunity to become direct participants in legal proceedings.

Liberty and security of the person

ARTICLE 14

1. *States Parties shall ensure that persons with disabilities, on an equal basis with others:*
a) *Enjoy the right to liberty and security of person;*
b) *Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.*
2. *States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.*

The Constitution of the Republic of Hungary stipulates that "*In the Republic of Hungary everyone has the right to freedom and personal security; no one shall be deprived of his freedom except on the grounds and in accordance with the procedures specified by law.*"[1] The right to security refers to a principle of the constitutional state under which nobody can be arbitrarily deprived of their personal freedom, and which provides guarantees in regard to deprivation or curtailment of personal freedom. Several elements of Hungarian regulation affect the right to personal liberty and security of persons with disabilities, and violation and defense of these said rights have constituted the subject of numerous decisions by the Constitutional Court of the Republic of Hungary and the Hungarian Parliamentary Commissioner for Civil Rights (ombudsman).

From the perspective of this Article, the Hungarian **Health Act's** [Egészségügyi törvény, Eütv.][2] provisions governing the treatment of psychiatric patients are of outstanding significance. The Eütv. Provides that "*Special protections shall be put into place to safeguard the rights of psychiatric patients receiving healthcare services, specifically because of their situation.*"[3] The rights of psychiatric patients can be restricted only to the degree and for the duration of time absolutely necessary and only if the patient's behavior qualifies as dangerous or imminently dangerous. The law regulates three forms of medical treatment for psychiatric patients: voluntary, emergency and involuntary treatment. With respect to all three forms of treatment decison or procedure by court of law is of pivotal importance. In regard to voluntary medical treatment (proceeding upon request), the court must, within 72 hours from receipt of notification, determine whether conditions for treatment exist, and issue a decision. With respect to emergency medical treatment, a decision must likewise be issued within 72 hours, and within 15 days in the event of involuntary treatment. In the case of all three forms of medical treatment the court must provide a hearing for the patient (or the person acting on the patient's behalf), the person in charge of the institution, or the doctor designated by it, it must obtain the opinion of an independent expert pscychiatrist, and, based on all these – weighing the facts and circumstances –must decide with respect to the justification of the given form of medical treatment.[4]

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[1] Article 55 (1), Act XX of 1949 on the Constitution of the Republic of Hungary

[2] Act CLIV of 1997 on Health [1997. CLIV. törvény az egészségügyről]

[3] Article 189 (1), Act CLIV of 1997 on Health

[4] Constitutional Court decision 21/2010. (II. 25.)

The extent to which the three-day (72 hour) deadline available for review of **emergency medical treatment** guarantees appropriate investigation of the conditions of non-arbitrary confinement is questionable. During this timeframe the nature of the psychiatric disorder of the person subject to the proceedings would have to be substantiated before court of law as well as facts corroborating its dangerousness. Although the legislative intent was presumably that nobody be restricted in their liberty without a court decision, the specified timeframe does, however, lead to the issuance of arbitrary decisions. *It is a frequent problem that the guardian ad litem providing representation for the psychiatric patient is not proactive in the court procedure and does not adequately represent the patient's interests, his/her presence is merely administrative rather than substantive.* It is noteworthy that according to available data in the year 2005 the Buda Central District Court handled 2,994 procedures for emergency medical treatment, of which the court found in favor therefor *in every single case*, with a similar outcome for the year 2006 as well.[5] Based on evidence provided by this data, court procedure fulfils more of an administrative function, the courts accept expert psychiatric opinion uncritically and frequently fail to investigate the existence or otherwise of imminently dangerous behavior, justifying the decision for emergency medical treatment based merely on the existence of *psychiatric disturbance*.

At the same time, it is important to highlight that *"If a patient cannot himself/herself decide to leave the health care institution, but this is contingent on others' consent, the fact thereof constitutes not only curtailment of the patient's health rights, but the curtailment of his/her personal liberty as well.* Patients with disabilities whom court of law has deprived of his/her legal competence, are deprived of their right to freely decide about their own institutional care – and thereby also of their right to choose their own place of residence."[6] The Constitutional Court, in its decision number 36/2000. (X. 27.) AB with respect to the medical treatment of psychiatric patients pointed out in regard to the right to personal liberty that the assertion of the right to personal liberty must be substantively examined "in assessing the constitutionality of all statutes restricting movement and change of location," emphasizing that *"provisions of the health act with respect to psychiatric patients obviously affect the assertion of the right to personal liberty set forth in Article 55 (1) of the Constitution… in the course of these procedures substantive decisions, affecting (restricting) personal liberty must be adopted."*[7]

Regulations governing the **involuntary medical treatment** of psychiatric patients result in the curtailment or deprivation of rights in numerous cases. „With respect to voluntary medical treatment it may, for instance occur that *if a third person requested the admission of a patient deprived of or restricted in his/her legal capacity – and court of law approved justification of the medical treatment – release from the institution will likewise be subject to the third persons' request.* As a consequence, whether or not a psychiatric patient can leave the hospital is contingent on the arbitrary deliberation of outsider persons.

It is important to state as a point of departure with respect to *involuntary medical treatment that involuntary (psychiatric) hospital treatment constitutes, at all events, a form of restriction/deprivation of personal liberty*, which, under the Convention, may

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[5] Response of the Buda Central District Court to the questionnaire sent under the aegis of the MDAC research

[6] Benkó Boglárka, Fiala János és Gombos Gábor: MDAC tanulmány a hazai jogszabályi környezet összhangjáról a CRPD-vel [Mental Disability Advocacy Center /MDAC/ Study, az OFT megbízásából készített elemzés. 2008. (Only in Hungarian.)

[7] Constitutional Court decision ABH 2000, 241, 271-272; 21/2010. (II. 25.) AB

only occur with the same guarantees other persons are entitled to, on an equal basis therefor, but certainly not on the ground of disability. An element of guarantee in applicable legislative provisions is that court of law decides with respect to hospitalization and confinement therein as a form of deprivation of liberty. At the same time it must, however, be emphasized that this specific procedure and the deprivation of liberty is exclusively contingent on the person's psychiatric disturbance, real or imaginary, and as such fails to comply with the Convention's stipulation that *"the existence of a disability shall in no case justify a deprivation of liberty."* Other illnesses and their consequences do not lead to such a solution in Hungary.

It is likewise necessary to call attention to the fact that under Hungary's health act ordering emergency medical treatment is possible only and exclusively in the event that *"a patient manifests imminently dangerous behavior, and if the danger can be averted only by immediate admission to and treatment in a psychiatric institute."*[8] At the same time it can happen that a doctor, without personal conviction and necessary circumspection – even in the absence of imminently dangerous behavior – orders medical treatment, often at the request of the legal guardian or relatives.[9]

The **European Court of Human Rights decision** on Gajcsi vs Hungary sheds light on legal anomalies with respect to review of involuntary medical treatment of psychiatric patients. The Court ruled that the superficiality and inadequacy of the review of compulsory medical treatment lasting for three years constituted violation of the right to personal liberty. In the view of the Mental Disability Advocacy Center (MADAC) failure to prove endangering conduct is a systemic problem in Hungary, and therefore in 2008 MDAC provided training, within the framework of continued education for judges, at the Judge Training Academy on the human rights facets of the issue, based on the Gajcsi ruling. However, there was no follow-up to this training and no other measure whatsoever has been instituted to bring Hungarian judicial practice in line with the Gajcsi ruling.

> Provisions governing placement in an institution of Hungary's Act on Social Administration and Social Services or Social Welfare Act [A szociális igazgatásról és a szociális ellátásokról szóló törvény, Szociális törvény][10] constitute a violation of the right to personal liberty.

Although the law declares that placement in an institution is voluntary, the placement in an institution of **persons deprived of their legal capacity** is not their own decision but that of their legal representative, and in the case of persons with limited legal competence it is contingent on their legal representative's consent. The Social Welfare Act thereby enables the guardians of persons with disabilities deprived of their legal competence to place them in a social welfare institution against their will, indeed even against their express protestation thereof. This, on the one hand, *constitutes a violation of the liberty of movement, the freedom to choose their residence (Article 18)*, and, on the other, violation of the right to personal liberty. In the course of such placement, which constitutes deprivation of the liberty of persons with disabilities deprived of their legal competence, there is no guarantee system in place which other persons are entitled to when their liberty is restricted:

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[8] Article 199 (1) Act LXIV of 1997 on Health

[9] The doctor of the psychiatric institution ordered the patient's emergency medical treatment based on neighbors' assertions, without actually conducting an examination. The doctor was subsequently issued a warning, currently a civil suit is underway for compensation.

[10] Act III of 1993. on Social Administration and Social Services [1993. évi III. törvény a szociális igazgatásról és szociális ellátásokról]

typically, their institutionalization does not take place based on court decision – this is merely a way to establish an institutional legal relationship. Although the placement of psychiatric patients in a residential institution is contingent on court decision, pursuant, however, to the legal provisions governing such placement, these are circumstances deriving merely from the person's disability, his/her psychiatric disorder.

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.

Finally, another problem with respect to placements in an institution (and thereby the right to exercise liberty of movement, freedom to choose residence and the right to personal liberty) is that termination of the institutional legal relationship is not in the hands of the person with disabilities deprived of his/her legal competence, either. Therefore, he/she is likewise deprived of the right to terminate involuntary placement and restriction."[11] As MDAC has indicated in one of its studies, "*Hungary's health protection system is largely institutional in character. 54 large institutions are at the disposal of persons grappling with psycho-social problems, and 147 specialized institutions function for persons with intellectual disability. The number of people placed in "patient care homes for the mentally ill" to the end of their lives has not changed for many years.*[12] *According to research by the Mental Health Interest Forum (PÉF), 80–100 percent of adults living in patient care homes for persons grappling with psycho-social disorders are deprived of their rights and live under guardianship.*[13]

Since Hungary's **new Civil Code** has not come into force, the abolition of deprivation of legal capacity could not constitute a significant step forward with respect to the restriction of personal liberty arising from placement in an institution. Under the new regulations, in the event that court of law orders the restriction of legal capacity with respect to choosing place of residence, the person under guardianship could have decided with respect to his/her placement in an institution, with his/her guardian's prior consent or approval after the fact.

In regard to penal institutions, both observation of mental state and ordering compulsory medical treatment result in restriction of personal liberty. Observation of mental state occurs when, in the course of expert investigation, the expert reaches the conclusion that the available data is not yet sufficient for establishing the final expert opinion, and therefore he/she submits a petition to the competent authority with respect to observation of the accused's mental state. In such cases the court may send the accused to a psychiatric institution or a civilian psychiatric institute, which may be extended for an additional one month. The lawfulness of this institution is objectionable, since "the court decision orders the detention of a person without either his/her guilt or dangerousness having been established, for the sole purpose of obtaining an expert opinion in the course of the procedure. *Thus, the law permits deprivation of liberty based on presumed disability.* Leaving the institution is contingent on the hospital's benevolence even when there

[11] **11.** Boglárka Benkó, János Fiala and Gábor Gombos: [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.)

[12] **12.** Gondnokság és emberi jogok Magyarországon – A gondnokság jogintézményének és gyakorlatának elemzése [Guardianship and Human Rights in Hungary – Analysis of the Legal Institution and Practice of Guardianship], MDAC [Mental Disability Advocacy Center], 2007

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

is no need for, and never was, for observing mental condition, which leads to arbitrary judgment without the accused himself/herself being entitled to initiate the termination of hospital placement."[14]

Likewise, forced medical treatment, a measure instituted against persons who, owing to a pathological mental state, cannot be punished, lacks the necessary legal guarantees with respect to deprivation of liberty. At the time of writing this report, the duration, pursuant to effective regulations, of court-ordered forced medical treatment "*can in a given case be far longer than even the sentence that can, incidentally, be meted out for the crime, but can even last until the end of the patient's life.*"

Since the new regulation has not entered into force on 1 May 2010, the law does not set a cap for the duration of forced medical treatment. The new law would have stipulated that forced medical treatment may, at the most, last only until the upper limit of the sentence for the act for which punishment was meted out. In the event of an act possibly punishable by a sentence of life imprisonment, this maximum term would have been twenty years. If the health status of the person treated necessitates maintaining forced treatment even subsequently to the maximum term therefor, the person under forced medical treatment must be placed in a psychiatric institution. This legislative step could have been a major contribution to the elimination of the legal deficiency in the domain of forced medical treatment and would have been a response to constant criticism on the part of civil society and the ombudsman's office.

At the same time we must also draw attention to those contained in the ombudsman's report, which states the following: "*On 1 May 2010 – due to the new regulations – approx. 20-25 patients under forced medical treatment who continue to require psychiatric care must be released from the Juridical and Observational Psychiatric Institute (Igazságügyi Megfigyelő és Elmegyógyító Intézet, IMEI). However, to date conditions for the 'civilian' care of patients who exhibit endangering conduct have not been established, albeit the necessity therefor had already arisen earlier as well. In theory, the new penal code regulation signifies a great step forward, since hitherto indefinite term forced medical treatment has become a measure with a fixed term, which is in compliance with the unequivocal requirement of specified term punishment posed by the classical penal code principle of 'nulla poena sine lege' (no punishment without law). In practice, however, the conditions for continued medical care for persons subject to forced treatment who exhibit (directly) endangering conduct have not been established, and this is unlikely to be accomplished by 1 May 2010, either.*"[15]

Another source of legal insecurity is that "those who drafted the bill left out of it a few important elements indispensable to its implementation. For instance, the law fails to say a single word in regard to which procedure and which authority will decide the fate of those already subject to forced medical treatment." The Attorney General's Office has already communicated the problem to the ministry concerned, namely that it is not unequivocally clear if the law's effect extends to the fate of those already previously sentenced to forced medical treatment without right of appeal. At the same time, the ombudsman's office deems it discriminatory if the change only covers future detainees but not those already undergoing treatment.

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[14] Boglárka Benkó, János Fiala and Gábor Gombos: [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.)

[15] Report of the Parliamentary Commissioner for Civil Rights (ombudsman) on case number AJB 1161/2009.

For perpetrators of an "unsound mind" the IMEI is the sole 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. Although this fundamental principle does not require States Parties to institute measures posing a disproportionate burden, with respect to forced medical treatment Hungary does not even attempt to implement forced medical treatment adapted to the individual person, indeed it expressly rejects this. There is no possibility in Hungary to treat patients whose danger to society does not warrant the IMEI's strict security level in a different psychiatric institution."[16]

"And with respect to communications rights associated with sign language, deficiencies must again be pointed out based on which we deem it conceivable that without a sign language interpreter *persons with hearing disability* are unlawfully restricted in their personal liberty. In the domain of refugee affairs and execution of sentences it is precisely owing to the lack thereof that further rights violations may occur and we would not even know about them."[17]

The abolition of indefinite term forced medical treatment triggered an avalanche of media response in Hungary. Unfortunately, the press focused extensively on the government not having made adequate preparations for the abolition of indefinite term forced medical treatment, as the result of which "perpetrators of crimes with psychiatric disorders will be let loose in the streets." The negative campaign and media hysteria with respect to patients with psychiatric disorders most certainly will not influence society's deep-rooted stereotypes in a positive direction.

RECOMMENDATIONS

- The human rights aspects of involuntary psychiatric treatment, international case law, the dissemination of best practices should be incorporated into the training of judges and attorneys;
- The patient rights representation system should be strengthened, accessibility thereof improved;
- Establishing alternative forms of providing cares which do not restrict or restrict less a person's right to liberty, in both civil and forensic psychiatry;
- The concept and requirements of rational/reasonable accommodation should be integrated into the Health Act, the Criminal Code and the laws governing Criminal Procedure;
- The awareness of public opinion should be raised that persons with psychiatric disturbance are no more dangerous than the average population;
- The Social Welfare Act should be amended with the purpose that – unlike currently effective regulation – it should not be possible to deprive persons with disabilities of their personal liberty via court-ordered placement in a patient care home for the mentally ill.

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[16] Boglárka Benkó, János Fiala and Gábor Gombos: [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.)

[17] Dr. Ádám Kósa and Dr. László Gábor Lovászy, Ph.D.: A fogyatékossággal élő 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. p. 12 (Only in Hungarian.)

ARTICLE 15

Freedom from torture or cruel, inhuman or degrading treatment or punishment

1. *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.*
2. *States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.*

“Legislators interpret prohibition of torture primarily in conjunction with measures instituted at penitentiaries and also frame legal safeguards with this scenario in mind. From the perspective of persons with mental health disabilities the threat of torture and degrading treatment exists not only in the context of the penal system, however, but in relation to all measures that deprive them of their liberties, including when they are subjected to medical treatment against their will.[1] However, Hungarian statutory measures fail to acknowledge the significance thereof and, accordingly, do not provide for the appropriate safeguards in this regard.”[2]

The Hungarian regulation[3] of **clinical trials and rightful clinical practices** of experimental medicinal products intended for use in humans has adopted the Council of Europe’s Ovideo Convention. Accordingly, it provides more stringent rules vis-à-vis persons of legal age deprived of their legal capacity as a vulnerable patient group, establishing more safeguards than with respect to other patient groups. Accordingly, in regard to persons deprived of or limited in their legal capacity the law sets forth as an additional condition compared with legally competent persons in that “*the results of the research can have an immediate beneficial effect on the health of the research subject and the research cannot be conducted effectively on a person who possesses full decision-making capacities.*”[4] It is important to highlight that even though the law requires that “in making decisions on the health care to be provided, the opinion of a patient with no disposing capacity or with limited disposing capacity shall be taken into consideration to the extent professionally possible,”[5] it is the legal representative who actually fully exercises the right of consent or rejection in the case of a person deprived of his/her legal capacity and partly in the case of a person limited in his/her legal capacity.

Special attention must, from the perspective of discussion of this Article, go to reviewing regulations governing measures limiting legal capacity applicable to persons *cared for in social care institutions.* **Act III of 1993 on Social Administration and Social Services** [A szociális igazgatásról és a szociális ellátásokról szóló törvény, Szoctv.] regulates the application of measures restricting personal liberty at social care institutions. The Szoctv. sets forth quite detailed rules for the contingency whereby use of measures restricting personal liberty becomes necessary due to the dangerous or imminently dangerous behavior of a person in care. Hungary’s **Health Act** [Egészségügyi törvény, Eütv.] provides general

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1. One of the central issues of international legal protection against torture is establishing appropriate regulation with respect to involuntary medical science research, putting in place necessary safeguards to make certain that experiments are conducted based on the principle of consent and voluntary participation, with special consideration to persons with limited legal capacity..

2. 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. p. 44. (Only in Hungarian.)

3. Decree 35/2005 (VIII. 26.) of the Minister of Health on the clinical trial and application of correct clinical practices of investigational medicinal products intended for use in humans: www.ogyi.hu/dynamic/Decree35_2005.doc stipulations with respect to measures restricting personal liberty under the aegis of the right to human dignity, declaring that "*in the course of healthcare, the patient's personal freedom may be restricted by physical, chemical, biological or psychological methods or procedures exclusively in case of emergency, or in the interest of protecting the life, physical safety and health of the patient or others. Restriction of the patient's personal liberty may not be of a punitive nature and may only last as long as the cause for which it was ordered exists.*"

Psychiatric patients are subject to special rules of applicability under the Health Act's provisions restricting personal liberty. Accordingly, only a patient who exhibits dangerous or imminently dangerous behavior can be restricted in his/her personal freedom in any manner whatsoever. The restriction can only be maintained and can only be employed to the extent and in the manner that is absolutely necessary to avert the danger. A person's freedom can, further, be restricted if departure of a patient under emergency or legally mandated medical treatment cannot otherwise be impeded.

Decree number 1/2000 (I. 7.) SzCsM [Ministry of Social and Family Affairs] spells out additional provisions on professional tasks and operational rules for social institutions providing personal care, under which "*in a residential institution for psychiatric patients, addicts and persons with disabilities, if the person in care exhibits dangerous or imminently dangerous behavior, applicable provisions of the Eütv. must prevail.*" Measures restricting personal freedom can be: restriction of movement, restricting leaving of the institution, isolation, binding, bodily restraint, but also use of other biological, chemical, psychological or physical methods. The goal of the decree – and the laws – is to exclude all possibility of abuse of measures that restrict personal liberty, giving special mention to the prohibition of torture. Conversely, however, decision with respect to measures restricting personal liberty (including their "rightfulness") remains in the hands of the institution caring for the patient in every instance.

Instituting measures to restrict a person's liberty in the course of psychiatric procedure is, however, not a purely medical issue the justification and duration of which it is a physician's right – or in exceptional cases that of the care provider – to determine. Instituting measures to restrict a person's liberty in the course of providing medical care should be underpinned by the same safeguards as is the case with respect to any other intervention into personal liberty in order that such restriction should not become abusive vis-à-vis persons in care who are vulnerable in the first place. Resorting to restrictions of personal liberty should be confined within stringent boundaries so that it will not result in physical or mental suffering for patients which tantamount to torture. Thus, patients should not only be ensured the possibility of questioning the effectiveness of restriction, its medical causality, but they should also be able to challenge its legality. The decree provides an opportunity for *patients* (and other persons) *to lodge a complaint* against a measure restricting personal liberty, and makes hospitals responsible for establishing their own grievance procedures. Thus, the adjudication of complaints is not separated from those who institute the contested measures in the first place. The law does not establish an obligation that an independent body determine the

4. Article 159 (4), Act CLIV of 1997 on Health [1997. évi CLIV. törvény az egészségügyről]

5. Article 16 (5), Act CLIV of 1997 on Health justification of measures to restrict personal liberty, or that the complainant have the right to turn to an independent body to fight the use of measures restricting personal liberty. The decree does not provide a safeguard against arbitrary decisions with respect to restrictions of personal liberty employed in the health care context. Moreover, no procedure whatsoever exists for investigating the lawfulness of such restrictions.

Ombudsman investigation case number OBH 5740/2008 drew attention to practical problems engendered by the aforesaid provisions. The subject of investigation was the death of a person with intellectual disability whom an orderly tied to the heater pipe next to his bed to keep the patient still at night lest he disrupt his fellow patients' sleep. The ombudsman's report stated: "*in order to prevent and eliminate irregularities with respect to fundamental rights, it is indispensible that statutory provisions, legal regulations, as well as institution policies based on them, be transparent, unequivocal and comprehensible for those applying the law, as well as being enforceable.*" The ombudsman established, further, that "the procedure employed, the lack of statutory personnel and material conditions likewise entail the hollowing of safeguard procedures and the right to legal redress. This – pointing even beyond the current case – indirectly, and in conjunction with the State's objective obligation to protect fundamental rights, *give rise to irregularity with respect to the right to life and human dignity.*"

It triggered a media storm and unleashed public outrage when a news story broke detailing how a **special institution employing persons with disabilities and persons raised in state care** maintained by the Bács-Kiskun County local government in Kecskemét's Juhar Street disciplined badly behaved children, occasionally children with disabilities, by locking them up for various periods (for even up to a whole day!) in a room that could not be opened from inside.

Another news item that ran in the Hungarian media was that 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, however. A **Mental Health Interest Forum** [Pszichiátriai Érdekvédelmi Fórum, PÉF] 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.*"[6]

In both cases both the public prosecutor's office and the local governments launched an investigation. Internal and independent inquiries maintain, howev-

[6] Mental Health Interest Forum (PÉF) press release, 26 January 2010. (Only in Hungarian.)

er, that the abuses alleged by media reports at the Kiskunhalas psychiatric home and at a Kecskemét social welfare institution did not in fact occur. "According to the findings the reported accusation did not contain specific events and times, it spoke of patient abuse in generalities and inconsistently, with no specific information or fact with respect to sexual abuse arising" – said the county assembly chair in a statement. 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 Parliamentary Commissioners Office (OBH) and civil society organizations have conducted extensive investigation of the situation of persons placed with the Juridical and Observational Psychiatric Institute (IMEI). Detention of convicted offenders and persons under pretrial custody at IMEI and concerns related therewith can be subjected to scrutiny with respect to several of the Convention's Articles. The principal issues of concern – including forced medical treatment, temporary forced medical treatment; observation of the mental state of persons in pretrial custody – with respect to such penal institutions is that at IMEI convicted offenders/persons in pretrial custody can be subjected to medical treatment without implementing the informed consent provision required with respect to medical care, even though otherwise stipulated conditions of "involuntary psychiatric treatment" do not exist. Another pivotal issue is the extent to which treatment ordered at IMEI can provide a solution adapted to the needs of psychiatric (psycho-social disability) and other medical disorders.

"The most conspicuous problem with regulations with respect to **measures restricting** personal liberty that may be employed at IMEI is that, in regard to IMEI inmates, they only designate physical coercion as constituting a measure restricting personal liberty. Other means of coercion employed in psychiatric treatments do not, under statutory provision, constitute a restriction of personal liberty. In consequence, those suffering such measures have no recourse against them (including reporting it to the police, taking legal action, filing a complaint). Obviously, physical coercion is not all that persons subjected to forced medical treatment must bear when medical treatment is being enforced. If a person resists medical treatment practically any means can be used against them in the absence of any safeguards whatsoever. These measures *are injurious to a person's integrity* far more than physical coercion, can also cause far more suffering, their impacts can be far more severe, and yet there is no possibility of legal redress against them.

The goal of forced treatment of offenders with psychosocial disability is, in accord with the principles of applicable statutory measures, to cure, not punish them. Owing to circumstances that exempt offenders from punishment, the cause of their detention at the Forensic and Observational Psychiatric Institute (IMEI) is prevention, not retaliation for the perpetrated offense. IMEI is, however, a penal institution, whereas experience with conditions prevailing at locked psychiatric institutions shows that, compared with other forms of care, medical cure here is slower and less effective. In light of this the question arises *to what extent, in reality, does forced medical treatment at IMEI serve punishment and to what extent does it serve the purposes of medical treatment.*"[7]

[7] Boglárka Benkó, János Fiala and Gábor Gombos: [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.)

> Of the penal code measures carried out at IMEI, special mention must go to temporary forced medical treatment, which court of law orders based on the conjecture that the accused
> 1. perpetrated a violent act against a person or a criminal offence posing a public danger,
> 2. is not punishable by reason of insanity,
> 3. is likely to reoffend in a similar manner,
> 4. presuming he/she is punishable, the accused would have to be sentenced to imprisonment for more than one year.[8]

At the same time, court of law only conjectures fact of the above-said and to order temporary forced medical treatment it is sufficient for the court to reach the conclusion that it will subsequently find the necessity of forced medical treatment substantiated. *"the only fact that upon ordering temporary forced medical treatment was – presumably – susbstantiated with full certitude is that the accused suffered from a psychiatric disorder (unsound mental state).* It must be noted that this psychiatric disorder might, in a given case, amount to no more than a mental health professional diagnosing the accused with depression. The accused's psychiatric disorder is the sole real reason serving as the basis for him/her be deprived of his/her liberty and be subjected to forced medical treatment on the grounds that it is not the court's responsibility, either, to investigate whether or not conditions for involuntary medical treatment (dangerous behavior) otherwise exist.[9] In practice, no investigation occurs, either, to find out whether the unsound state of mental functioning is of a degree that justifies deprivation of liberty.

Temporary forced medical treatment does not merely constitute deprivation of a person's liberty. Owing to the nature of the treatment, it also constitutes an encroachment of a person's physical and mental integrity, as well as health rights. At the same time, there is no guarantee whatsoever that the decision ordering treatment not be made arbitrarily. The only possible place where temporary medical treatment can be executed is IMEI, obviously an unsuitable place to provide diverse alternative forms of treatment and care in line with different psychiatric disorders.

The extraordinarily invasive nature of coercive measures, the gravity of its consequences, the place and mode of execution, the total deprivation of health rights, the arbitrariness of the decision serving as the basis for these measures, in their totality, *do not exclude the possibility that temporary forced medical treatment constitutes torture and cruel treatment.*

Additionally, in the event of "observation of mental state," a person in pretrial custody can be sent to IMEI for medical treatment even if in the course of investigation by a mental health professional ordered during criminal proceedings "the mental health professional has reached the conclusion that the data at his/her disposal are insufficient to establish a final expert opinion and therefore he/she files petition with the authorities requesting observation of the accused's mental state. In consequence, observation of mental state is part of the investigation conducted by the mental health professional and at once its instrument as well,

[8] Article 74 (1), Act IV. Of 1978 on the Criminal Code: "In case of the perpetrator of a violent punishable act against a person, or of a punishable act causing public danger, forced medical treatment shall be ordered, if the perpetrator is not punishable because of his insane state of mental functions, and it is to be supposed, that he will perpetrate a similar act, provided that, in case of punishability, a punishment exceeding one year of imprisonment would have to be inflicted."

[9] Boglárka Benkó, János Fiala and Gábor Gombos: [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.)

which, obviously, also entails restriction of personal liberty. *Psychiatric diagnosis constitutes the sole legal basis for the accused being deprived of his/her personal integrity, right to medical self-determination, appropriate treatment of his/her medical disorder.*

The findings of **MDAC and the Hungarian Helsinki Committee** in conjunction with a visit to IMEI have formulated numerous criticisms with respect to IMEI's functioning. Similarly to the **ombudsman investigation** of case number **OBH AJB-1161/2009,** which highlighted as a negative phenomenon, among others, that "they can only accommodate adults and minors together," and that "*the buildings are not accessible, whereas they also care for persons with physical disability – persons with locomotor, visual, and hearing disability – at the institution.*" The ombudsman's on-site investigation emphasized, further, that "earlier courses, trainings have ceased to exist, currently only one study group is functioning, whereas the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommendation provides that besides medication-based treatment therapeutic and other activities should also be provided. Yet, at IMEI, a single ping-pong table serves as the sole means of physical exercise, and the wards in one of the buildings entirely lack electric sockets, so patients can only watch television in the communal area."

RECOMMENDATIONS

- Hungary should join the Optional Protocol to the 1984 Convention Against Torture (OPCAT) adopted by the UN General Assembly, which would require that Hungary establish a national prevention mechanism;
- A patients' rights advocacy system should be developed;
- Civil society oversight of investigations of violations of the law should be stepped up;
- Sensitizing and boosting the sense of responsibility of persons who act on behalf of investigating authorities and the justice system;
- In the event of violation of the law perpetrators should always be faced with criminal charges;

Freedom from exploitation, violence and abuse

ARTICLE 16

1. *States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.*
2. *States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.*
3. *In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.*
4. *States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.*
5. *States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.*

Article 3 of **Act XXVI of 1998, on ensuring equal opportunities for persons with disabilities** [1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról, Fot.] states that "due to their condition, persons with disabilities are less able to exercise the rights to which they are entitled on the same basis as everyone else, and it is therefore justifiable to provide them with preferential treatment in every possible way." Though the Act does not refer to freedom from exploitation, violence and abuse, the text quoted does suggest that persons with disabilities must also be provided with necessary and proportionate help to have access to those rights that are included in Article 16 of the Convention.

The discriminatory conducts that are sanctioned by **Act CXXV of 2003, on equal treatment and the promotion of equal opportunities** [2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról, Ebktv.], harassment and retribution are relevant with regard to Article 16 of the Convention.
Article 10.1 "Harassment is a conduct of sexual or of other nature violating human dignity related to the relevant person's characteristics defined in Article 8 with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment against someone."
Article 10.3 "Retribution is a conduct that causes infringement, is aimed at infringement, or threatens with infringement, against the person making a complaint or initiating procedures because of a violation of the principle of equal treatment, or against a person assisting in such a procedure, in relation to these acts."

In Article 12, the Ebktv. provides that claims for the violation of the principle of equal treatment can be submitted not only to the **Equal Rights Authority** [Egyenlő Bánásmód Hatóság, EBH], but in other procedures defined by other statues as well, particularly in the course of legal actions for the violation of personality rights, labour court cases, and administrative actions by consumer protection or labour authorities, or by authorities dealing with administrative offences.
Article 21 of Ebktv. states that:
"It is considered a violation of the principle of equal treatment in particular if the employer inflicts direct or indirect negative discrimination upon an employee, especially when the following dispositions are defined or applied:
e) in determining and providing working conditions;
f) in establishing and providing allowances due on the basis of the employment relationship or other relationship related to work, particularly in establishing and providing wages/salaries defined in Article 142/A(3) of Act XXII of 1992 on the Labour Code."

Article 5 of **Act XXII of 1992 on the Labour Code** [1992. évi XXII. törvény a Munka Törvénykönyvéről] defines the obligation of equal treatment, while Article 142/A (1) provides that "when defining remuneration for the same works or works of the same value, the principle of equal treatment shall be observed." Should an employee receive less remuneration on grounds that violate Article 142/A (1), i.e. because of their disability, this could constitute a violation of Article 16 of the Convention.

To mitigate the social, moral and pecuniary injuries of individuals who are victims of criminal acts and whose quality of life has thereby been endangered, the Parliament has adopted, on the basis of the principles of social solidarity and equity, **Act CXXXV of 2005 on crime victim support and state compensation** [2005. évi CXXXV. törvény a bűncselekmények áldozatainak segítéséről és az állami kárenyhítésről]. Article 4 states that:

1. *When rendering victim support services, the State shall facilitate the protection of victims' interests, grant instant monetary aid and provide legal aid.*
2. With a view to facilitate the protection of victims' interests, the victim support services shall help victims, in a manner and to the extent they may require, through the legal process of enforcement of their fundamental rights and for having access to healthcare services, health insurance benefits and social welfare services.
3. The victim protection service shall provide, in the form of instant monetary aid, coverage for a victim's extraordinary expenses related to housing, clothing, nutrition and travel, medical and funeral expenses if he/she is unable, as a consequence of being victimized in a crime, to cover such expenses.

A victim is eligible for compensation irrespective of his/her earnings when s/he "receives attendance allowance, public healthcare provision and invalidity allowance," or when they are "eligible for aid to the mentally impaired, personal annuity for the blind and the visually impaired, or increased family allowance" (Article 6.3. e–f).

Act IV of 1978 on the Criminal Code (1978. évi IV. törvény a büntető törvénykönyvről, Btk.) *does not include perpetration against persons with disabilities* among aggravated cases which incur more severe terms. On the other hand, the Btk. does recognize the categories of persons incapable of self-defence and persons incapable of expressing their will, which may apply to persons with disabilities. Provisions of the Btk. that cover such cases include an aggravated case of homicide (Article 166.2. j), an aggravated case of battery (Article 170.3), one of the basic cases of rape (Article 197.1), and a basic case of indecency (Article 198.1).

In this context we must mention what happened in the Kiskunhalas Institute for Psychiatric and Disabled Patients [Pszichiátriai és Fogyatékos Betegek Otthona]: in February 2009 the media reported on two employees abusing patients. *(See this in more detail in Article 15.)*

RECOMMENDATIONS

- The measures that are outlined in Article 16.4 of the Convention – those that "promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services" – should be taken to enable persons with disabilities to initiate court proceedings against conducts that result in exploitation or violate the principle of equal treatment.
- When a person with a disability becomes the victim of a crime, s/he is eligible for the services defined in Act CXXXV of 2005. This Act should be modified so that Article 16.4 of the Convention be completely fulfilled.
- Regarding Article 16 of the Convention a review of the Criminal Code is necessary so that perpetration against persons incapable of self-defence or expressing their will become aggravated cases of other crimes as well: these may include crimes against marriage, family, youth and sexual morals described in Chapter XIV of the Criminal Code.
- In line with the approach of the Convention, a new designation should be found for the protected group, instead of "persons incapable of self-defence or expressing their will."

Protecting the integrity of the person

ARTICLE 17

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

Hungarian law provides for the protection of the integrity of the individual in several statutes. The highest and most general of these is the **Constitution,** which guarantees the right of Hungarian citizens to *life*, *dignity*, *health*, *good reputation*, *the privacy of the home*, *and the protection of secrecy in private affairs and personal data*.

Several of the provisions of the **Act on Health** [Egészségügyi törvény, Eütv.][1] concern safeguards for the integrity of the individual. With regard to informed consent, the Act provides that the patient has the *"right to complete information provided in an individualized form."* Patients with limited or no capacity to act also have the right to information, in accordance with their "age and mental state." The Act also obliges healthcare givers to supply, "if necessary and possible, the services of an interpreter or a sign language interpreter" to provide the necessary information. Yet, the right to accessible information is often infringed in practice, owing partly to the lack of financial means and competent professionals, and the weaknesses of links between the hospitals, patient rights advocates and professionals. Furthermore, the satisfaction of the right to information should not be contingent on the subjective judgement of healthcare staff; the opinion of an adult with limited capacity to act must be taken into account not "to the extent possible" (where this extent is determined by the healthcare staff) but as something that has legal relevance.

To make informed consent possible under all circumstances, the Act on Health must provide that the provision of information that enables access for all cannot be subject to consideration.

The principle of integrity is seriously violated in Hungary by the fact that the restrictions on the personal freedom of *persons under involuntary medical treatment* automatically involve the restriction of health rights-related self-determination. The Eütv. provides that the *representatives of patients with limited or no capacity to act need to give their consent only to invasive interventions.*[2]

Since psychiatric pharmacotherapy is not an invasive intervention, its use is entirely at the discretion of the treating doctor. An application has been submitted to the Constitutional Court stating that this provision violates the integrity of psychiatric patients. With its decision 36/2000 (27 October), the Constitutional Court declared that this provision was not against the Constitution. The Court found that there was no reason of principle to apply different rules to psychiatric patients than to other patients.

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[1] Act CLIV of 1997 on Health [1997. évi CLIV. törvény az egészségügyr_l, Eütv.]. In English: http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.HUN.3-Annex10.pdf

[2] "Invasive intervention: a physical intervention penetrating into the patient's body through the skin, mucous membrane or an orifice, excluding interventions which pose negligible risks to the patient from a professional point of view." (Eütv., Article 3.m.)

However, it follows from the above that there is one such reason of principle, namely that if psychotropic medicines are not invasive, they are strongly intrusive. Hungarian law seems to consider only invasive interventions serious enough to require the consent of the patient or their representative for their application. The position of the law is that there is no serious risk to the patient's life if an intervention is non-invasive, and thus in the case of patients with no capacity to act the doctor's decision suffices for the treatment. There is an ethical complication to the involuntary application of psychotropic medicines in that they have considerable side effects. As a result, the informed patient, cognizant of the side effects from his own and other patients' experience, will often be reluctant to take the medicines, feeling that these will produce a condition worse than the untreated illness. Hungarian law does not differentiate between the patient's respective capacities in these two questions: being admitted to an institution with a psychiatric illness, and giving their consent to the treatments suggested, once inside the institution."[3]

Which is to say Hungarian law does not provide against involuntary admission leading automatically to involuntary treatment.

> The practice is just the opposite, for instance, in Canada, where the courts make separate decisions about the restriction of the personal freedom and the limitations of legal capacity when involuntary medical treatment is ordered.[4]

"Involuntary admitted patients who have sufficient capacity to understand their treatment should also have the right to refuse psychiatric treatment," writes bioethician Prof. József Kovács in a study.

PROTECTION AGAINST FORCED STERILIZATION AND FORCED ABORTION

Those rules of Hungarian law on sterilization for purposes of family planning that provide for even the involuntary sterilization of persons with no capacity to act require extensive safeguards, compulsory court proceedings. (See this in more detail in Article 23.) In our opinion however, sterilization should have specific rules within those relevant to health-related declarations of intent, and they should require particularly stringent safeguards. The safeguards should apply not only to persons under guardianship, but to those as well who are not under guardianship but require support.

Sterilization must not belong to the category of general health-related declarations of intent. In such cases, the joint decision of the guardian and the person under his care (persons with limited capacity to act), let alone the independent decision of the guardian (persons under plenary guardianship) should not suffice.
It is thus extremely important that a court should decide in each case, following the complex, rigorous consideration of conditions.

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[3] Prof. Kovács József: A nem önkéntes pszichiátriai kezelés és a véleményszabadság [Involuntary psychiatric treatment and freedom of opinion] Fundamentum 2004/1 (Only in Hungarian)

[4] Starson v. Swayze http://csc.lexum.umontreal.ca/en/2003/2003scc32/2003scc32.html

Persons with intellectual disability almost never initiate their own sterilization. In the decisive majority of cases, the application is submitted not by the person concerned but by their legal representative. What is to be feared, then, is *not that the person concerned may make a thoughtless and irreversible decision, but that others might do so by abusing his or her condition.*

Courts must consider the following (among others) when their approval for sterilization is sought:
a) What is the likelihood of the person concerned engaging in sexual activity or becoming pregnant?
b) Can the person's capacity to understand be improved, e.g. with regular medical consultation, to avoid unwanted pregnancy?
c) Can contraception be realized with less drastic means?
d) Does the person proposing or supporting sterilization act in good faith, and is there not a conflict of interests?
e) What would constitute a greater psychic trauma for the person concerned: becoming pregnant and giving birth, or being made infertile?

Sterilization can never be approved, and thus the guardian do not have the right to act independently, when the reason for application is one of the following:

1. eugenic purposes
2. solely for the purposes of contraception
3. to avoid the consequences of rape
4. to prevent future problems

The success of sterilization-related safeguards can be guaranteed only if the above principles are included in the law, and the courts are provided with interpretation guidelines that respect these principles.

INDEPENDENT SUPERVISORY AUTHORITIES

There are several mechanisms to oversee healthcare, and a complex supervisory system has been established to ensure that health rights are satisfied. Negligent healthcare workers can be called to account through ethical, civil and criminal law procedures. Though the law provides for a comprehensive and complex mechanism, the system in practice is often criticized.

As bioethician Prof. József Kovács puts it: "*there are countless complaints about the service in Hungary, which simply do not have a forum. Only the 'large cases' reach the courts, yet most cases are not large, and at present there is no real solution for them.*"
The **patient rights advocacy system** is to provide patients with information on their rights, help to protect these rights, and advocacy. To guarantee their independence, advocates cannot be employed by the healthcare provider that provides services to the patients they are to represent.

> "The number of cases reported to the Public Foundation for the **Rights of Patients, Children and Persons on Social Welfare** [Betegjogi, Ellátottjogi és Gyermekjogi Közalapítvány] increases every year. Our patient rights advocates handled 6750 complaints in 2004, 8300 in 2005, 7900 in 2006, 11,250 in 2007, and as many as 16,600 in 2008. Most cases concerned the infringement of right to healthcare. Next in order were violation of dignity and the right to information, which may also involve infringements on the patients' right to self-determination. The fields in health service where most complaints are lodged are internal medicine, psychiatry, gynaecology and surgery."

Act XCVII of 2006 on professional chambers in healthcare [2006. évi XCVII. törvény az egészségügyben működő szakmai kamarákról], which came into force on 1 January 2007, brought fundamental changes to the handling of ethical infractions, as it made membership non-compulsory. To retain the possibility of sanctioning, and maintain the weight of ethical action, new ethical councils were established, with jurisdiction over those who are not members of the chambers. The **National Ethical Council** [Országos Etikai Tanács] also has jurisdiction over chamber members: appeals against the decisions of the ethical councils of the Hungarian Medical/Pharmacists'/Health Workers' Chamber are considered by the national ethical councils of the respective chambers only if the decision contested is the suspension of membership. If the appeal concerns the facts of the case, the body to act in the second instance is the National Ethical Council, a part of the **Hungarian National Public Health and Medical Officer Service** [Állami Népegészségügyi és Tisztiorvosi Szolgálat, ÁNTSZ].

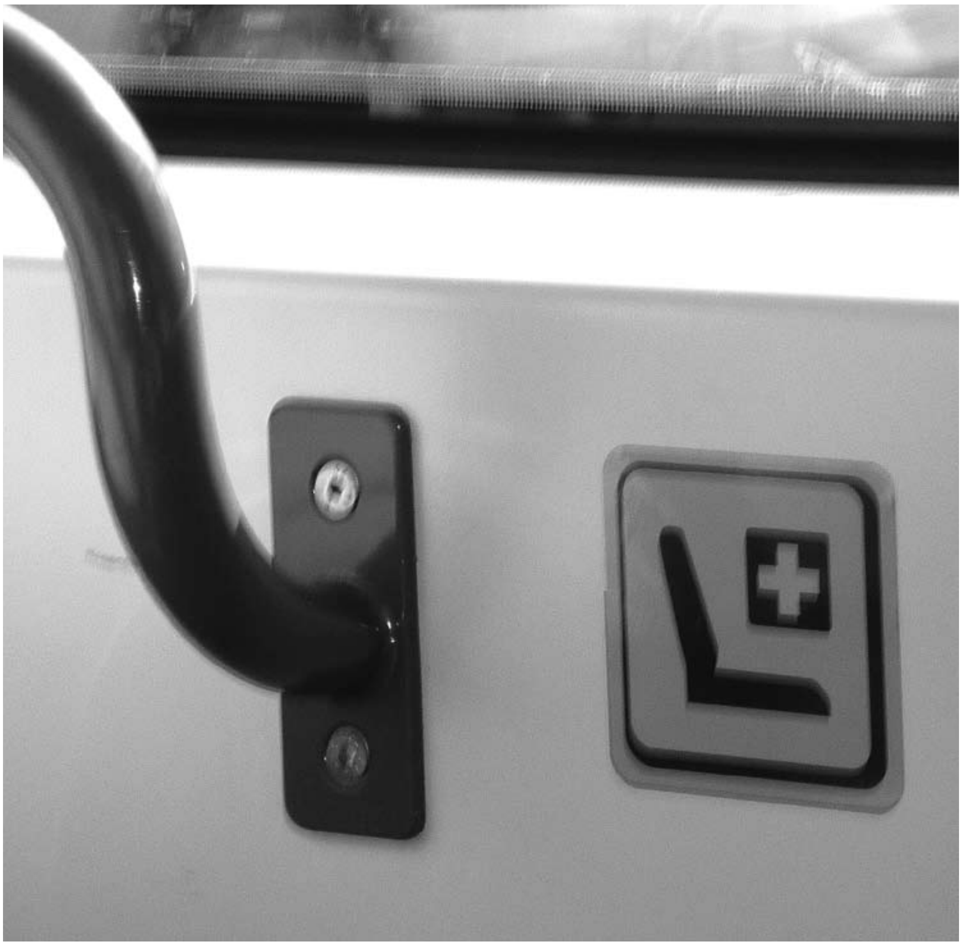
The cases of those who are not members of the chambers are tried in the first instance by the **county ethical councils,** and appeals are considered by the National Ethical Council.

There is one difference between the applicable sanctions: while the ethical boards of the ÁNTSZ can impose warnings, reprimands and fines to the maximum value of ten times the minimal wage, the ethical committees of the chambers can also suspend the membership of the offender.

The ethical committees can only act on offences against the professional-ethical rules of the health service, and an offence against whatever falls outside the authority of these rules cannot be considered an ethical case. Only the independent courts of the Republic of Hungary are entitled to establish *responsibility under civil and criminal law.*

The institution of the mediation council serves to settle legal disputes between patients and healthcare providers without court proceedings. The members of a council are selected from a register of mediators maintained by the Hungarian Chamber of Forensic Experts [Magyar Igazságügyi Szakértői Kamara]. If no agreement is made within four months from the first meeting of the council, the procedure is terminated. The agreements are legally binding.

Beside the ethical committees set up in its framework, the ÁNTSZ as a professional authority also controls, coordinates and supervises activities in public health,



epidemiology and administration, and supervises the health service. Its sanctions include warnings, fines (now also health fines), suspending and withdrawing licences, and initiating disciplinary proceedings.

The **Health Insurance Supervisory Authority** [Egészségbiztosítási Felügyelet] protects the rights of the insured, registers quality-related data on health services, launches investigations in administrative procedures, and can, if necessary, issue fines to ensure the minimum quality of service.

Several *ombudsman reports* deal with complaints about violations of patients' rights, notably the right to information and the right to self-determination. In general, the number of cases that reach ethical-professional forums and courts has increased in recent years, thanks partly to the growing legal consciousness of citizens. It is often a critique, however, that the esprit de corps of the medical profession hampers objective judgement and desirable outcomes in these cases.

RECOMMENDATIONS

- Hungary should ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which was adopted by the United Nations General Assembly on 18 December 2002. It would require Hungary to introduce a national prevention mechanism.

- To enable *informed consent* under all circumstances, the Eütv. should provide that healthcare givers must supply information that enables access for all. The current wording does not provide for such an unambiguous obligation.
- When ordering involuntary treatment, courts should give separate consideration to whether personal freedom should be restricted, and the power of disposal over health rights should be limited. Currently, law does not acknowledge the right of those involuntary admitted patients who have the capacity to understand their treatment to refuse psychiatric treatment.
- Sterilization should have specific rules among those relevant to health-related declarations of intent, and particularly stringent safeguards should be introduced. The safeguards should apply not only to persons under guardianship, but to those as well who are not under guardianship but require support, and persons with disabilities who do not require support.
- Law should require the compulsory supply of such information that enables access for all and conforms to the communication needs of persons with disabilities.

Liberty of movement and nationality

ARTICLE 18

1. *States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:*
a) *Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;*
b) *Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;*
c) *Are free to leave any country, including their own;*
d) *Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.*
2. *Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.*

As regards Article 18 of the Convention, the following provisions of the **Constitution** are of relevance:
Article 58.1 Everyone legally staying or residing in the territory of the Republic of Hungary – with the exception of the cases established by law – has the right to move freely and to choose his place of residence, including the right to leave his domicile or the country.
Article 69.1 In the Republic of Hungary no one shall be denied of his Hungarian citizenship against his will and no Hungarian citizen may be expelled from the territory of the Republic of Hungary.
Article 69.2 Hungarian citizens may always return to Hungary from abroad.

Government Decree 101/1998 (22 May) on the implementation of **Act XII of 1998 on travelling abroad** [A külföldre utazásról szóló 1998. évi XII. törvény végrehajtásáról szóló 101/1998. (V. 22.) Korm. rendelet] has the following provisions on applications for travelling documents:
Article 17. (3) The application of a minor or a person under guardianship shall be accompanied by a declaration the parents (legal representative) make before a notary public, the guardianship authority, an official of the consulate, the passport authority, or the notary of the regional centre, giving their consent to the issuance of the document, or by a document proving the cessation or suspension of parental care.

These rules violate Article 18.1.c of the Convention, because **persons with a limited capacity to act** can apply for travel documents, on account of their disability or lack of complete legal capacity, only with the consent of their legal representative, and can leave the country only with the consent of their guardian.

Government Decree 168/1999 (24 November) on the issuing and the registry of identity cards (168/1999. [XI. 24.] Korm. rendelet a személyazonosító igazolvány kiadásáról és nyilvántartásáról) states that:
Article 16.2 For an applicant with no capacity to act, their legal representative shall act, but the applicant shall not be relieved of their obligation to be present in person at the time

of application, with the exception of cases specified in Articles 15.3–4. (N.B. These cases include health reasons.)
Article 31.3 In the case of minors and persons under plenary guardianship, the responsibilities related to the issuance, use and possession of the identity card falls on their representative.

It is thus evident that while persons with disabilities who are **under plenary guardianship** are not deprived of the possibility to have an identity card, they are deprived of the possibility of applying for one on their own. Furthermore, these provisions contravene Article 18.1.b of the Convention by not ruling out the possibility of preventing persons with disabilities, on the basis of disability, from possessing and using their documentation of identification.

The law of the Republic of Hungary fails to satisfy the requirements of the article of the Convention in the case of **immigrants with hearing impairment,** when they apply for citizenship. Since for them sign language is the mother tongue, they do not have equal access to the service.[1]

Article 13.1 of **Act CXL of 2004 on the general rules of administrative proceedings and services** [2004. évi CXL. törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól, Ket.] states that:
1) This Act shall not apply to:
a) *infringement procedures, election procedures, the preparation and completion of a national referendum, to property administration, and citizenship procedures, with the exception of the issue of citizenship certificates*

> Since the rules of the Ket. do not apply to citizenship procedures – with the exception specified –, the rules that promote equal opportunities for persons with disabilities should be introduced to the citizenship procedures as well.

Act LV of 1993 on Hungarian citizenship [1993. évi LV. törvény a magyar állampolgárságról] states that:
Article 13.2 The application for citizenship shall contain the data specified, and shall be made out in the Hungarian language, with the exception of the application for a citizenship certificate. The applicant shall sign the application. When the application is submitted, the identity of the applicant shall be verified, and the data included in the application shall be compared with the data of the documents enclosed.
Due to the provisions of the Ket. on language use, the application for a citizenship certificate cannot be required to be made out in Hungarian.
This provision also violates Article 18 of the Convention.

Article 15 of the Act LV of 1993 on Hungarian citizenship states that:
Article 15.1 Persons with full legal capacity may submit their application for citizenship in person, while persons with limited or no capacity to act can apply through their legal representative.
Article 15.2 When a petition for naturalization or re-naturalization, or a declaration of resignation is submitted, the person shall be heard, even if he or she has a limited capacity to act.

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[1] Dr. Ádám Kósa, Dr. László Gábor Lovászy, Ph.D.: A fogyatékossággal élő személyek jogairól szóló egyezmény értékelése és kritikája a jelnyelvhez kapcsolódó jogok vonatkozásában [A review and critique of the Convention on the Rights of People with Disabilities with respect to rights related to sign language], SINOSZ, 2008. (Only in Hungarian.)

Article 15.4 Spouses or a parent living together with his or her minor children or children of age with no capacity to act may submit a joint application for naturalization or re-naturalization, or a joint declaration of resignation of Hungarian citizenship.

According to these provisions, adult persons with disabilities and with a limited capacity to act can **apply for citizenship only through their guardians,** and not in person. Article 15.2 requires hearing only in the case of persons with a limited capacity to act, and there are no such provisions for persons with no capacity to act. Article 7 of the same Act also infringes on the right to self-determination of the person with no capacity to act when it provides that:

Article 7.1 Naturalized and re-naturalized (hereinafter jointly referred to as "naturalized") persons shall have the option to take either a citizenship oath or a pledge of allegiance. The naturalized person shall take the oath or pledge of allegiance before the mayor of his or her place of residence, or, if Article 4.6 or Article 4.7 applies, before the mayor or the head of the competent foreign representation of Hungary. If the naturalized person has no capacity to act, the oath or pledge of allegiance shall be taken in his or her name by his or her guardian.

These provisions also contravene Article 18 of the Convention, namely Section 1.*a)*

The provision of Article 18 on the liberty of movement and the freedom to choose place of residence is violated by the following legal provisions:

Article 12 of Act CLIV of 1997 on health [1997. évi CLIV. törvény az egészségügyről, Eütv.] has the following provisions (among others) on the right to leave the healthcare facility:

Article 12.1 The patient shall have a right to leave the healthcare facility, unless he threatens the physical safety or health of others by doing so. This right may only be restricted in the cases defined by law.

Article 12.5 In the case of a patient with no capacity to act, the right defined in Paragraph 1 may be exercised with the agreement of their legal representative.

Article 18 of the Convention is violated in the case of patients with disabilities and no capacity to act because for the principle of liberty of movement to be satisfied, the approval of the legal representative is necessary.

Chapter X of the Eütv. contains special rules for the treatment and care of psychiatric patients. Title II of the chapter includes provisions for voluntary, emergency and mandatory treatment.

Since even the voluntary treatment of psychiatric patients involves deprivation of liberty, Article 197.9 of the Eütv. violates Article 18 of the Convention when it normally provides that patients with a full capacity to act must be released from the institution at their request, while patients with limited or no capacity to act must be released at the request of the person who requested the treatment. The persons who can request release from the hospital are specified in Articles 16.1 and 16.2 of the Eütv.

The provisions of the Eütv. both on emergency and mandatory treatment contravene the provisions of Article 18 of the Convention on liberty of movement. These treatments – deprivations of liberty – may be ceased as a result of judicial review,[2] or when the treatment is no longer necessary.[3]

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[2] Required, in the case of emergency treatment, by Article 199.8 of the Eütv.; in the case of mandatory treatment, by Article 200.7 and Article 198.1.

[3] See Articles 199.9 and 200.8.

These deprivations of liberty on health grounds cannot be ceased by a patient who receives treatment only because of their disability, whether they have full, limited or no capacity to act.

Act III of 1993 on social administration and social services [1993. évi III. törvény a szociális igazgatásról és szociális ellátásokról, Szoctv.] and the current **Civil Code** [1959. évi IV. törvény a Polgári Törvénykönyvről, Ptk] cause a violation of Article 18 of the Convention when providing that in the case of persons with no capacity to act the guardian has the right to decide where the person under guardianship will live.[4]

Act IV of 1959 on the Civil Code states that:
Article 14.1 Persons of legal age shall have limited capacity to act if a court has placed them under the care of a guardian.
Article 14.6 The capacity to act of persons placed under guardianship may be completely restricted by court particularly in the following cases:
Article 14.6.7 declarations of intent in connection with placement in a social institution

[4] According to Article 15/A.1 of the Ptk. and Articles 93 and 93.3 of the Szoctv., the temporary guardian can initiate the placement of a person under temporary guardianship in an institution, with the preliminary approval of the guardianship authority.

Article 14/B.1 In general, or with respect to the cases specified in the court ruling – with the exceptions defined in paragraph (2) –, the declaration of intent of a person with limited capacity to act shall be deemed valid only if it is made with the prior consent or subsequent approval of that person's guardian. In the case of a disagreement between the guardian and the person under guardianship the guardianship authority shall decide. If and when the person with limited capacity to act regains their full capacity, they shall make their own decisions about the validity of their pending declarations of intent.
Article 15/A.1 The declaration of intent of a person with no capacity to act – with the exception defined in paragraph (2) – shall be null and void; their guardian shall act in their name. Prior to making a decision the guardian shall hear the views and requests of the person under guardianship, if they be able to express their views – with regard, for instance, to place of residence – and shall abide by such requests if possible. A guardian who repeatedly breaches this obligation shall be subject to dismissal in accordance with Article 19/C.2.

Act III of 1993 on social administration and social services states that:
Article 93.1 Accessing social services that provide personal care is voluntary, and access shall be requested or initiated by the person requiring the service, or by their legal representative.
Article 93.2 If the person requiring the service has no capacity to act, the request or initiative shall be submitted – taking into account the views of the person concerned, to the extent possible – by their legal representative. A person with a limited capacity to act can submit their request or initiative with the approval of their legal representative, or – if the court has not limited their capacity in this respect – on their own.
Article 93.3 If the legal representative is a temporary guardian, their request or initiative for placement in an institution shall require the prior approval of the guardianship authority.

Act CXX of 2009 on the **new Civil Code,** which has not entered into force, **would have had the following provisions:**
Article 2.17 [The concept and establishment of an advance directive]
Article 2.17.2 A person of age with full capacity to act can use an advance directive to provide particularly for the following:

Article 2.17.2.c Initiate or forbid placement in a social institution.

The legal institution of supported decision-making would have provided further possibilities for the independent life, and hence the choice of place of residence, of persons with disabilities.
The new Civil Code would have maintained the possibility of limiting the capacity to act, and, under certain circumstance, even the independent action of the guardian.
Article 2.23.1 A person of age shall have limited capacity to act if a court has placed them under guardianship with regard to certain groups of cases.
Article 2.25 [Independent action by the guardian of a person with limited capacity to act] In a procedure defined by another statue, a court may authorize a guardian to act, and make declarations of intent, in the restricted groups of cases or particular cases within a group –

b) *at the joint request of the guardian and the guardianship authority, if an expert opinion based on a complex examination states that the guardian cannot, even with the assistance of an expert of communication with persons of disabilities, communicate with the person under guardianship about the given case or groups of cases in a manner that would enable the guardian to provide their prior consent or subsequent approval for the person's declaration of intent, and if the protection of the rights of the person under guardianship cannot be guaranteed by the procedure defined in Articles 2.24.1 and 2.24.2.*

RECOMMENDATIONS

With regard to persons with a limited capacity to act, the following legal instruments need to be reviewed, in accordance with the above analysis:

- Act LV of 1993 on Hungarian citizenship;
- Act CLIV of 1997 on health;
- Act III of 1993 on social administration and social services;
- Government Decree 101/1998 (22 May) on the implementation of Act XII of 1998 on travelling abroad;
- Government Decree 168/1999 (24 November) on issuing identity cards and keeping a register thereof;
  The law of the Republic of Hungary fails to meet the requirements of the Article with regard to granting citizenship to immigrants with hearing impairment.

The instrument to be modified is:

- Act LV of 1993 on Hungarian citizenship.
- Law should ensure that those rules of residential institutions that regulate leaving and returning to the institution provide for the liberty of movement, offering a leave every day.
- The new Civil Code, which was developed with the participation of persons with disabilities and their NGOs, and which contains such new rules for legal capacity (the capacity to act) that respect the dignity and autonomy of the person, should be put into force immediately.

Living independently and being included in the community

ARTICLE 19

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:
a) *Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;*
b) *Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;*
c) *Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.*

Under these provisions, Hungary undertakes to change the social services provided to persons with disabilities by shifting the emphasis from large residential institutions to services that promote participation in the community, thereby ensuring that every person with disabilities can exercise their rights to freely choose their place of residence, to live in a community, and to have equal access to local public services.[1]

FACTS AND DATA ON RESIDENTIAL SERVICES AND COMMUNITY-BASED SERVICES

The dominance of large institutions

Most of the provisions of the Article are not satisfied in Hungary, where placement in large institutions is typically favoured over services that support the participation of persons with disabilities in community life. According to available data, in 2008 a total of 24,658 persons with physical or mental disabilities accessed residential services, of whom 22,970 persons lived in large social institutions, and only 1688 persons are known to have resided in small residential homes.[2] On average, 95 persons live in a home for persons with disabilities, while this number is 132 for psychiatric patients, but there is a psychiatric institution where 720 persons live together.

The data for the 2000s prove that the dominance of large institutions is an unvarying trend.

According to reports and research, the majority of residential homes can be considered total institutions,[3] in which the residents' rights are regularly and substantially violated.[4]

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[1] For a definition of the concept of disability, see Article 1 of the Convention.

[2] Source: Central Statistical Office [Központi Statisztikai Hivatal, KSH]

[3] Erving Goffman coined the term of the total institution. Cf. Erving Goffman: Asylums; essays on the social situation of mental patients and other inmates. Garden City, N.Y.: Anchor Books, 1961.

RESIDENT CLASSIFICATION	TYPE OF HOME	2000	2001	2002	2003	2004	2005	2006	2007	2008
Psychiatric patients	Institution	8,124	7,939	7,877	7,752	7,843	7,888	7,902	7,899	7,943
	Residential home	9	23	83	137	122	186	230	254	310
	Total	8,133	7,962	7,960	7,889	7,965	8,074	8,132	8,153	8,253
Persons with disabilities	Institution	15,223	15,122	15,304	15,264	15,157	15,225	15,084	15,150	15,027
	Residential home	123	317	524	772	969	1,062	1,183	1,307	1,378
TOTAL		15,346	15,439	15,828	16,036	16,126	16,287	16,267	16,457	16,405

Table 1: Number of persons living in residential institutions in 2000–2008.
Source: Central Statistical Office [Központi Statisztikai Hivatal, KSH]

As for the small residential homes, it must be emphasized that in the majority of cases these work on the premises of large institutions, or under the control of institutions. This means that the not inconsiderable growth in the number of residential homes for persons with disabilities cannot be considered an unqualified success: very often, they are but privileges within the framework of a large institution, and cannot be regarded as a form of community-based services.

Community-based services are unavailable

Beside the dominance of large institutions, the Hungarian conditions are also characterized by an almost complete absence of community-based services for persons with disabilities. Persons with intellectual or mental disabilities who do not live in institutions can hardly find any services that would help them to live in the local community.

Daytime institutions can serve a total of 4,490 persons with disabilities, whilst there are *almost no services available for families.* In a questionnaire-based survey made in 2006–2007, 80 percent of families with a member with intellectual disability claimed to access no services from the local government. In 2008, a total of 1,312 persons with mental disabilities could access daytime care on 30 locations throughout the country, 5,455 accessed a community-based service, and temporary homes for psychiatric patients provided residence for 65 persons.[5] To all intents and purposes, the support of persons with physical or mental disabilities is entirely undertaken by their families.

It is cause for alarm that since 1st January 2009, law requires only towns with more than 10,000 residents, as opposed to the earlier requirement of 3,000 residents, to maintain institutions that provide daytime services for persons with disabilities. It is similarly regrettable that local governments are no longer required to provide community-based services for psychiatric patients.[6]

Since family members have to provide care that is often required throughout the day, they are bound to lose their jobs, which leads to impoverishment and isolation, and increases their dependence on state benefits. But as many of these families distrust residential institutions, they opt for home care and the risk of impoverishment and social isolation.

[4] Beszámoló az állampolgári jogok országgyűlési biztosának és általános helyettesének 2005–2008. évi tevékenységéről [Report on the activity of the Parliamentary Commissioner for Civil Rights and his General Deputy in 2005–2008]. Budapest: Országgyűlési Biztos Hivatala, 2006–2009. In English: http://www.obh.hu/allam/eng/index.htm
Betegjogi, Ellátottjogi és Gyermekjogi Közalapítvány: Beszámoló az ellátottjogi képviselők 2006. évi munkájáról [Report on the work of social welfare advocates]. Budapest: BEGyK, 2007. (Only in Hungarian.)
Geert Freyhoff, Camilla Parker, Magali Coué, Nancy Greig (eds.): Results and Recommendations of the European Research Initiative on Community-Based Residential Alternatives for Disabled People. European Coalition for Community Living: 2004. www.community-living.info

[5] KSH (2009), ibid.

TYPE OF SERVICE	USERS	SERVICE PROVIDERS
Daytime care for persons with physical disabilities	4,490	179
Daytime care for psychiatric patients	1,312	30
Community-based service for psychiatric patients	5,455	–
Support service	19,350	–
Temporary home for persons with physical disabilities	65	21
Temporary home for psychiatric patients	231	4

Table 2: The number of users and providers of community-based services in Hungary in 2008 (KSH 2009)

RELEVANT POLICIES AND STRATEGIES

Legal regulation and the use of budgetary funds in Hungary

According to Article 29.5 of **Act XXVI of 1998 on ensuring equal opportunities for persons with disabilities** [1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról, Fot.]:
... institutions providing permanent residence for persons with disabilities shall be transformed gradually, by 1 January 2010, in the following manner: persons with disabilities capable of independent life with personal help shall receive care in residential homes for small communities; persons with disabilities requiring institutional care shall receive it in humanized, modernized institutions.

With **Act C of 1999** [1999. évi C. törvény az Európai Szociális Karta kihirdetéséről] Parliament ratified the **European Social Charter,** Article 15 of which states that:
With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:
1) to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;

From the preamble to the 1 January 2008 amendment of Act III of 1993 on social administration and social services (1993. évi III. törvény a szociális igazgatásról és szociális ellátásokról): "The responsibilities of local governments are considerably restructured. At present, when local governments perform their responsibilities, they observe different quantitative and qualitative indicators. To make resource management more flexible and the scope for action broader, it is necessary to increase residence number limits, and to make certain mandatory responsibilities optional. This change concerns day care, which becomes mandatory from 10,000 residents, as compared to the present 3,000, with the exception that day care for the elderly remains mandatory for the local governments of settlements with more than 3,000 residents. The resident limit for mandatory temporary residence services is also raised from 10,000 to 30,000. Support service and community-based services cease to be mandatory from 1 January 2009, whilst they remain services whose contents are defined by statute, and all providers will receive financing in the same manner, in a competition-based framework that takes into consideration actual demands."

2) to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services.

Since 1999, the Hungarian state has been pursuing *a policy that is the opposite of its obligations* under the Fot. and the European Social Charter.

Between 1998 and 2006, Hungary devoted HUF 23 bn from the national budget to restore large residential homes and build new ones.[6] In contrast, between 1998 and 2010, less than a billion in budgetary funds was spent on the development of small residential homes and related services.

No government strategy

It also hindered the start of the reform that the governments did not prepare the strategic documents and schedules that are necessary for deinstitutionalization and the establishment of community-based services. In 2007 and 2008, the Ministry of Social Affairs and Labour [Szociális és Munkaügyi Minisztérium, SzMM] commissioned two studies: these analyzed the possible solutions for, and the costs of, the reform, but failed to make concrete recommendations about the actions to be taken.

Following protests from numerous NGOs and professional circles, the SzMM made an agreement with civil society in November 2009, offering to prepare the necessary strategic documents by 1 January 2010. On 31 March 2010, this undertaking was still not fulfilled.

New rules on deinstitutionalization

The deadline for deinstitutionalization as established in the Fot. passed on 1 January 2010. Since the system had shown no appreciable changes by that time, legislators were obliged to set a new deadline and amend the act. **Article 17 of the Fot. was amended,** as of 16 March 2010, thus:

(1) A person with disabilities shall have the right to choose the place of residencethat best suits their personal conditions, whether it be the home of their family, a residential home or an institution.
(2) Social institutions that provide care and nursing for more than 50 persons with disabilities shall be replaced as specified in Paragraphs (3)–(5).
(3) By 31 December 2013, 1500 residential positions for persons with disabilities and psychiatric patients shall be replaced in the development programmes co-financed by the European Union.
(4) To replace the residential positions stated in Paragraph (3), Parliament shall prepare a schedule by 31 December 2010, which shall state the parties responsible and the deadlines of implementation.

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[6] Source: Hand in Hand Foundation [Kézenfogva Alapítvány]

(5) Replacement shall be effected with due consideration to Article 19 of the Convention for the Rights of Persons with Disabilities, ratified with Act XCII of 2007.

Thus, according to current law, Parliament must set a deadline for the replacement of residential institutions by 31 December 2010, and must create by that time a detailed schedule and strategy.

Parliament assumed the responsibility to fund, from EU development resources, replacements for 1500 places in residential institutions, and made a reference in a statute to the Convention, stating that the reform of the system must be performed with regard to Article 19. The preamble to the amendment bill makes it obvious that the replacement of large institutions must be understood with regard not only to persons with disabilities but also to psychiatric patients.

On the same occasion, Parliament amended **Act III of 1993 on social administration and social services** (Szoctv.), stating in Article 57.3 that "*as of 1 January 2011, new places for the institutional care and nursing of persons with disabilities shall be created only in the form of residential homes.*"

A new addition to Article 129 states that "*developments of institutions providing care and nursing for persons with disabilities can receive dedicated support only if they aim to replace institutions with a capacity larger than 50 persons.*"

In a welcome move, legislators want to stop the further growth of institutions providing care and nursing for persons with disabilities, and make this obvious by cutting off funding for such developments. It nonetheless gives cause for concern that the act does not mention the institutions of psychiatric patients, or the rehabilitation homes of persons with disabilities.

USING EUROPEAN UNION RESOURCES TO BUILD LARGE INSTITUTIONS

The social policy of the European Union also supports the promotion of community-based services and the replacement of large institutions, and provides resources for member states to reform certain elements of their welfare systems. Hungary too is eligible for such support, but the use of the resources was cause for serious concern in the reporting period.

On 6 November 2009, the **National Development Agency** [Nemzeti Fejlesztési Ügynökség, NFÜ], which handles structural funds from the European Union, initiated a public debate of its tender programme *Replacing residential institutions.* The declared intent of the programme was to dismantle large social institutions for persons with physical and mental disabilities, the elderly and people with pathological addictions, and to promote forms of residence that house smaller communities and offer more human living conditions. Despite this declared objective, the programme would have enabled tenders for HUF 10 bn to build new large institutions and reconstruct old ones, even if the works were to be carried out on the current location, on the edge of towns, or if they were to house more than 150 persons in the same building.

Eventually, the call for tenders was not published. In an open letter to the Prime Minister and the Minister for Social Affairs and Labour, twenty-one international and Hungarian NGOs and professional circles gave voice to their indignation over the intent to develop large institutions and to support them from European structural funds, and demanded that the tender programme be suspended and the call for tenders be modified.[7]

Following the protest, consultations began between the NGOs and the SzMM. According to the resulting agreement, the government and the NGOs jointly invited the NFÜ to take special care when managing tenders for development resources to ensure that the responsibilities Hungary undertook in the international Convention, as well as the relevant resolutions of the European Commission, be observed. As part of the agreement, the SzMM delegated two civil members to the workgroup that prepared the tender. The thoroughly revised version was submitted to public debate between 10 and 25 March 2010. The new plan essentially agrees with the spirit of the Convention.

SUMMARY – COMPLIANCE WITH ARTICLE 19 OF THE CONVENTION IN HUNGARY

Hungarian social policy is essentially incompatible with the objectives and responsibilities undertaken with Article 19 of the Convention. Though Hungary was the second country in the world to ratify the Convention, and enacted the programme of social inclusion for persons with disabilities, as well as the objective of closing down large institutions, a significant number of persons with disabilities – about 23,000 persons – are still forced to live in large institutions. Not only has the Hungarian state supported and developed its large institutions in the past decade, but as recently as 2009 it attempted to make the development funds of the European Union available for large institutions. It took an international protest to stop this attempt. Furthermore, it must be emphasized that the Hungarian state fails to develop sufficiently community-based services, forcing thereby persons with disabilities not living in institutions to be isolated with their families.

RECOMMENDATIONS

Recommended actions for Hungarian social policy

- The Hungarian state must stop representing the development of community-based services for persons with disabilities and the replacement of large institutions as a responsibility it undertakes in international conventions and its own law, while its social policy is incompatible with these objectives, and it all

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[7] ECCL: Wasted Time, Wasted Money, Wasted Lives. A Wasted Opportunity? Budapest, European Coalition for Community Living, 2010.

but focuses its policy on the development of services that rely on large institutions. The Hungarian state must unambiguously declare its commitment to the objectives of the Convention, must prepare a strategy for the replacement of large institutions in the course of an open public debate, and must abide by the deadlines.

- Special care must be taken to ensure that the problem of replacing large institutions is not confined to the group of persons with disabilities, and persons with mental disabilities are also covered by such measures. The state must acknowledge that no degree of disability can justify placement in a large institution, and even in the case of the most serious disabilities the right to live in the community should be recognized.

Personal mobility

ARTICLE 20

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:

a) *Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;*

b) *Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;*

c) *Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;*

d) *Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.*

Act XXVI of 1998 on ensuring equal opportunities for persons with disabilities[1] [1998. évi XXVI. törvény a a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról, Fot.] has the following provisions on supporting services and aids:
Section 4 For the purposes of this act:
c) aid: a device that serves to partially or fully make up for the partial or full lack of physical or sensory capacity in a person living with disabilities;
d) supporting service: service that promotes independent living for persons with disabilities, satisfies their everyday needs and is realized through the personal participation of the person with disability.

Section 11 of the Fot. has these provisions on supporting services and aids:
Access to the supporting service appropriate to the needs justified by the disability, as well as aids, shall be provided for persons living with disability. A separate regulation shall determine the range of aids obtainable at a subsidized price, as well as the manner and extent of support.

It is in Article 65/C that **Act III of 1993 on social administration and social services** [1993. évi III. törvény a szociális igazgatásról és szociális ellátásokról, Szoctv.] provides on supporting services.[2] Paragraph (1) states that:
A supporting service is rendered to a person with disability in their living environment, particularly with the aim of facilitating access to public services away from home, and providing specialist help at home while preserving the independence of the person's life.

Later the act states that only those persons with severe disabilities can have access to supporting services who are specified by the act.

THE OPERATION OF SUPPORTING SERVICES

To live independently, some persons with disabilities access **supporting services.** However, the supporting services are available only during office hours; transport at other times need to be arranged for individually, which is expensive, and particularly for those who do not live in cities, difficult to attain.
Supporting services are meant to assist the persons concerned to preserve and

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[1] Act No. XXVI. Of 1998 on Provision of the Rights of Persons Living with Disability and their Equal of Opportunities. http://text.disabilityknowledge.org/The-Law.htm

[2] See also: A személyes gondoskodást nyújtó szociális intézmények szakmai feladatairól és működésük feltételeiről szóló 1/2000. (I. 7.) SzCsM rendelet [Decree 1/2000 of the Ministry of Social Affairs and Family on the responsibilities and operating conditions of institutions providing live assistance], Articles 39/A and 39/D.

strengthen their dignity. For persons with disabilities, supporting services and various aids are key to personal mobility and independent living.

> According to the August 2008 statistics of the **Public Employment Service** [Állami Foglalkoztatási Szolgálat], there were at the time 540 providers of supporting services in the country. In December 2008, this number was 343. According to the **National Health Insurance Fund** [Országos Egészségbiztosítási Pénztár, OEP], *"there are 192,479 persons with severe disabilities in the country, of whom about 20,000 access some supporting service."*
> According to 2008 data there were considerable inequalities in the regional distribution of supporting services. The least (36) were available in the Western Transdanubian region.

While prior to 31 December 2008 it was the responsibility of local governments to arrange for live assistance and transport for persons with severe disabilities, which the local governments realized through their own institutions or in cooperation with churches and NGOs, receiving state support (normative grants) for these services, *since 1 January 2009, supporting services can have access to state support in a tender system.*
In practice, the grants are insufficient for the supporting services, which forces the providers to drop certain services.

Though the Hungarian supporting services seek to facilitate the mobility and live assistance that is required by Article 20 of the Convention, Paragraph a) of the Article is not satisfied in that these services are not always available at the time and in the manner chosen by the persons with disabilities. When the service is unavailable, finding alternatives is very costly.

SUPPORT FOR MEDICAL AIDS

In his statement of 11 August 2009, the Parliamentary Commissioner for Civil Rights [Állampolgári Jogok Országgyűlési Biztosa, OBH-ÁJOB, ombudsman] points out that *"it is a mandatory duty for the state to protect the human rights of persons with disabilities."*
With the **modification of the regulation of social security support for medical aids,** policy makers wanted to reduce the deficit that was to accumulate by the end of 2009, and maximize at the same time the improvement in the life quality of the patients concerned, and distribute the costs equitably, that is to say make access to state supported medical aids fairer. Ombudsman Máté Szabó considered it unacceptable to correct the deficit of the state support system at the expense of those most in need of it. The statement emphasized that the *CRPD* had been ratified for over a year, and Hungary must fulfil its requirements.

It follows from the above that Paragraph b) *of Article 20 of the Convention is not satisfied when access to certain medical aids is hindered by high costs. The prescription of medical aids is sometimes difficult because only the general practitioner is authorized to prescribe more than onespecific aids, at the recommendation of a specialist.*

MOPED CARS

In a statement dated 4 January 2010 – which is based on the Parliamentary Commissioner for Civil Rights's **report AJB 4216/2009** –, the ombudsman pointed out that though there are hundreds of thousands of unregistered vehicles on Hungarian roads, separate regulations were introduced for the few hundred **moped cars,** which suddenly prohibit the owners from using them. And though moped cars have been legally in use for years without registration plates and licenses, their owners now not only have to pay a registration fee, but also have to obtain registration certificates.

> Previously, driving a moped car did not require a type B driving licence, something the owners took into consideration when choosing this type of vehicle. The persons concerned obviously had no time to prepare for the changes and to obtain a licence. It is difficult to prove ownership because it was possible to buy moped cars without the formal requirements that apply for the purchase of cars. Registration also entails a registration fee. At the same time, the regulations do not provide for moped cars that were in use before they were "reclassified."
>
> In the report mentioned, the ombudsman had already indicated that according to EU law, a product legally produced and marketed in a member state should be freely marketable in the entire Community, and the same is true of the EU classification of the product, i.e. the moped car. Everywhere else in the EU, four-wheeled mopeds are classified as cycles with an auxiliary motor (with an engine smaller than 50 c.c., a top speed less than 45 kmph, and a fuel-consumption of one or two litres). In the other member states, they can be driven without a licence, in certain places from age fourteen. Thanks to the new regulations, Hungary is an exception.

Ombudsman Máté Szabó called upon Parliament, the Minister of Justice and Law Enforcement and the minister responsible for transport to resolve the contradictions of the regulations.

The regulations described lead to the violation of Paragraph b) *of the Convention.*

TRANSPORT DISCOUNTS AND THE MIDIBUS SERVICE

Government Decree 85/2007 (25 April) on fee discounts in public transport [85/2007. (IV. 25.) Korm. rendelet a a közforgalmú személyszállítási utazási kedvezményekről] provides persons with disabilities – with the exception of persons with psychosocial disabilities – with considerable discounts.

The ombudsman carried out an investigation into the **midibus service** of the Budapest Transport Company (Budapesti Közlekedési Vállalat, BKV), which is reserved for persons with disabilities, but which requires passengers to *validate two standard tickets. Law provides persons with severe disabilities and the person accompanying them with a 100 percent discount on local transport, and 90 percent on long-distance services.* Even access to the midibus service is restricted compared to the other services (the person restricted in their mobility must order the service in advance, by phone), as a result of which "*the rights to mobility and to self-determination of persons with disabilities are violated*", the report states.

The ombudsman called upon both the Mayor of Budapest and BKV Zrt. to terminate the discriminative practice. In its reply, the Budapest Municipality stated that it *did not consider the practice of the transport company discriminative, and will not, despite the recommendations, instruct the company it owned to stop the violation of the law.*

The ombudsman also considered the situation of **accessibility in transport systems** discouraging:
The proportion of wheelchair-accessible cars and the accessibility markers of buildings at MÁV-Start Zrt.[3] *are extremely low.* The regional distribution is very disproportionate: 82 out of 100 vehicles of the Debrecen Transport Company have a low floor, while Pécs Transport Company, still before important developments and now at the bottom of the list, shows a 3 percent rate. *Even when there are developments, complex accessibility, one that meets the requirements of all persons with disabilities, is not always realized.*
(See more on the ombudsman's report on accessibility in public transport in the discussion of Article 9.)

In Chapter III, among its objectives, Resolution of Parliament 10/2006 (16 February) on the **new National Disability Program**[4] [10/2006. (II. 16.) OGY határozat az új Országos Fogyatékosügyi Programról, OFP] provides that:
2. **Action to be taken to induce a positive change in the attitude of society towards persons with disabilities**

2.2. On the reasons for social exclusion due to lack of information
… Disability issues should appear in the curricula of … transport professionals, and [they] should learn the techniques of special communication with persons with disabilities.

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[3] MÁV-START Vasúti Személyszállító Zártkörűen Működő Részvénytársaság [MÁV-START Rail Transport Corporation].

[4] The New National Programme of Disability Affairs. http://www.szmm.gov.hu/main.php?folderID=1295

3. **Improving the quality of life of persons with disabilities and their families**

3.6. Access to complex rehabilitation services for persons with disabilities
… The development of the system of transport allowances and of the transport services must be continued (including supporting services, the purchase of school buses, the network of village caretakers, taxi services, and transport by ambulance).
The system of individual transport adopted to the special needs of persons with disabilities is to be worked out, especially for persons with physical disabilities and autism, or any other disability that make the use of public transport impossible. Basic social services available in the place of residence and in the vicinity are to be expanded, and the independent living of persons with disabilities must be promoted by providing for the continuity of supporting services. Above all, direct help in the place of residence is to be provided to persons with disabilities and their families, so that placement in a residential institution become necessary only in very special cases.

4. **Promoting the active participation of persons with disabilities in social life**

4.2. Equal access
Budgetary funds should be allocated to help similar programmes run by local governments and the non-governmental sector. In the scope of this effort (…) such plans are to be supported that lead to the development of devices and methods that make transport easier (e.g. warning the blind of sudden level drops , adding sound signals to traffic lights, pavement and road street ramps, etc.).

In contrast with these objectives and the provisions of the Convention, *"the accessibility of the vehicles and buildings of public transport is random and only partial. Signalling and information devices are rarely in use, acoustic information is not coupled with visual information."*
In 2008, the Public Foundation for the the Equal Opportunities of Persons with Disabilities [Fogyatékos Személyek Esélyegyenlőségéért Közalapítvány, FSZK] developed recommendations for the accessibility of transport and information and communication technology.

RECOMMENDATIONS

- The regulation of supporting services should be reviewed, including the funding of this social service.
- With regard to moped cars, the ombudsman has made the following recommendations:
  - Parliament should provide that the post hoc "administrative" registration of vehicles previously used legally without license plates and registration be exempt from the registration fee;
  - the minister for transport should modify the ER.[5] so that vehicles whose type is acknowledged in the EU be classified as in other member states; the regulation on the licence required for a given type of vehicles should be in accord with, and not opposed to, the BMr.[6]

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[5] A közúti járművek műszaki megvizsgálásáról szóló 5/1190. (IV.12.) KöHÉM rendelet (ER) [Decree 5/1190 of the Ministry of Transport, Telecommunications and Energy on the technical inspection of road vehicles].

[6] A közúti közlekedési igazgatási feladatokról, a közúti közlekedési okmányok kiadásáról és visszavonásáról szóló 35/2000. (XI.30.) BM rendelet (BMr.) [Decree 35/2000 of the Ministry of Interior on the administration of road transport, and the issuance and withdrawal of documents for road transport.]

- Since the accessibility of the vehicles and buildings of public transport is random and only partial, signalling and information devices are rarely in use, and acoustic information is not coupled with visual information, both law and practice should take a direction that is in line with the provisions of the Convention.
- In providing social security support for medical aids, the requirements of the Convention should be observed more closely.
- In calls for tenders, making the available infrastructure accessible should be a central element; when granting construction permits, accessibility too should be examined.

Freedom of expression, opinion, and access to information

ARTICLE 21

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

a) *Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;*

b) *Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;*

c) *Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;*

d) *Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;*

e) *Recognizing and promoting the use of sign languages.*

In the Republic of Hungary all are entitled to exercise the right to **freedom of expression and opinion,** and, further, to access and disseminate data of public interest.[1]

Based on Hungarian Constitutional Court decisions, the freedom of expression and opinion holds a unique place among fundamental rights; it is the "umbrella right" of **the fundamental rights of communication.**[2] The freedom of expression and opinion follows the absolute rights to life and human dignity in the theoretical ranking of fundamentel rights.

As an umbrella right, the freedom of expression and opinion serve as a springboard to numerous other fundamental rights. For example, the freedom of speech, the freedom of the press, the freedom of conscience and religion, or, the freedom of assembly. The freedom of expression and opinion are not only the most important means of individual self-expression, but it also contributes to the shaping of democratic public opinion.

For persons with disabilities access to information is of vital importance, so they can participate in social life on an equal basis with others.

The issue of access to information is closely connected to providing accessible and usable forms of communication to persons with disabilities. *Article 9 of the UN Convention stipulates elimination of obstacles and barriers to accessibility to information and communications.*

Act XXVI of 1998 on the Provisions of the Rights of Persons Living with Disability and their Equal Opportunities (Fot.), expressly guarantees access on an equal basis to public services. In addition[3] it stipulates that persons with disabilities

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[1] Article 61 (1) Act XX of 1949 on the Constitution of the Republic of Hungary http://www.mkab.hu/index.php?id=constitution

[2] Constitutional Court Decision 30/1992

[3] Article 7/A and Article 7/B of Act XXVI of 1998 on Provision of the Rights of Persons Living with Disability and their Equal Opportunities http://text.disabilityknowledge.org/The-Law.htm

must be ensured access to public and other information on the basis of equal opportunity.[4]

Research conducted by the **Hungarian Public Administration Institute** between February 2006 and January 2007 reveals that communication channels within the institutional system of public administration are not adequately equipped to address the needs of clients with disabilities who constitute a special communication medium.[5] when exchanging information. *For example, only 53 of the local government websites that were studied by visually-impaired testers were usable with JAWS, while 19 websites were not blind-friendly at all.*

In January 2008 Hungary's **Equal Treatment Advisory Board declared** that failure to ensure accessibility and access to public services on an equal basis violates the equal treatment principle. This constitutes direct discrimination because people with disabilities are treated less favourably than others by limiting or barring their access to public services. As the accessibility of public services a statutory measure in force, defaulting authorities are culpable.[6]

The elimination of barriers to accessibile information is of paramount importance for persons with intellectual disabilities or hearing impairments. For persons with intellectual disability it is essential to raise awareness about **easily understandable communications** and the avalability of presence of personal assistants is essential. Additionally, for persons who are deaf or hard of hearing, availability of the so-called **verban ramp** is pivotal. In 2004, Budapest's Municipal Government launched a programme for the elimination of barriers to accessibility to culture, resulting in several Budapest theatres and cinemas being equipped with audio frequency induction loops. Furthermore, work commenced to make some of Hungary's provincial theatres and ecclesiastical institutions accessible to persons who are deaf or hard of hearing. A national sign language interpreting service was also launched at the same time; however, continuous funding for the program has not been guaranteed. Persons with hearing impairments also face issues accessing public service broadcasting because few programmes have closed-captioning or sign language interpreting, breaching this group's right to accessible information and communication.

In addition to the elimination of barriers to accessibility to culture, the **Hungarian Association of the Deaf and Hard of Hearing (SINOSZ)** wishes to contribute to establishing an accessible environment for persons who are deaf or hard of hearing via a nationwide programme in order to ensure broad access to public services. By developing its Website, SINOSZ plans to launch an online customer gateway, thereby promoting e-public services and accessibility. Between SINOSZ, and Budapest's Municipal Government, continuous coordination is underway to craft an action plan to eliminate accessibility barriers in Budapest. (For example by making Budapest's Web portal accessible for the hearing-impaired, creating a text-messaging wall for various emergency services, developing a passenger information system for public transportation in Budapest, etc.)

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[4] Article 6 and Article 7, Act XXVI of 1998 http://text.disabilityknowledge.org/The-Law.htm

[5] Dr. Marianna Nagy, Dániel Szabó: „Kommunikációs akadálymentesítés a helyi közigazgatásban [Elimination of Obstacles and Barriers to Accessibility]," elib.kkf.hu/okt_publ/szf_25_13.pdf

[6] View point number 384/1/2008. (I.23.) TT. of Hungary's Equal Treatment Authority Advisory Board with respect to the obligation to eliminate obstacles and barriers to accessibility

With the participation of the **Hungarian Association for Persons with Intellectual Disability and their Helpers (ÉFOÉSZ),** the Hungarian National Museum's website provides an easy-to-read version for **persons with intellectual disability.**[7] Talks are also underway for the online Budapest Portal to provide similar services. ÉFOÉSZ has acted as an advisor in several operative programmes in regard to accessibility (e.g. eliminate barriers to information for a social welfare canteen, developing training programmes). At the same time, however, there is also a growing need in the for-profit sector for easily understandable communications. ÉFOÉSZ has participated in the production of an easy to understand version of public beach signs in Siófok. It has also established accessible museum tours for persons with intellectual disabilities at Budapest's Ludwig Museum.[8] Talks are underway to eliminate barriers to accessing information at Budapest's new metro line and at the Hungarian branches of an international banking network.

Excercising the right to vote is an important facet of freedom of expression and opinion, therefore, it is essential that pre-election information reach persons with disabilities according to the principles of accessible communication.[9] The report of Hungary's Parlimentary Commissioner (Ombudsman) for Civil Rights investigating the right to vote of persons with disabilities stresses, further, that with respect to persons with disabilities voting procedures, establishments and materials are inadequate, are not accessible, and fail to comply with Hungary's statutory provisions stipulating the direct exercise of the right to vote, the prohibition of discrimination and the principle of equal opportunity. They also fail to comply with the stipulations of the UN Convention.

> Further aggravating the situation, is that persons under guardianship do not have the right to vote because Hungary's Constitution states that persons who, purusant to final judgement of court of law, are under guardianship that excludes or restricts competence do not have the right to vote.

HUNGARIAN SIGN LANGUAGE ACT

On November 9, 2009, following over a six-year preparatory period, the Hungarian Parliament unanimously adopted **Act CXXV of 2009 on Hungarian Sign Language and the use of Hungarian Sign Language.**[10] This act which was entered into force on July 1, 2010, acknowledges sign language as an autonomous natural language.

Therefore, beginning on January 1, 2011, people who are eligible by the law, are entitled to use free sign language interpreters in order to access public services. Also, as of July 1, 2010, all announcements and newscasts of public interest, motion pictures, children's and youth programmes and programmes produced for persons with disabilities must be available with Hungarian closed-captioning or sign language interpreting for at least two hours in year 2010, and for each year thereafter the said duration must increase by two hours. By 2015, all programming must entirely be made available with Hungarian closed-captioning or sign language interpreting.

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[7] http://www.hnm.hu/egysz/index.html (only in Hungarian)

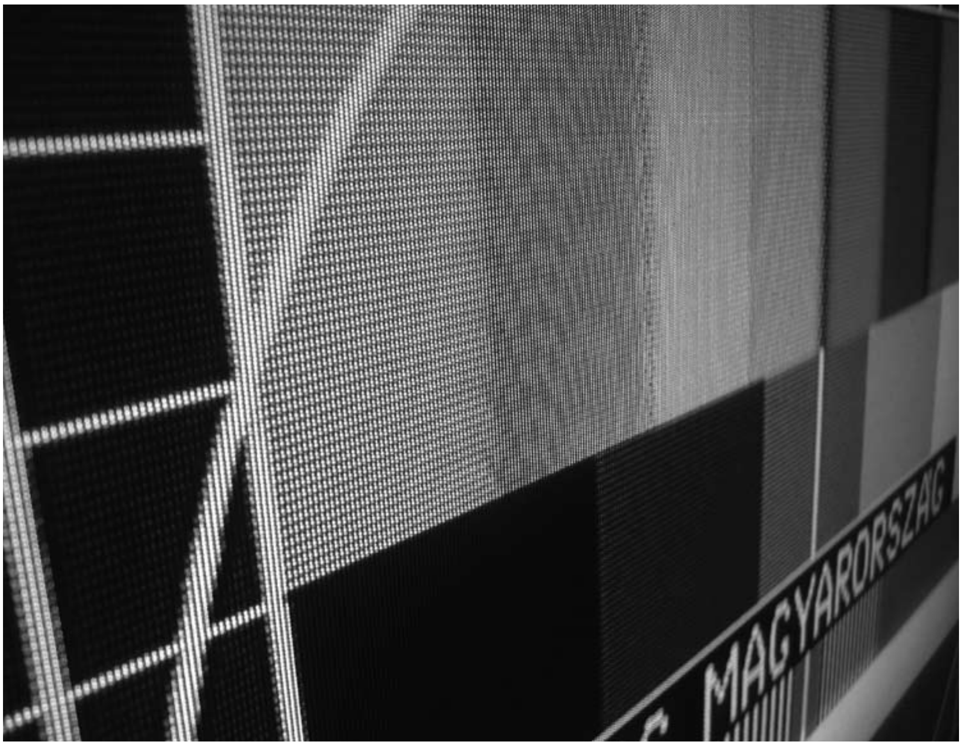
[8] www.ludwigmuseum.hu

[9] Hungarian Parliamentary Commissioner's Office (OBH) report 2405/2009

[10] http://www.fszk.hu/fszk/tudastar/jogszabaly/hazai/A_jelnyelvi_torveny_angolul.pdf

SUMMARY

Overall, the tools currently made available to persons with disabilities to help them access information is still inadequate. Of all forms of communications set forth under the UN Convention, progress has only been made with respect to Braille writing, sign language and easily to read communications. Unfortunately, these are only available to persons with disabilities in a very limited way and it is extremely hard to access.



RECOMMENDATIONS

- Social awareness should be raised so that public opinion recognizes that the spread of info-communications technologies will make a major contribution to promoting equal opportunity for persons with disabilities;
- The right to freedom of expression and opinion and the right of access to information should be implemented via the development of access to services. To this end, support services to persons with disabilities should be expanded and transportation should be rendered free of barriers and obstacles;
- Integration in education and social welfare services should be strengthened;
- Information and communication technologies should be appropriately developed and already existing technologies expanded;
- Training should be provided for professionals who are familiar with and are already using accessible communication formats and tools;
- Organisations representing the interests of persons with psycho-social impairment should be given a voice in Hungary's National Disability Affairs Council (OFT) to ensure the right of persons with psycho-social disability the freedom of expression and opinion.

Respect for privacy

ARTICLE 22

1. *No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.*

2. *States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.*

LEGAL BACKGROUND

Rights associated with respect for privacy are protected primarily by **civil law** through the protection of personal rights. These rights must be respected *by all*, and are protected by law irrespectively whether or not the subject of these rights is a person with disabilities. Personal rights are particularly violated in the event that the principle of equal treatment is breached, the right to freedom of conscience is infringed, and personal freedom unlawfully curtailed, physical integrity, health, **honour and human dignity are violated.** The protection of personal rights also extends to protection **from defamation.** Under civil law provisions personal rights are violated in case **privacy of correspondence is breached.** Furthermore, these rights are violated in case a private secret is obtained and is unlawfully made public or abused in another manner. The law likewise protects the right **to a private home.**

Cases related to personal rights –according to the principle rules- can be represented only by person. A person **limited in his/her legal capacity** is entitled to stand up for the protection of his/her personal rights. Persons entirely deprived of their legal capacity do not have the right to assert their personal rights personally, their legal representative can act therefore on their behalf. I case of persons under plenary guardianship it is upon the consent of the guardian whether or not steps are taken to remedy the breach of law in case of serious violation of the personal rights of a person with disabilities.

Just like the current legislation, Hungary's new Civil Code[1] – which enters into force 1 May 2010 – protects the right to life, bodily integrity, human dignity, protection of health, the right to bear a name, protection from defamation, the ban on any misuse of the likeness or recorded voice of another person, the rules governing the protection of personal data and violation to the memory of a deceased person.

The new Civil Code introduces new provisions specifically governing the legal protection of persons with disabilities. It sets forth that „*it shall constitute violation of personal rights in the event that a person suffers disadvantage due to his/her disability.*" Although currently effective legislation also provides for the protection of personal rights, legal codification thereof entails significant practical consequences: in the event of said injury, too, the injured party shall have the

[1] Act CXX of 2009 on the Civil Code
http://www.dpiap.org/resources/pdf/Hungarian_legal_capacity_reform_10_05_14.pdf

right to claim compensation for his/her injury.”[2] In consequence, by introducing the legal institution of compensation for injury, it becomes possible for a person who has suffered injury to demand compensation purely on the ground of his/her legal rights having been violated – without bearing the burden of proof with respect to the specific disadvantage that had occurred. The extent to which this legal opportunity will effectively protect the legal rights of persons with disabilities will depend on how litigation therefore will play out in court of law.

Certain, more serious instances of unlawful violations of a person’s privacy are also penalised by Hungary’s Criminal Code (tresspassing, harrassment, violation of secrecy of correspondence, slander, libel). The **Criminal Code** stipulates that in the event that the injured party, the accuser or other person concerned has been deprived of their legal capacity or have limited legal capacity, they will be represented by their **legal representative,** and, in the event of conflict of interest, provisions of Hungary’s Civil Code will be applicable.[3]

In sum, a person under guardianship which affects his/her legal capacity does not have the right to act independently even in the event that his/her rights of privacy have been violated under Hungarian criminal law.

Hungary’s Constitutional Court derived the right to privacy from the right to human dignity. It regards **the right to human dignity**[4] in and of itself as an expression of the so-called “general personal right,” which incorporates additional sub-rights: examples include the right of self-determination, the general freedom to act, **the right to privacy,** the right of the personality to freely evolve, the right to identity. The general personal right is the original basic right from which you can derive other basic rights, so it’s a subsidiary fundamental right courts of law can summon in every instance **to protect the autonomy of the individual,** in the event that none of the specifically designated fundamental rights are applicable with respect to the actual facts of a given case. Similarly to all other fundamental rights, individual sub-rights derived from the said the main legal basis **are subject to restriction** pursuant to those contained in Article 8 (2) of the Constitution of the Republic of Hungary. According to the Constitutional Court’s standing practice restricting a fundamental right will only remain within the boundaries of constitutionality provided the said restriction is unavoidable, that is, the protection or asserting of another fundamental constitutional right and constitutional value – or a responsibility deriving from the Constitution – cannot be ensured in another manner, and, further, in the event that the importance of the goal to be accomplished and the gravity of the violation of the fundamental right perpetrated in the interest therefore are proportionate with each other.

Accordingly, the rights designated by the Convention – associated with the protection of privacy – are to be protected in compliance with the above-said principles, and *may only be restricted in exceptional cases, with due consideration for the principles of necessity and proportionality.*

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[2] http://nol.hu/belfold/20100329-mennyi_ideig_el_majd_a_friss_polgari_torvenykonyv „Mennyi ideig él majd a friss polgári törvénykönyv? Májustól alkalmazni kell, de a Fidesz visszavonhatja [How Long Will the New Civil Code Last? It Must Enter Into Force in May, but Fidesz Could Revoke It]” – Károly Lencsés

[3] Article 56 (2) of Act XIX of 1998 http://www.themissing.cicr.org/ihl-nat.nsf/0/033D3F79294DC84EC1257163002CD383

[4] Article 54, The Constitution of the Republic of Hungary http://www.mkab.hu/index.php?id=constitution

DATA MANAGEMENT IN SOCIAL WELFARE BENEFITS AND SERVICES

Hungarian legislation governing social welfare benefits and services mandates the management and collection of a broad range of personal data, which makes special concerns with respect to person's right to privacy. Social welfare service providers and institutions *manage personal data far more extensively* than justified by the discharging of their responsibilities. The violation thereby perpetrated is greater still when such data is forwarded, processed or linked up with other data.

In Hungary separate legislation governs the protection of personal data and the public disclosure of data in the public interest, and, further, Hungary's Constitutional Court has issued several rulings on its own interpretation of statutory provisions governing data management.

> Statutory provision sets forth that data with respect to state of health – including the fact, characterstic traits, etc. of disability – qualify as special data, the management of which is subject to more stringent regulations. ”

The Constitutional Court does not interpret the right to the protection of personal data as a conventional protected right, but, rather, making due consideration for the active aspect of said right as well, **as the right to informational self-determination.**[5]

According therefore, the condition – and at once the most important guarantee of – the usage of the right to informational self-determination is *attachment to purpose*. This means that personal data may only be processed for a specifically defined and lawful purpose. Data processing must, at every stage, comply with the announced and recorded and publicly certified purpose. The purpose of data processing must be communicated to the person concerned in a manner that *he/she be able to appraise the impact thereof on his/her rights*, so that he/she be able to make an informed decision with respect to providing said data; further, that *in the event of utilisation departing from its purported purpose he/she can assert his/her rights.*

VIOLATION OF THE RIGHT TO THE PROTECTION OF PERSONAL DATA

The right of persons with disabilities to protection of their personal data – herein including privacy – is violated when recording of their personal data in conjunction with various social welfare and other services fails to comply with the above-said data management principles.

When availing themselves of social welfare services (for instance, support services, day-care services, placement in long-term residential institutions) persons with

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[5] Based on the statements contained in Constitutional Court Resolution 15/1991. (IV. 13.) AB

disabilities must provide extensive data with respect to their health status, including diverse medical aspects of their disability, the illnesses of the person cared for, as well as data pertaining to legal capacity. The referenced data can be located in appendices 1–5 of **Decree 9/1999. (XI. 24.) SzCsM rendelet,**[6] appendices 70–10 of **Decree 1/2000 (I. 7.) SzCsM,**[7] and appendix 1 of Government **Decree 29/1993 (II. 17.).**[8]

Also of concern is that *anonymity is not guaranteed* when the data collected is being reviewed. An array of data with respect to a person with disabilities, as well as the full range of conclusions which can be inferred there from become freely accessible via the diverse personal data placed on file as well as associated medical reports.

In the absence of information – communicated directly to the person concerned in a form he/she can understand - with respect to the purpose of data management, data utilisation and distribution of data to others the constitutional rights of those concerned are violated.

DATA COLLECTION AND RESPECTING THE RIGHT TO PRIVACY

We wish to underscore that this article of the Convention *must be interpreted in conjunction with the Convention's provisions governing data collection (Article 31)*. Namely, referencing respect for the right to privacy **cannot serve as an impediment** to collecting appropriate information with respect to persons with disabilities, via which the State can craft and put into practice the policy necessary for implementing the Convention. The criteria for data collection must, further, comply with the provisions set forth under Article 31, the guarantees provided by statutory provision (herein also including data protection legislation), as well as with internationally endorsed norms.

In October 2009 Hungarian NGOs addressed a letter to the President of the Republic of Hungary in response to the fact that Hungary's Census 2011 bill lacked authorisation provision with respect to the collection of disability data[9] (see Article 31 for additional details).

Accordingly, we wish to point out that collecting data with respect to persons with disabilities must be based on striking a balance between respect for the right to privacy and the aforesaid principles set forth under the Convention for data collecting.

PERSONS WITH INTELLECTUAL DISABILITIES

Persons with intellectual disabilities are impeded in asserting their rights to data protection, albeit they are a group who are particularly vulnerable to data management abuse. Under Hungarian legislation governing data protection

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[6] Ministry fof Social and Family Affairs Decree 9/1999. (XI. 24.) SzCsM on Access to Social Welfare Services Providing Personal Care

[7] Ministry of Social and Family Affairs Decree 1/2000 (I. 7.) SzCsM on the Profeessional Responsibilities of Social Welfare Institutions Providing Personal Care and the Conditions of their Operation

[8] Government Decree 29/1993 (II. 17.) Korm. On Fees Payable for Social Welfare Services Providing Personal Care

[9] http://www.efoesz.hu/download/mdac_es_az_efoesz_levele_a_koztarsasagi_elnokhoz.pdf

a person whose rights have been violated is entitled to seek redress from court of law. A person may be party to litigation even in the event that he/she does not otherwise hold the legal capacity therefore. However, in the absence of legal capacity with respect to litigation, he/she does not have the right to independently and personally assert his/her claim before court of law.[10]

In the absence of next of kin or a supportive social environment those concerned (e.g. persons with disabilities in large residential institutions) are utterly vulnerable, since their data can be subject to arbitrary management, and taking action against the said is likewise impossible owing to the deficiencies of Hungarian procedural regulations with respect to asserting claims therefore.

CONCLUSION

1. Every person is **equally** entitled to the right to "privacy" and the sub-rights thereof, and several branches of Hungarian law do indeed protect these said rights irrespective of disability. This also follows from the fact that Hungary's Constitutional Court has defined human dignity not in terms of a simple fundamental right, but as an absolute human right which is "a quality inherent in human life which is indivisible and unlimitable and therefore equal with respect to all people. The right to equal dignity, in unison with the right to life, guarantees that it should not be possible to make a legal distinction between human lives. Everyone's human dignity and life **are untouchable, irrespective of their physical and mental development and condition,** and also irrespective of the extent to which they have fulfilled their human potential and the reason therefore."

2. In terms of **assertion** of these rights, however, persons with mental disability find themselves at a disadvantage. In certain cases the legal backdrop therefor constitutes an absolute impediment to the assertion of these said rights, as, for instance, in the case of persons deprived of their legal capacity when they try to assert their personal rights or their rights with respect to the protection of their personal data.

In other cases persons with disabilities – typically those living in large residential institutions – are incapable of availing themselves of their rights to privacy owing to their condition, which is rooted in their circumstances. Persons with disabilities have the right to choose a form of residence – family home, residential home, institution – corresponding to their disability and personal circumstances.[11] However since community-based forms of accommodation suitable for providing an alternative to large residential institutions are not available, Article 22 of the Convention is also violated because life in an institution typically entails that persons with intellectual disability are compelled (forcibly) to live together with many others in one room, and – also given the real segregation of these said institutions – they only have a limited opportunity to cultivate their social connections. During their stay at residential institutions, a strictly curtailed rigid daily schedule impedes independent living, and the staff taking care of them frequently humiliates them and treats them in a manner that violates their human

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[10] A person may act as a party to ligitation personally or via authorised proxy in the event that he/she has full legal competence as set forth under Hungarian civil law, or in the event that he/she has the right pursuant to civil law provisions to validly dispose over the subject of litigation (contentious disposing capacity).In the event that a party does not have contentious disposing capacity (...) his/her legal representative shall act on his/her behalf. [Article 49 (1)–(2), Act III of 1953

[11] Article 17, Act XXVI of 1998 on Provision of the Rights of Persons Living with Disability and Their Equality of Opportunity http://text.disabilityknowledge.org/The-Law.htm

dignity. The institutional system lacks flexibility, its mandatory regulations hold priority over the individual welfare – including with respect to privacy – of persons with disabilities.

In this regard, Article 22 of the Convention is closely bound up with Article 19 thereof on independent living and acceptance into community.

RECOMMENDATIONS

- Hungarian legislation governing a person's **legal capacity** must be reformed pursuant to the provisions set forth in Article 12 of the UN Convention before rights with respect to the protection of privacy can be asserted in Hungary. Depriving a person of their legal capacity at once entails deprivation of persons with disabilities of the right to take a stand against acts which violate their privacy independently, of their own free will;
- To eliminate the anomalies concomitant with residential home accommodation, we recommend the crafting of governmental programmes aiming to **replace large residential institutions,** and that establishment of the financial backgrounds;
- The regulation of **data management** by social welfare service providers and institutions should be reformed, in order that special data be handled with full discretion, confined to the domain required for accomplishing a specific task, tied to the stated purpose, with fullest possible respect for the personal rights of the person concerned. To prevent abuse, data shared with others should be made anonymous in every instance vis-á-vis third persons and organisations, when data that can be connected to a person with disabilities is reviewed, processed, shared with others;
- In reviewing regulations attention should also be paid to the requirement that the claim of those concerned to assert their rights be guaranteed in every instance – irrespective of their legal capacity;
- Another important task is **shaping social attitudes,** and in the course thereof to engender a mentality which does not merely regard persons with disabilities as passive, excessively needy subjects of state welfare services, but, rather, as persons in their own right and of independent free will whose own decisions with respect to their (private) lives must be respected.

Respect for home and the family

ARTICLE 23

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:
a) The light of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;
b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;
c. Persons with disabilities, including children, retain their fertility on an equal basis with others.
2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.
3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.
4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.
5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

"Hungarian family law regulations were not rooted in a conceptual framework supportive and encouraging of persons with disabilities founding a family, exercising their role as parents or spouses. Generally speaking, statutory measures therefor reflect a family model according to which only persons with no disabilities are capable of taking responsibility for each other, for dependent family members who need help. Hungarian Civil Code provisions in general and family law provisions in particular regard the best interests of the child paramount, yet are suggestive that solely persons with no disabilities are capable of providing this. Besides not encouraging persons with disabilities to found a family, in some areas statutory measures expressly impede it."[1]

At the time of the report, provisions of Hungary's Civil Code expressly allow for partial restriction or total deprivation of the legal capacity of persons with disabilities (ability to make independent legal statements, possibility for making independent decisions). There under, "*Persons whose necessary discretionary ability for conducting their affairs is - owing to their mental state, unsound mind, or pathological addiction - generally, or in respect of certain matters, permanently or recurrently diminished shall be placed by a court under guardianship that limits their competency.*"[2]

The court is entitled to restrict the legal capacity of a person placed in a guardianship with respect to various legal affairs, among them family law legal state-

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[1] 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.)

[2] Article 14 (4), Act IV of 1959 on the Civil Code of the Republic of Hungary [1959. évi IV. törvény a Polgári Törvénykönyvről]

ments (for example determining and changing the name of one's child, approval for putting up one's child for adoption; exercising rights connected with health care provision). Another frequent occurrence is the general restricting of the legal capacity of the person under guardianship, when, with few exceptions, the validity of all legal statements of said person under guardianship is contingent on his/her guardian's prior consent or subsequent approval.

3. Act IV of 1959 on the Civil Code of the Republic of Hungary

In Hungary, under the Civil Code in force at the time of the report,[3] the court is entitled to place *"persons of legal age whose necessary discretionary ability for conducting their affairs is – owing to their mental state or unsound mind – permanently or recurrently diminished"* under a guardianship that prevents the person from exercising their capacity to act. As a consequence, the guardian of the person without the capacity to act – with the exception of contracts of lesser importance – shall act on the person's behalf with respect to legal statements.

Accordingly, and in consequence of the above, *statutory provisions governing health care services for persons deprived of their legal capacity under guardianship set forth stipulations which, contrary to the Convention's provisions and spirit, absolutely deprive them of their rights.*

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

A case in point is Hungary's **Family Act** [Családjogi törvény],[4] 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, Gyermekvédelmi 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.

And persons with disabilities deprived of their legal capacity *do not have the right to enter into marriage in any way at all.* Hungarian law provides guarantees to ensure that persons unfit for parenting or adoption on account of their behaviours have their rights terminated or suspended, and to prevent the guardianship authority from approving any adoptions they might initiate. Instead, however, of applying these guarantees, Hungarian regulations reflect the prejudice that persons with disabilities are unfit and unworthy to be parents and spouses, that their familial role is equally valuable to that of persons with no disabilities. Persons with disabilities deprived of legal capacity are not entitled to make their own decision with respect to dissolving their marriage. The Family Act does not even entertain the possibility that the person filing for divorce be granted assistance, but *deems persons with disabilities deprived of legal capacity unfit to make their own decisions with respect to maintaining and 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.

Given that effective legislation recognizes the institution of legal capacity, it is possible, pursuant to **Act CLIV of 1997 on Health** [Az egészségügyről szóló 1997. évi CLIV. törvény], to sterilize persons deprived of legal capacity without their consent therefor. This is possible, based on final court judgement, 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.”*[5]

(Regulation and practice of sterilization will be discussed in greater detail under Article 17.)

Since the **New Civil Code has not entered into force,** it could not be of outstanding significance in the above described matter. Under the new law, there would have been a new legislative ban on plenary guardianship, which would have eliminated numerous barriers with respect to the family law situation of persons with disabilities. Under the new regulations, it would have become possible for persons previously placed in plenary guardianship to be – in certain cases with the guardian’s prior consent or subsequent approval – entitled to enter into marriage. Also, with respect to other matters involving said persons’ relationships under family law, requesting their statement and obtaining their approval would have become unavoidable.

Despite some indisputably positive changes in Hungary, and the new Civil Code – that has not enterd into force – signifying a paradigm shift in the legal status of persons living with disabilities in Hungary, numerous legal provisions depriving them of their rights will remain in force and contain substantial restrictions with respect to the relationship system under family law of persons living with disabilities.

Thus, *adoption of minor children continues to remain only available* **for persons with legal capacity** in Hungary[6] *with the same holding true for foster parenting.*[7] *Participating in reproductive procedures, too, is ensured only for persons with legal capacity.*[8]

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[5] Article 187, Act CLIV of 1997 on Health [Az egészségügyről szóló 1997. évi CLIV. törvény]

[6] Article 47 (1), Act IV of 1952 on Marriage, Family and Guardianship

[7] Article 54 (1, Act XXXI of 1997 on the Protection of Children and Guardianship Administration [1997. évi XXXI. törvény a gyermek védelméről és a gyámügyi igazgatásról]

[8] Article 168 (5), Act CLIV of 1997 on Health

Over and above restrictive factors established by the law, in everyday life, too, numerous, frequently insurmountable, irresolvable factors impede their family life.
Barriers therefore are primarily:

a) **Prejudice**

b) **Counter-interest**

Other family members' financial counter-interest, since in the event of marriage the new partner will also become an heir.

c) **Physical and psychological dependence**

People living under guardianship have a far stronger desire for love and emotional security than others, and therefore most of them sacrifice their own interests.

d) Lack of livelihood

Income that would ensure making ends meet even at the lowest living standard, labour market disadvantages are enormous.

e) The residential institution system of education wherein children aged 6–7 are separated from their families during a larger part of the week from Monday to Friday.

f) 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. However, like probably everywhere in the world, foster and adoptive parents primarily care for healthy children. 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.

g) 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. This service is not, generally speaking, sufficient for everyday assistance of family life, being limited to a weekly 1-2 occasions. Were it to actually help people to and from work, with shopping and household tasks even for just two hours a day on an ongoing basis, the number of persons thus helped would be limited to 4,000–5,000 persons –in contrast with the 100,000 who need it.

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.

The issue of residential institutions will be discussed in greater detail in Article 19.)

In the overwhelming majority of residential institutions operated by Hungary's social welfare system, today four or more persons live together in one room. Despite the fact that the law stipulates single and double rooms, in old mansions it is frequently impossible to comply therewith for technical, but even more often for financial reasons.

Recent years have witnessed improvements in the physical condition of institutions, but the process is slow. Chances for marriage and harmonious cohabitation are undermined by growing up in isolation, the fact that a young person is simply not familiar with how a family works.

SUMMARY

Persons with disabilities in Hungary face legal, financial, service, physical and attitudinal barriers with respect to living their life 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 percent of the everyday problems of the 10 percent of those grappling with these issues.

Persons under guardianship are especially vulnerable and constrained. The assertion of their wishes and their will amounts to almost zero in this area, since their overwhelming majority cannot, due to mental and legal vulnerability, establish a home and start a family without help from others.

Having children is "acceptable" for persons with disabilities other than mental disability, albeit no financial support or services are available therefor. Persons with mental (psycho-social and intellectual) disabilities are, for the most part, under guardianhip, and thus they stand no chance of having children without financial and other support from family members.

RECOMMENDASIONS

The following recommendations can be made to Hungary's Government with respect to the above.

- There should be education for independent living;
- There should be adequate work and income;
- It should be possible to live in a family setting;
- Genuine self-determination should be guaranteed;
- A family help/support network should be launched;
- Prejudice and attitudes should be changed;
- The new Civil Code, which was developed with the participation of persons with disabilities and their NGOs, and which contains such new rules for legal capacity (the capacity to act) that respect the dignity and autonomy of the person, should be put into force immediately.

Education

ARTICLE 24

1. *States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:*

a) *The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;*

b) *The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;*

c) *Enabling persons with disabilities to participate effectively in a free society.*

2. *In realizing this right, States Parties shall ensure that:*

a) *Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;*

b) *Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;*

c) *Reasonable accommodation of the individual's requirements is provided;*

d) *Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;*

e) *Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.*

3. *States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:*

a) *Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;*

b) *Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;*

c) *Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.*

4. *In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.*

5. *States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.*

The Constitution of the Republic of Hungary provides for the right to formal schooling within the context of the right to education and culture, setting forth that "*The Republic of Hungary guarantees the right of education to its citizens. The Republic of Hungary shall implement this right through the dissemination and general access to culture, free compulsory primary schooling, through secondary and higher education available to all persons on the basis of their ability, and furthermore through financial support for students.*"[1] The Constitution is rather tight-lipped concerning regulation of the right to culture in general and the right to education in

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[1] Article 70/F (1–2), Act XX of 1949, The Constitution of the Republic of Hungary

particular. However, the elements of the right to education of constitutional importance, have evolved over time in Constitutions and in associated international documents – not least via the rulings of Hungary’s Constitutional Court. These elements include compulsory schooling, the language of tuition, and (in Hungary) ideological neutrality.”[2]

In the Republic of Hungary all children must attend school (in contrast with prior regulation which did not mandate compulsory school education for children with severe and multiple disabilities), and public school is free in primary and secondary education.

“CHILDREN WITH SPECIAL EDUCATIONAL NEEDS”

Hungary’s **Public Education Act** [Közoktatási törvény][3] sets forth separate provisions regarding “children/students with special needs”[4] who “*have the right to receive pedagogical, therapeutic educational, conductive educational service corresponding to their condition within the scope of special care after their legitimate claim has been established.*”[5] In accordance with Hungarian practice, children with special educational needs are provided special care that includes early intervention and care, kindergarten and school education and development preparation, according to the professional opinion of expert and rehabilitation committees.

Although *there are isolated initiatives for the introduction of an* **inclusive educational system** *in Hungary,*[6] *there are no mandatory provisions in the domestic legal environment that would declare the State’s commitment to establish an inclusive educational system.*[7]

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[2] Justification of the Constitution of the Republic of Hungary, Act XX of 1949

[3] Act No. LXXIX of 1993 on Public Education (1993. LXXIX. törvény „A közoktatásról”)

[4] Article 121 (1) Act No. LXXIX of 1993 on Public Education defines a children with special educational needs as “children *i)* with physical, organoleptic, mental or lalopathic disabilities, autistic children; they are multi-disabled in case of the simultaneous occurrence of several disabilities; those who struggle with the chronic and serious derangement of cognitive functions and the development of behaviour ascribable to organic reasons, *ii)* struggling with the chronic and serious derangement of cognitive functions and of the development of behaviour not ascribable to organic reasons on the basis of the expert opinion of the rehabilitation committee of experts.”

[5] Article 30 (1), Act LXXIX of 1993 on Public Education

[6] See, „Gyermekek Háza” Alternatív Alapozó Program [„Children’s House” Alternative Preparatory Program]

INFRINGEMENT OF EQUAL OPPORTUNITY

A study compiled in 2008 reports that *one of the areas that most lags behind is education.*[8] 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.

Hungary's Public Education Act contains elements in support of facilitating integrated education for children with disabilities. Among others, it is possible to raise the school leaving age of children with special educational needs to the age of twenty,[9] and for a school principal to partially or fully exempt students from studying specific subjects if the student's individual abilities or disability justifies it.

PERSONS WITH DISABILITIES IN HIGHER EDUCATION

In order for persons with disabilities to enjoy the educational opportunities provided by higher education, Hungary's **Higher Education Act** [Felsőoktatásról szóló törvény][10] authorizes the Government to stipulate the requirement of favorable treatment with respect to applicants with disabilities, among others. Favorable treatment shall not involve exemption from the achievement of basic academic standards required for graduation or obtaining professional qualifications. Additionally, the Higher Education Act contains numerous stipulations beneficial to students with disabilities, including "*particular enunciation of the right of students with disabilities to receive care appropriate to their disability. The law provides that preparation and examination be adapted to disability and, in justified cases, the student must be exempted from examinations in certain subjects, furthermore, he/she must be provided assistance in order to be able to fullfil his/her obligations arising from his/her legal relationship as a student. For students with disabilities, the period for which funding is available may also be extended by four semesters.*"

Regarding international scholarships, students with disabilities may apply for various subprograms of the European Union's "Youth in Action" program, wherein special costs expressly serve to cover additional expenses arising from the disadvantaged situation of the student. Students with disabilities can also apply at **Tempus Public Foundation** for an Erasmus scholarship, and are entitled to, supplementary funding.[11] The Hungarian State contributes to both systems.

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[7] The following explanation points out the difference between integrated and inclusive education: The qualitative differences can be rendered perceptible by the terms admission (integration) and acceptance (inclusion). In an admitting school children with special educational needs are merely present, their special needs are not taken into consideration, their integration and learning is not provided adequate assistance. In an inclusive (accepting) school, however, teaching and education takes a more advanced form of integrated education. Teachers of an accepting institution represent the mentality striving to achieve individual advancement and development based on individual differentiation.

[8] Dr. Ádám Kósa and Dr. László Gábor Lovászy, Ph.D. (2008) A fogyatékossággal élő 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.)

[9] Article 6 (3), Act No. LXXIX of 1993 on Public Education

[10] Act CXXXIX of 2005 on Higher Education [2005. évi CXXXIX. törvény „A felsőoktatásról"]

[11] For additional information, please visit: http://english.tpf.hu/

KINDERGARTEN AND PRIMARY SCHOOL EXPERIENCES

In accordance with the above mentioned provisions, **Act XXVI of 1998, on ensuring equal opportunities for persons with disabilities** [1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról, Fot.], also declares the right of persons with disabilities *to participate in vocational training, adult education and higher education, highlighting the opportunity that "in keeping with the opinion of the expert and rehabilitation committee set up for this purpose - the person living with disability shall take part in kindergarten training and school education together with other children and pupils, in the same kindergarten group or school class."*[12] The implementation of the provision faces countless barriers and resistance.

As a result, the by-laws of the kindergarten investigated by the Ombudsman contained a proviso that if "the majority of parents in the group objects to the admission of a child with special educational needs, regarding integrated education of a child with special education needs as a threat to their own child, the child's placement in the kindergarten is terminated. If the child hinders educational work conducted in the group, or the development of other children attending the group, we shall terminate kindergarten placement. We will request the parent to take his/her child to another educational institution if kindergarten teachers or special education teachers are unable to provide for or refuse to undertake special education of the child."[13]

Case Law Studies,[14] published by the **Hand in Hand Foundation,** recounts similar negative experiences. A case in point is, when testing a young autistic boy's knowledge, the school failed to consider the child's *"special learning and testing needs"* on several occasions; for instance, the child was unable to write on checkered paper, or was unable to perform if the lighting was inadequate. Another example is when a kindergarten did not allow a young girl with Down Syndrome to participate in baby swimming because she was not sufficiently potty-trained, despite the fact that *"use of a special swim diaper could have rectified the deficiency"*. It has even happened that an alternative school, despite its prior promise, refused the admission of a little girl because *"the child is autistic, and they do not want to turn themselves into a school for 'retards'"*.

Unfortunately, the above mentioned examples bear testimony to cases that are neither special nor unique; they rather portray the general mentality in Hungary and the attitude of the majority of mainstream educators.

Hungary's National Disability Program[15] emphasizes integration, access on an equal basis and access to higher education, highlighting the fact that based on 2001 Census data, the educational level of people with disabilities is significantly lower than that of the population at large.[16]

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[12] Act XXVI of 1998, on ensuring equal opportunities for persons with disabilities [1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról, Fot.], Chapter III. Section 13

[13] Report of the Office of the Parliamentary Commissioner (OBH) case number OBH 1588/2008

[14] Dr. Szilvia Halmos and Dr. Adrienn Gazsi, Esetjogi Tanulmányfüzet – Az értelmi fogyatékos, halmozottan fogyatékos és autista emberek számára működtetett antidiszkriminációs jelzőrendszer tapasztalatairól [Case Law Studies – On the Experiences of the Anti-Discrimination Signal System Operated for Persons with Intellectual Disability, Persons with Multiple Disabilities and Persons with Autism]. Kézenfogva Alapítvány [Hand in Hand Foundation], Budapest, 2008. Only in Hungarian.

[15] National Disability Program (Országos Fogyatékosügyi Program, OFP) can be downloaded from: http://www.szmm.gov.hu/main.php?folderID=1295

[16] The education level of people with disabilities is 8 grades of the elementary school, or even less, in case of 70.4% of people with disabilities, while in case of non-disabled people is 49.5%. The ratio of people with college or university degrees within the disabled population is 5%, while this proportion among non-disabled people is 10.2%..

"Accordingly, access to adult education and higher education for people with disabilities must be improved, and thus their chances to get a job will also improve.
This measure must also include increasing the number of adult education programmes adapted to people with disabilities, training of teachers participating in adult education and higher educationon disabilities and special education, and providing physical and infrastructural conditions necessary for education." [17]

> In practice – as countless investigations of the ombudsman relating to access to education on an equal basis have found – Hungary significantly lags behind the provisions set forth under the UN Convention.

Accordingly, the **ombudsman's report AJB-1438/2009** on the situation of autistic children in education found that *"the educational system is incapable of responding to the special needs of children with autism; NGO reports indicate that they frequently do not have access to educational institutions appropriate for their condition."* In another investigation , the ombudsman emphasized that *"genuine equality is not accomplished if persons with disabilities are only formally treated equal. Genuine equality calls for positive measures with a view to equalize factors limiting persons with disabilities in asserting their rights."*

AUTISTIC STUDENTS

At the time of this report, **Government Resolution 1038/2010. (II. 18.)** was passed, incorporating Hungary's **National Autism Strategy** into the medium term action plan of the country's new National Disability Program, stipulating the following with respect to education:

"The development of autism-specific education shall be provided for. To this end, the quality requirement system of autism-specific development and education must be established for all levels of education. Commencing the academic year 2010/2011, assistance shall be provided to public educational institutions for the introduction of the requirement system by ensuring funding via grant proposals. The possibility shall be investigated whether, in the medium term, public education institutions participating in the education of students with autism should receive supplementary funding."[18]

The **deadline for the action plan is 31 May 2010.**

ISOLATION OF CHILDREN WITH DISABILITIES

"A fundamental characteristic of schools teaching students with disabilities – with respect to all persons with disabilities, but especially to persons with non-intellectual disability – is that Hungary's school system educates persons with disabilities mostly in extremely *specialized and isolated institutions.* These isolated schools – while capable of adequately, indeed excellently performing their educational duties – frequently raise barriers before those concerned precisely

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[17] National Disability Program, 3.2

[18] Government Resolution 1038/2010. (II. 18.) Korm. on the Amendment of the Medium Term Action Plan for 2007–2010 for the Implementation of the New National Disability Program [A Kormány 1038/2010. (II. 18.) Korm. Határozata az új Országos Fogyatékosügyi Program végrehajtásának 2007–2010. évekre vonatkozó középtávú intézkedési tervéről szóló 1062/2007. (VIII. 7.) Korm. határozat módosításáról]

from the viewpoint of the social integration of students with disabilities. Raised in isolation from society as a whole, students find it challenging to get around in everyday situations outside the boundaries of the disabled subculture, in the society of the 'healthy'. They are held back in their social mobility in myriad ways, since, from early childhood, they have been used to a life segregated from majority society. Educating students with disabilities in isolation *has also entailed the isolation of the special education profession*".

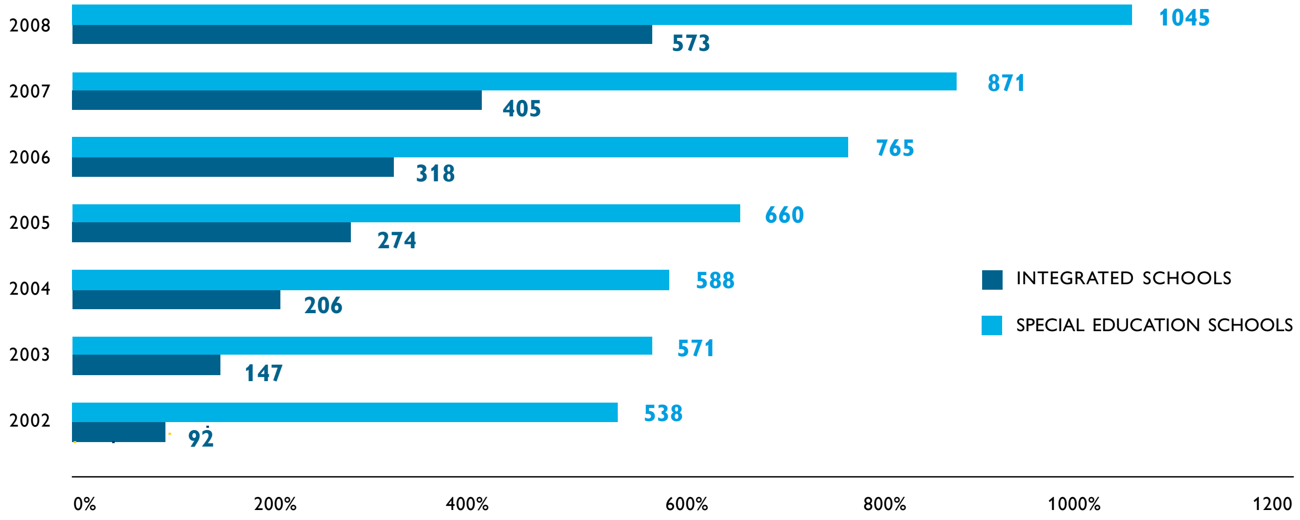
There is, in this domain, a lack of adequate training for mainstream educators, schools do not have suitable professionals at their disposal, especially outside of Budapest.

> *"Indicative of the failure of Hungarian teacher training is that primary school teachers do not have to possess the skills to educate dyslexic children"* – commented psychologist Tamás Vekerdi in an interview about the introduction of integrated teaching.

Furthermore, it is important to emphasize that owing to the paucity of the social welfare system provision, children with special educational needs and their parents face major hurdles in everyday life. "To enter into these legal relationships frequently demands serious effort on the part of target group subjects with special needs, indeed in many cases this is distinctly impossible.

For instance, it is a Budapest municipal council or county council responsibility to organize adequate education for children with special educational needs,[19] so it is frequently the case that only a single school per county is suited to receiving students with just one of many diverse disabilities, which can well be as much as 70–80 kilometers from the their family's residence, and being educated in boarding school type of arrangement could cause psychological trauma for a 7–8 year old child."

Number of autistic students studying in integrated and special education schools, beginning of school year, 2002–2008.
Forrás: KIR.



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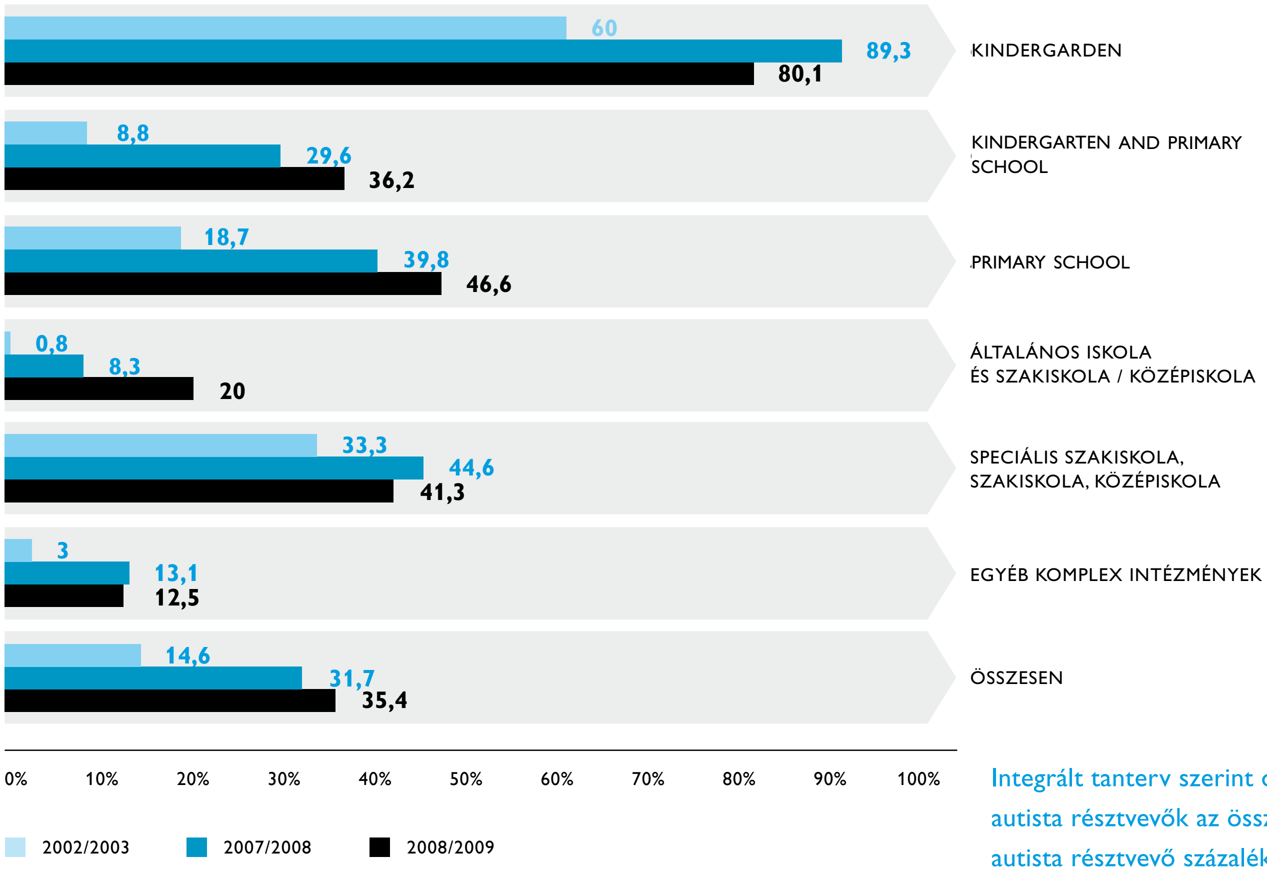
[19] „Article 86 (1) (2) and Article 87 (1) e), Act LXXIX of 1993 on Public Education



Integrált tanterv szerint oktatott autista résztvevők az összes autista résztvevő százalékos arányában az intézmény típusa szerint a közoktatásban.
Forrás: KIR.

We would like to draw attention to the fact that, in our view, the practice described above and its legal underpinnings constitute *infringement of Article 24 of the Convention, since pursuant therefore the Hungarian State must establish a situation whereby (SNI) children with disabilities can access public education services on an equal basis with their non-disabled peers in the residential environment, whereby neither their families nor themselves should have to shoulder disproportionate sacrifices to be able to participate in education and teaching appropriate to their special needs.*[20]

The right of children with disabilities to education, as well as their other rights, are substantially infringed, they suffer significant discrimination in their everyday lives owing to the lack of an inclusive educational system and the deficiencies of integrated teaching in Hungary.

EARLY INTERVENTION

In Hungary, *the quality of early childhood intervention is not standardized*, the number of centers insufficient. These programs are customized and provide a mix of health, pedagogical and social services to foster babies' and young children's most harmonious development, thereby *increasing their chances of social inclusion.*[21]

From the early 1990s, staff of the **Early Intervention Centre Budapest** have collaborated on an ongoing basis with the Ministry for Health, Social Welfare and Education to resolve the issue of early development, but only the Education Ministry made a committment therefor. In 1996, early intervention was defined

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[20] Dr. Szilvia Halmos and Dr. Adrienn Gazsi, Esetjogi Tanulmányfüzet – Az értelmi fogyatékos, halmozottan fogyatékos és autista emberek számára működtetett antidiszkriminációs jelzőrendszer tapasztalatairól [Case Law Studies – On the Experiences of the Anti-Discrimination Signal System Operated for Persons with Intellectual Disability, Persons with Multiple Disabilities and Persons with Autism]. Kézenfogva Alapítvány [Hand in Hand Foundation], Budapest, 2008, p. 55.

[21] E-mail interview with Barbara Czeizel, Early Intervention Centre Budapest

in the Public Education Act,[22] with a primary focus on special education services. Legislators left out, however, the training of early intervention professionals.

The data of Hungary's **Ministry for Education and Culture** (OKM) show that in Hungary today approximately 3,000 children (aged 0–5) receive some form of early intervention services, whereas in each year cohort approximately 5,000 (i.e. a total of 30,000) children would need this prior to reaching school age. This calculation is corroborated by another OKM figure: *annually nearly 5,000 children enter the first grade of primary school in the SNI, that is, special educational need category*.

STUDENTS WITH HEARING DISABILITY

There are similar deficiencies "*with respect to education for children with hearing disability, where the use of sign language is optional. The access of deaf and hard of hearing children to sign language is entirely limited. What is missing is the legal regulation environment which would ensure compulsory use of teaching methods to which the Convention itself refers. In consequence, persons with hearing disability exiting public education start out with a great disadvantage compared with their non-disabled peers.*[23]

Article 24 of the UN Convention stipulates that States Parties facilitate "the learning of sign language and the promotion of the linguistic identity of the deaf community; Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual." In order to help ensure the realization of this right, States Parties shall take appropriate measures "to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education."

Hungary's **Public Education Act** [Act LXXIX of 1993] sets forth with respect to the teaching of children with special educational needs that teaching *may be performed in sign language*, however it mentions the possibility of teaching in sign language without making it compulsory.

The education ministry decree 29/2002. (V. 17.) OM on the Conditions Ensuring the Equal Opportunities of Students with Disabilities Necessary for their Continued Studies sets forth more specific provisions with respect to the rights of students with hearing disability in higher education: *the option of written examination instead of an oral one, the possibility of exemption from compulsory foreign language learning and sitting for a state-certified foreign language proficiency examination, the possibility of access to a sign language interpretor for an oral examination, the possibility of using visual illustration and aids, and, if necessary, extended preparatory time.*

In the wake of Hungary's ratification o f the UN Convention, the Hungarian State still has its work cut out for it with respect to enacting legislation in the domain of education.[24]

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[22] Act LXII of 1996 on the Amendment of Act LXXIX of 1993 on Public Education

[23] Dr. Ádám Kósa and Dr. László Gábor Lovászy, Ph.D.: A fogyatékossággal élő 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.)

[24] Dr Gergey Tapolczai, „ENSZ Egyezmény elemzése a hallássérültek szemével [The UN Convention in the Eyes of Persons with Hearing Disability]," SINOSZ Web site, 2008. (Only in Hungarian.)

The legislative context changed significantly with the entry into force of the **sign language act** (CXXV of 2009[25]). With respect to the education of children with hearing disability the act stipulates that commencing *1 September 2017 it will become compulsory to teach deaf children Hungarian sign language in schools established for them*, whilst learning Hungarian sign language in integrated schools will be become an option in the event that even the parent of just one child choses it. Also commencing from the said deadline, organizing *bilingual education* for children choosing this in schools for deaf children will become compulsory.

SINOSZ programs involving access to sign language

In 2008, the Hungarian Association of the Deaf and Hard of Hearing [Siketek és Nagyothallók Országos Szövetsége, SINOSZ] implemented *the reform of its sign language courses*, prepared curricula and teaching materials appropriate for all levels, trained teachers and examiners on an ongoing basis.

In the course of 2009, SINOSZ launched *bilingual courses for parents*, simultaneously with which it operated its "cub hut," where childminders with hearing disability cared for the children of parents learning sign language. The goal of the course is that parents learn their children's first language, which enhances communication between them and a harmonious parent-child relationship.

In 2009, sign language courses continued. In Budapest alone a total of 185 persons attended A1-level sign language courses, 86 persons studied at the A2/1 level, 42 persons participated in the A2/2 course, while 28 persons applied for the first B1/1 course.

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[25] Act CXXV of 2009 on Hungarian Sign Language and the use of Hungarian Sign Language ["Magyar jelnyelvről és a magyar jelnyelv használatáról szóló 2009. évi CXXV. törvény"]: http://www.fszk.hu/fszk/tudastar/jogszabaly/hazai/A_jelnyelvi_torveny_angolul.pdf

SINOSZ carried out *curriculum development* as part of its reform of sign language courses. It continued to create new auxiliary educational materials and examination packages. By the end of 2009 the following were completed: A2/2 trial examination package, A2/1 and A2/2 teaching DVD, B1/1 textbook. It produced *sign language dictionary* DVDs as part of its reform of sign language courses.

In the *Grundtvig Sign Language Library* international project, SINOSZ adapted the novel The Little Prince to sign language, and the adapting of the Hungarian novel *Pál utcai fiúk* [The Boys of Paul Street] is underway. The published DVD's offer a fascinating intellectual journey via works of world literature brought to life in sign language. The path is now open to showing and discussing the film in a community setting. Financed from EU funding, this project is built around the idea of "*Lifelong learning*".

On January 19–21 2009, Lóránd Eötvös University (ELTE) Social Science Faculty's Social Work and Social Policy Department served as the venue for the 4th *EveryChild Conference*, which SINOSZ also attended, presenting a demonstration class. The goal of EveryChild is to provide an opportunity for getting acquainted with and debating timely challenges, work and achievements of all expert professionals involved with children.

SINOSZ entered into close cooperation with **ELTE University and Miskolc University,** who have demonstrated their openness by *starting a sign language specialization (ELTE)* and by commencing sign language mentor training (Miskolc University).

As the result of years of partnership between SINOSZ and ELTE, in September 2009, a training project was launched, for the first time in Hungary, whereby *students could study sign language and deaf culture at the university level for four semesters, and were likewise able to become acquainted with the language and culture of the deaf community in Hungary.* This training, additionally, provides an overview of the language use rights of the deaf, bilingualism, and bilingual education.

> Sign language mentor training: Under a cooperation agreement between SINOSZ and **Miskolc University** (commencing on 25 September 2009), SINOSZ undertakes an active role in the area of education, practical training and the development of specialized teacher training. At the Applied Linguistics Department the academic year 2003/2003 witnessed the launch of training for applied linguistics students. From the very beginning, acquainting students with sign language and deaf culture was an integral part of this training. Students can choose the 50 credit sign language specialization in the framework of the recently introduced three-year Bologna system's BSc training.

RECOMMENDATIONS

- The government should draft a strategy for the introduction of an inclusive educational system, and should provide for its financing as a designated item in the national budget;
- The government should institute measures to provide appropriate training for the mainstream teaching profession to enable it to perform the additional responsibilities entailed by the introduction of the inclusive educational system, and it should allocate additional funding therefore;
- The government should take steps so that educational institutions do more than just comply with the requirement of accessibility, that they be inclusive; *it should ensure education in sign language for students with hearing disability;*
- Hungary's National Basic Curriculum (Nemzeti Alaptanterv) should be revised to comply with requirements justified by the needs of the inclusive educational system;
- The government should take steps, besides allocating additional funding, so that mainstream society – including parents and educational professionals – become acquainted with the potential of the inclusive educational system, how it can provide extra benefits, via media campaigns and informational publications;

- With respect to the segregated education of SNI children, Budapest and county councils should, in the context of their mandatory responsibilities, establish the requirement system for their education, at least at the small regional level;
- It should be made mandatory for competent local councils that they join forces with other local councils in the event that at least one SNI's student's explicitly stated needs necessitate common action to meet such needs;
- The Government should provide additional funding for the introduction of elements of the Rochester program (note taking service, sign language interpreting, closed-captioning) to assist deaf and hard of hearing students in higher education;
- Personal helpers should be trained in the framework of higher education

Health

ARTICLE 25

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

a) *Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;*

b) *Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;*

c) *Provide these health services as close as possible to people's own communities, including in rural areas;*

d) *Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;*

e) *Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;*

f) *Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.*

The right to health is set forth under Article 70/D of the Constitution of the Republic of Hungary as follows

Article 70/D

(1) Everyone living in the territory of the Republic of Hungary has the right to the highest possible level of physical and mental health.

(2) The Republic of Hungary shall implement this right through institutions of labor safety and health care, through the organization of medical care and the opportunities for regular physical activity, as well as through the protection of the urban and natural environment.

Guaranteeing the right to the highest possible level of physical and mental health constitutes a State responsibility, which the State fulfils via central state bodies and a system of local government – and other – bodies. In the framework thereof the State is responsible – among others – for the operation of the institutional network of health care and the provision of medical care.

Defining the right to the highest possible level of physical and mental health as a legal right under the Constitution means that the State is responsible, in line with the national economy's strength, and contingent on State and societal resources, for establishing an economic and legal environment providing the best possible conditions in regard to citizen's healthy lifestyle and healthful living. The basis of comparison with respect to "the highest level" is thus the *national economy's current capacity*, and not the current level of medical science.[1]

The right to health is defined as liberties, rights, and sometimes responsibilities, guaranteed by patients rights as third generation rights. In Hungary, patients rights

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[1] Constitutional Court decision 56/1995. (IX. 15.) AB, ABH 1995, 260.

are spelled out under the **Act CLIV of 1997 on health** [1997. évi CLIV. törvény az egészségügyről, Eütv.] One of the most important fundamental principles of Eütv. is that in the course of delivering health services and government measures protection of patient rights must be guaranteed. A patient's personal freedom and right of self-determination may be restricted exclusively in cases and in a manner justified by his/her health status and set forth by statutory provision.[2] The Eütv. specifies nine patient rights as follows:

> 1. The right to health care (Articles 6–9);
> 2. The right to human dignity (Article 10);
> 3. The right to have contact (Article 11);
> 4. The right to leave the health care facility (Article 12);
> 5. The right to information (Articles 13–14);
> 6. The right to self-determination (Articles 15–19);
> 7. The right to refuse health care (Articles 20–23);
> 8. The right to become acquainted with the medical record (Article 24);
> 9. The right to professional secrecy.

All these rights will, obviously, prevail fully if and to the extent that doctor and patient are familiar with the possibilities provided by law, as well as their responsibility to co-operate. This, of course, is also contingent on mutual trust and collaboration.

The **Act on Equal Treatment and Promotion of Equal Opportunities**[3] (Ebktv.) sets forth that entities providing health care comply with the principle of equal treatment in establishing their legal relationships, in their legal relationships, in their procedures and measures.[4] Direct discrimination, indirect discrimination, harassment, unlawful segregation, retribution and any orders issued for the above constitute a violation of the principle of equal treatment.[5]

Ebktv. provides that the principle of equal treatment be enforced with respect to health care, particularly with respect to the provision of health services, including participation in preventive programs and medical check-ups, preventive medical care, use of premises for residence, the satisfaction of dietary and other needs.[6]

In the course of providing health care for persons with disabilities – in line with Eütv – the needs arising from their disability must be taken into account. Persons with disabilities must be provided – in conjunction with disability – with regular and efficient health care needed for the improvement of their condition and to prevent the deterioration of their condition. Persons caring for persons living with disability must be ensured the possibility of special training and further training. In the course of health care for persons with disabilities, efforts must be made to ensure that the care *promotes rehabilitation and social integration* and does not strengthen the sense of illness.[7]

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[2] Article 2 (1), Eütv.

[3] Act CXXV of 2003, on equal treatment and the promotion of equal opportunities [Az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról szóló 2003. évi CXXV. törvény, Ebktv.]

[4] Article 4 k) Ebktv.

[5] Article 7 (1), Ebktv.

[6] Article 25 (1), Ebktv..

[7] Article 12, Act XXVI of 1998, on ensuring equal opportunities for persons with disabilities [1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlôségük biztosításáról, Fot.]

With respect to rehabilitation, one of the goals of Hungary's **National Disability Programme** (OFP)[8] is to implement a health program (National Public Health Program) for the prevention of the disabled condition and its deterioration, by organizing health awareness boosting programs. The OFP provides that *teaching disability issues also be included in health care trainings.*

OFP spells out that **access on an equal basis** must be provided to basic medical care and specialist care for all persons with disabilities. To this end, within the framework of reorganization and development of health care, procurement of the instruments necessary for persons with disabilities to have access **to services on an equal basis** must be ensured and funded with respect to primary (pediatric) care, dental care, as well as specialist medical services.

AVAILABILITY OF MEDICAL AID

Although the aforementioned statutes theoretically provide significant protection to persons with disabilities with respect to health care provision, statutory provisions stipulating and providing funding for individual services *engender discrimination* of considerable degree in numerous walks of everyday life. For instance, deaf or hard of hearing persons suffer major disadvantage with respect to obtaining medical aids. Health legislation discriminates against all disability groups by demanding a very high private copayment towards the price of medical aids provided for them.

> The subsidy for hearing aids for the hard of hearing is 70 percent, moreover the devices subsidized are not the most advanced ones, equal opportunity thereby being impaired. Both deaf and hard of hearing persons have a hard time obtaining the instruments needed for independent living. Under effective rules of law these devices are available in the framework of health care .The range of flashing and sound signaling equipment, amplifiers, communications software is rather limited and receives limited subsidies.[9]

Under the *health care reform* launched at the end of 2006, **Hungary's National Health Insurance Fund** [Országos Egészségbiztosítási Pénztár, OEP] announced drastic cuts in medical aids funding. As a result of the new consolidated social insurance list published and having entered into force *on 1 June 2007, patient's private copayments have jumped by 482 percent*, the Hungarian Health Insurance Fund's list of free or reduced cost prescriptions and medical aids have been cut back, outmoded devices continue to remain on the list, whilst new products have not (due to extremely high fees) been placed on it – all of which increased the number of hard of hearing persons unprovided for. The cut-back in subsidy makes compliance with professional protocols impossible, which could result in deterioration of the quality of services.

In his letter dated 19 July 2009, Dr Lajos Hegedűs, president of the National Federation of Disabled Persons' Associations [Mozgáskorlátozottak Egyesületeinek Országos Szövetsége, MEOSZ], managing vice-president of the National

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[8] The Draft Resolution of the Parliament No. H/18907on the new National Disability Programme10/2006. (II. 16.) [10/2006. (II. 16.) OGY határozat az új Országos Fogyatékosügyi Programról]

[9] Dr. Ádám Kósa and Dr. László Gábor Lovászy, Ph.D. (2008) A fogyatékossággal élő 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.)

Council of Federations of People with Disabilities [Fogyatékos Emberek Szövetségeinek Tanácsa, FESZT] *put forth amending motions with respect to the planned reorganization of medical aid provision.* The letter was sent after it became clear that the Government – despite discussions – had ignored the proposals of advocacy organizations and that the restructuring would entail a significant (10 percent) increase in patient costs. Dr. Hegedűs is pressing for implementation of the rehabilitation principle in medical aid provision, as follows: all those in need should be provided with a single device to cover basic care; students or persons of working age who can be rehabilitated more effectively with a better than average device should have access to better than average, more modern devices providing better than average rehabilitation. *By comparison, the government's plan discriminates on the basis of age, namely it does not subsidize medical aids for persons above retirement age (65).* Moreover, it throws yet another hurdle in the path of those in need: the condition for prescribing medical devices is accessible environment. Since international and domestic law stipulate that it is State responsibility to provide an accessible environment, it is striking that the State takes citizens to task therefore.

Experience shows that, *to many persons with disabilities concerned, Hungary's health-care financing system fails to comply with the requirement of* **"free or affordable health care"** set forth under the Convention.

The Convention provides that accessibility specifically include *geographical accessibility* as well. Hungary's health care system reveals tendencies quite to the contrary: the number of service provider entities is being cut back. This tendency is somewhat offset by a travel subsidy, however statutory provision grants this subsidy as service-associated benefit rather than a person-specific one, therefore adults with disabilities cannot, in availing themselves of another service, draw upon it. It remains a rule that everybody access basic health care in or near their places of residence (Article 88, Eütv.), however outpatient specialized care is organized according to larger districts.

To persons with intellectual disabilities providing dental and gynocology services poses the greatest challenge of all. In a petition submitted to the Parliamentary Commissioner for Civil Rights (ombudsman) the Hungarian Association for Persons with Intellectual Disabilities (Értelmi Fogyatékossággal Élők és Segítőik Országos Érdekvédelmi Szövetsége, ÉFOÉSZ) summed up actual experiences concerning dental care as follows:

"Discrimination is also rooted in the fact that healthy persons obtain care of identical content and quality free of charge, or, even if a fee is charged for care, they can access it at a substantially lower cost since there are no special needs that the person who is provided care must pay for. In the absence of financing contracts, special conditions and the costs associated therewith must be paid for by families in every single dental intervention."[10]

ÉFOÉSZ complemented the specific complaint with elements of several hundred similar complaints, as follows: *"in the case of dental treatment, care is frequently provided under anasthetic, which is more simple for doctors, even though this would*

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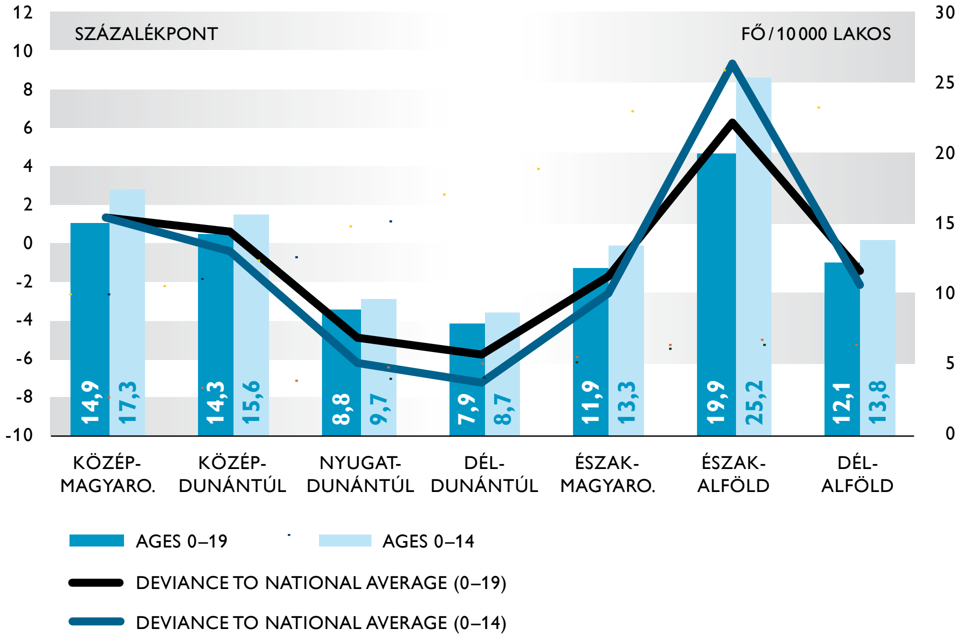
[10] The investigation of the Parliamentary Commission for Civil Rights (ombudsman) in the ÉFOÉSZ petition is in progress.

not be needed in numerous cases and anasthesia involves major risk; tooth conservation treatments for persons with intellectual disability are rare."

The Hungarian State, organizations exercising powers as authorities (OEP, REP), entities providing health care (hospitals, outpatient clinics) are supposed to comply with **the requirement of equal treatment** in establishing their legal relationships, in their legal relationships, in the course of their procedures and measures.[11]



Persons living with ASD ages 0–19 and 0–14 in outpatient care for a population of 10,000 in the same age cohort and deviance to national average

In 2009 the Office of the Parliamentary Commissioner for Civil Rights (OBH-ÁJOB) investigated the necessity of **striking drugs used by persons with disabilities** (Doxilek, Doxium) from the OEP list of free or reduced cost prescriptions.[12] Hungary's Minister for Health justified the termination of subsidies on the grounds that the cost-effectiveness of the use of the drugs Doxilek and Doxium is not proven, however they failed to put on the list a drug with an identical active agent to replace them. The ombudsman established that *withdrawal of the Health Insurance Fund subsidy from these drugs could be in violation of the fundamental principles of Act (XXVI. of 1998) on Provision of the Rights of Persons Living with Disability and Their Equality of Opportunity*, as well as of provisions set forth under the Convention. The aforesaid measure might also *infringe the right*, guaranteed under Hungary's Constitution, *to the highest possible level of physical and mental health*.

In March 2010 **the Public Foundation for the Equal Opportunities of Persons with Disabilities** (FSZK) launched *new accredited training programs* with support from the Institute of Basic and Continuing Education of Health Workers *for health professionals*. The goal of the trainings was to help professionals working in the most diverse areas of health care by showing them, in the course of their everyday work, the most up-to-date practical knowledge on how to treat and establish relationships with persons with disabilities. The program embraced topics

[11] Article 4 a), c), k), Act CXXV of 2003, on equal treatment and the promotion of equal opportunities [Az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról szóló 2003. évi CXXV. törvény, Ebktv.]

[12] Ombudsman's report case number AJB 5709/2009.

such as "patients with special care needs in health care," "creating opportunities relationship training," and „building communication bridges between healthy persons and persons with disabilities."

With a view to providing access on an equal basis, in 2010 The **National Institute of Pharmacy** [Országos Gyógyszerészeti Intézet, OGYI] launched a service, accessible via the Internet and over the telephone, whereby persons with visual disability would receive information about patient information leaflets (PIL). Besides OGYI's blind-friendly Internet page Béres Pharmaceutical Company provides accessible information, while the **Hungarian Federation of the Blind** and Visually Impaired [Magyar Vakok és Gyengénlátók Országos Szövetsége, MVGYOSZ] offers PIL in Braille upon request. Additionally, the Szabolcs-Szatmár-Bereg Country Association of the Blind and Visually Impaired has indicated to undertake the preparation of Braille version patient information leaflets for blind people living in the region.

It is not only financing problems, however, that wield a major discriminative impact, the same holds true for legislation governing specific services. A case in point is **reproductive procedures,** which continue to be available only to persons with full legal capacity *(see Article 23 for details)*, and major anomalies continue to persist with respect to the medical treatment of psychiatric patents *(see Article 15 for details)*.

> The practice of **forced medical treatment** likewise runs contrary to Article 25 of the Convention, which sets forth that States Members *"provide those health services needed by persons with disabilities specifically because of their disabilities."* Under Hungary's Criminal Code, forced medical treatment can be ordered, if the perpetrator is not punishable because of his "insane state of mental functions".[13] The sole institution maintained for perpetrators with an "insane state of mental functions" is the Juridical and Observational Psychiatric Institute (IMEI), therefore forced medical treatment can only take place at IMEI. Medical care provided at IMEI does not alleviate or help with disability, since no consideration whatsoever is made for specific needs arising from the disabled person's actual medical condition, but, rather, weighs upon patients as a punishment.

The **care available for pregnant women** in Hungary is advanced in European comparison. As a complex health care service it is *"to protect the health of the pregnant woman, to enhance the fetus' health development and healthy birth, to prevent risk and complications, or to recognize them in time."* Health services and **screening tests** for the prevention and early detection of diseases are available within the statutory health insurance scheme as set forth under Ministry of Welfare Decree No. 51/1997. (XII. 18.) NM.

It is a common criticism levied at screening tests that, as a report of UNICEF's Florence research centre also highlights: *"schedules for physical check-ups for infants and children are substantial, but assessments tend to overlook developmental and behavioural dimensions of health. Once a diagnosis is made, it is rarely changed. This is especially true for children deemed 'ineducable' (or unteachable) and placed in institutions."*[14]

[13] Article 74 (1), Act IV of 1978 on the Criminal Code [1978. évi IV. törvény a Büntető Törvénykönyvről]

[14] Innocenti Insight Children and Disability in Transition in CEE-CIS and Baltic States (2005), UNICEF, Innocenti Research Centre, Florence: http://www.unicef.org/ceecis/Disability-eng.pdf

With respect to the diagnosing of children suffering from Autism Spectrum Disorders (ASD) it is a problem that *"there are very few adequately equipped diagnostic sites with trained staff and standard diagnostic equipment. At these places long waiting lists are frequent. It may occur that children receive different diagnoses at different diagnistic sites or that establishing a diagnosis is a protracted process."*[15]

In Hungary, the quality of **early childhood intervention** *is not standardized, the number of centers insufficient.* Based on the experiences of early intervention professionals in Hungary and abroad, early intervention is most effective when children have a precise diagnosis established at the earliest possible age, if the early intervention program is *complex and continuous*, and if *services adapt to the needs of the family' and the residential district.* These programs are customized and provide a mix of health, pedagogical and social services to foster babies' and young children's most harmonious development, *thereby increasing chances of social inclusion.*[16]

From the early 1990s, staff of the **Early Intervention Centre Budapest** have collaborated on an ongoing basis with the Ministry for Health, Social Welfare and Education to resolve the issue of early development, but only the Education Ministry made a commitment therefore. In 1996, early intervention was defined in the Public Education Act,[17] *with a primary focus on special education services.* Legislators left out, however, the training of early intervention professionals.

> Education Ministry data show that in Hungary today approximately 3,000 (0–5 year old) children are provided some sort of early intervention services, whereas approximately 5,000 per age cohort (that is a total of 30,000) children would need it prior to reaching school age.

SCREENING TESTS

European experience shows that introducing screening tests produces discernable benefits. Targeted screening tests with a public health purpose are those public health activities which cover specified age cohorts of the population and, using personal invitation, is carried out with justified regularity.

[15] Autizmus – Tény – Képek [Autism – Fact – Images], Autisták Országos Szövetsége és Jelenkutató Alapítvány [National Autism Association and Foundation for Researching the Present], Budapest, 2009. (Only in Hungarian.)

[16] E-mail interview with Barbara Czeizel, Early Intervention Centre Budapest, 19 March 2010.

[17] Act LXII of 1996 on the amendment of Act LXXIX of 1993 on Public Education [1996. évi LXII. törvény a közoktatásról szóló 1993. évi LXXIX. törvény módosításáról], 25.3

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 organized and mandatory screenings can be granted in the event of illness.[18]

TRAINING

Although there are sporadic initiatives to provide empirical knowledge for health care professionals during everyday work on how to establish relationships and communicate with persons with disabilities,[19] it is our understanding that the **Hungarian Medical Chamber** *has not, up to the date of this report, organized further training and has not instituted measures to inform its members about professional developments regarding the Convention.*[20]

SUMMARY

Generally speaking, even though statutory provisions governing health care provision and the National Disability Program theoretically contain numerous positive provisions, in practice there are deficiencies in health care services, and related information and campaigns, not to mention that underfinancing of the entire system renders the actual attainment of equal opportunity even more difficult.

RECOMMENDATIONS

- The requirement of „free or affordable health care" in services for persons with disabilities should be implemented in Hungarian health care financing system;
- The Eütv. should be transformed so that all services (including reproductive services) be accessible to persons with disabilities;
- The reorganization of medical aids provision should be conducted with rehabilitation as top priority. *(see Article 26)*;
- In disability training (with special regard to women with disabilities)
  - – Persons with disabilities and their organizations should play an active role in training and in the preparation of learning materials
  - – Practical training should include disabled persons' own experiences;
- Special care responsibilities should be incorporated into nursing protocol with respect to women with disabilities, and special emphasis should be given to the right to dignity and self-determination of women with disabilities;
- Quality management system procedures should include measures for persons with disabilities (especially regarding women with disabilities). These should be drafted in collaboration with those concerned.
- 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;
- The quality of early childhood intervention should be standardized, the number of centers increased; early intervention professionals should be trained.

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[18] 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.

[19] See accredited training programs organized by Public Foundation for the Equal Opportunities of Persons with Disabilities (FSZK) and the Institute of Basic and Continuing Education of Health Workers

[20] The Hungarian Medical Chamber did not respond to the letter sent by The Mental Disability Advocacy Center (MDAC) on the subject.

Habilitation and rehabilitation

ARTICLE 26

1. *States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:*
a) *Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;*
b) *Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.*
2. *States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.*
3. *States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.*

CHARACTERISTICS OF THE HUNGARIAN LEGAL ENVIRONMENT

Certain elements of the system of habilitation and rehabilitation have existed since the early 1990s, but even today they do no cohere into a unified system. Health-related habilitation and rehabilitation is essentially regulated by the Act on Health, elements of rehabilitation in primary and secondary education by the Act on Public Education, vocational rehabilitation by the Act on Employment, and the institutional elements of social rehabilitation by the Act on Social Administration and Social Services.

The general legal requirements for the rehabilitation of persons with disabilities and the related principles are provided in **Act XXVI of 1998 on ensuring equal opportunities for persons with disabilities** [1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról, Fot.], which makes it the responsibility of Parliament and the government to create the detailed rules and to carry out rehabilitation.
Beside the act that defines the principles and the essential institutions of rehabilitation, the individual fields have their own regulations; there is, for instance, a separate act on the introduction of the rehabilitation benefit.[1]

Rehabilitation appears in a programmatic form in a Resolution of Parliament on the **National Disability Programme** [Országos Fogyatékosügyi Program, OFP], and in a government decree that draws up an action plan for the implementation of the Programme.[2] Neither of these include a resource plan.

These instruments were already in existence before the ratification of the Convention, and the latter seems to have little influence on the success of these rules.

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1. Act LXXXIV of 2007 on rehabilitation benefits [2007. évi LXXXIV. törvény a rehabilitációs járadékról].

2. [Resolution of Parliament 10/2006 (16 February) on the new National Disability Programme] 10/2006. (II. 16.) országgyűlési határozat az Országos Fogyatékosügyi Programról. http://www.szmm.gov.hu/main.php?folderID=1295 Government Decree 1062/2007 (7 August) on the midterm action plan for the implementation of the National Disability Programme in the years 2007–2010 [1062/2007. (VIII. 7.) Korm. Határozat az új Országos Fogyatékosügyi Program végrehajtásának 2007–2010. évekre vonatkozó középtávú intézkedési tervéről]

REALIZATION OF THE RULES

a) In health-related habilitation, screening tests are common both before and after birth. These tests can usually identify possible impairments early on, but there is, unfortunately, *no unified system of institutions that provide early intervention*. The screenings also enable healthcare professionals to provide parents with timely and appropriate information on caring for a child with a disability. The actual quality of this information greatly depends on what doctors and healthcare workers know about the possible social function and values of persons with disabilities.

There are considerable differences between regions in the country as regards the efficiency of screenings, early identification, and the availability of health centres suitable for early intervention. Unfortunately, there are *areas, which have no such service whatsoever*, and parents must travel long distances to have appropriate care for their children.

b) The efficiency of adults' health rehabilitation is low, for the following reasons:

- institutions of health rehabilitation do not form a standard professional system;
- there is no standard concept for, and control over, their establishment and operation, the system is far too heterogeneous, due to the diversity of operators;
- rather than being goal-oriented, the institutional structure tries to follow the fluctuations of funding;
- *there is a shortage of rehabilitation specialists, both doctors and auxiliary staff (physiotherapists, occupational therapists, etc.);*
- *there is no support for medical aids whose purpose is rehabilitation; the system seeks to provide the barest minimum.*

c) Early intervention centres, which form part of the public education system and provide for **early habilitation,** are unevenly distributed in the country, do not form an organized network, and as a result, may have differences in the quality of their services, even though the professional standards are provided by law.

According to Hungarian and international development specialists, the efficiency of early development depends on the accuracy of the diagnosis, which should be made as early as possible; also, the early development programme should be *complex and continuous*, and *the service should be adapted to the requirements of the family and the place of residence*. These programmes offer a personalized combination of health, pedagogical and social services, to help infants and small children to develop as harmonically as possible, *increasing their chances of social integration.*[3]

> From the early 1990s on, the specialists of the **Budapest Centre for Early Development** [Budapesti Korai Fejlesztő Központ] repeatedly initiated consultations with the ministries for health, social affairs and education, but only the Ministry of Education embraced the cause of early development. In 1996, early development was included in the **Act on Public Education,**[4] concentrating essentially on special education, while the training of early development specialists was not provided for in the act.

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[3] E-mail interview with Barbara Czeizel, Early Intervention Centre Budapest, 19 March 2010.

[4] Act LXII of 1996 on the amendment of Act LXXIX of 1993 on public education [1996. évi LXII. törvény a közoktatásról szóló 1993. évi LXXIX. törvény módosításáról] 25.3

Since the centres for early intervention and development have the status of public education institutions, they have no institutionalized links to the healthcare system, and cooperation is consequently ensured not by law, but by the local networks of relations. They are very much underfinanced and their financial status is unstable.

The situation has seen *no improvement since the ratification of the UN Convention*, and declining support in recent years has in fact been responsible for a deterioration.

d) In primary and secondary education, which form the foundation of habilitation, the law encourages inclusion, which nonetheless is slow to gain ground in practice.
The main reasons are as follows:

- majority teachers usually lack even the most fundamental knowledge about the habilitation of children with disabilities, and consequently prefer to refuse to admit such children;
- most institutions of majority education still cannot provide accessible venues, information and communication technologies for children with disabilities.

The provisions for the establishment of the form of training called "development of educational skills" mark a significant development for habilitation, as they extend the requirement of education to children with the most severe disabilities.[5]

e) There is a system of institutions for **social rehabilitation,** but it is far less developed than desirable.

There are few residential institutions for rehabilitation, and their regional distribution is uneven.

Due to insufficient funds, the number and capacity of day care institutions that provide social services near the home of those in need of it fall far behind the requirements of current law.

Thanks to the amendment of relevant law a few years ago,[6] which followed strong lobbying on the part of NGOs, **the network of services providing social rehabilitation at home** greatly benefited from the new rules and the support (normative grants) provided. Unfortunately, *considerable cuts in the available funds has lead to the arrest of development, and the capacity of the system now stagnates, with large parts of the country still lacking such services.*

NGOs try to establish and operate **peer counselling networks,** but they receive no *dedicated support.*

f) Vocational rehabilitation could be efficient if the components (health care, education, training, social service, vocational rehabilitation) formed a coherent system. There is unfortunately no sign of an organized, institutionalized system of cooperation that would be regulated by law.

[5] Act LXXIX of 1993 on public education [1993. évi LXXIX. törvény a közoktatásról] 30.1

[6] Act IV of 2003 on the amendment of Act III of 1993 on social administration and social services [2003. évi IV. törvény – A szociális igazgatásról és a szociális ellátásokról 1993. évi III. törvény módosítása]

The essential responsibilities related to vocational rehabilitation are undertaken by the network of employment centres. Establishing rehabilitation commissioners, groups and rehabilitation information centres within the employment centres was considered an important achievement. This organization now has an accessible physical infrastructure and information and commutation technology.

The efficiency of vocational rehabilitation is regrettably low, Hungary having the worst statistics in Europe on the employment of persons with disabilities.

> ”
>
> Less than 10 percent of working-age persons with disabilities are employed regularly.

The main reasons are:

- unreliable, constantly changing regulations, which are not supported by any concept;[7]
- *constantly decreasing support for employment;*
- support for employment encourages expenditure rather than investment;
- most actors on the open labour market refuse to employ persons with disabilities, and attitude is as much a reason as finances. The positive effects of the very significant growth of rehabilitation subsidies in 2010[8] are not yet discernible;
- *a great many persons with disabilities are not motivated and do not have sufficient interest in being employed; the limitations on the wages earnable without losing the disability benefits further dampen motivation;*
- *most persons with disabilities do not have qualifications that are sought after in the labour market, because the former, essentially segregated system of training and retraining did not provide them with marketable skills.* Today's vocational training still fails in this respect, so if a person does have a job, it is typically unskilled labour;

Alternative supporting technologies are almost unknown in rehabilitation, they are unavailable when needed, and there is no systematic funding available for their use.

A 2008 publication of the Hungarian Central Statistical Office (HSCO) [Központi Statisztikai Hivatal, KSH], *Társadalmi jellemzők és ellátó rendszerek 2008* [Social characteristics and social transfers] proves as much. The publication states that:

> ”
>
> In all, 36 per cent of those employed with a reduced capacity to work claim they need help to be able to work. The kinds of assistance were complementary, yet one third of those concerned chose only one type. A further third considered two types of assistance necessary, and only the remaining third said they needed all the types of assistance available to be able to do work that agrees with their qualifications, financial and other requirements. 606,892 out of 938,010 persons with a reduced capacity to work did not require a change in their working conditions.

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[7] 321/2007. (XII.5.) kormányrendelet a komplex rehabilitációról [Government Decree 321/2007 (5 December) on complex rehabilitation]. 1991. évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról [Act IV of 1991 on the promotion of employment and unemployment benefits].

[8] Rehabilitation subsidy which amounted to 177,600 HUF per person per year in 2009 were raised in 2010 to 964,500 HUF. The employer is required to pay the rehabilitation subsidy if he does not employ at least one person with a reduced capacity to work in 20 employees.

Very few tender programmes can accommodate funding for such technologies, and there have been hardly any calls for tenders in the past two years.

The **successful competition for the basic rehabilitation of the blind** is a positive example, though it could concern only relatively few people. Continuing the programme is highly recommended.

> There has been a commendable instance of international cooperation in the field of supporting technologies: in 2008, with the help of IBM, the Eötvös Loránd University of Science [Eötvös Loránd Tudományegyetem, ELTE] set up language labs on its campuses in Trefort-kert and Lágymányos, for the use of students with disabilities. IBM also offered half-year internships for selected students. The initiative is part of IBM's Academic Partnership Programme. The 50,000 euro support was used to buy special furniture, information devices, aids for the visually impaired, and software.

Introduced in 2007, the *rehabilitation benefit system*[9] – which encourages cooperation-based rehabilitation over what was an almost automatic choice formerly, disability pension – has not been able to show positive results because several key elements of the system of rehabilitation are missing, and very few persons are integrated or reintegrated into the labour market.

g) The past two years have seen a significant, positive shift in the **training of rehabilitation specialists,** as several institutions of secondary and tertiary education are now offering relevant courses. It is still a few years before the results can become manifest.

SUMMARY

a) The fundamental elements of regulation are available, but these are not harmonized, and are consequently inefficient.

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[9] Government Decree 321/2007 (5 December) on complex rehabilitation [321/2007. (XII.5.) kormányrendelet a komplex rehabilitációról].

b) NGOs are working to establish and operate peer counselling networks, but these receive no dedicated support.

c) Alternative supporting technologies are almost unknown in rehabilitation, and there is no systematic support for their use.

d) More resources should be devoted to rehabilitation, as it is an investment that produces returns.

RECOMMENDATIONS

- The government should draft an act on rehabilitation that defines a standard concept, ensures standardized, systematic operation for the presently disjointed elements of the institutional structure, and specifies the principles of funding.
- The government should draw up legislation on the system of peer counseling networks operated by DPOs, and include provisions for funding them.
- The National Disability Programme should increase the resources available for the rehabilitation of persons with disabilities.
- The government should draw up legislation on the use of alternative supporting technologies in rehabilitation, and should provide for the systemic funding of their use.

Work and employment

ARTICLE 27

1. *State parties recognize the right of persons with disabilities to work on a n equal basis with others; this includes the right to the opportunity to earn a living through freely chosen work or the right to be accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:*

a) *Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;*

b) *Protect the rights of persons with disabilities, on an equal basis with others, to just and favorable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;*

c) *Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;*

d) *Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;*

e) *Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;*

f) *Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;*

g) *Employ persons with disabilities in the public sector;*

h) *Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;*

i) *Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;*

j) *Promote the acquisition by persons with disabilities of work experience in the open labour market;*

k) *Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.*

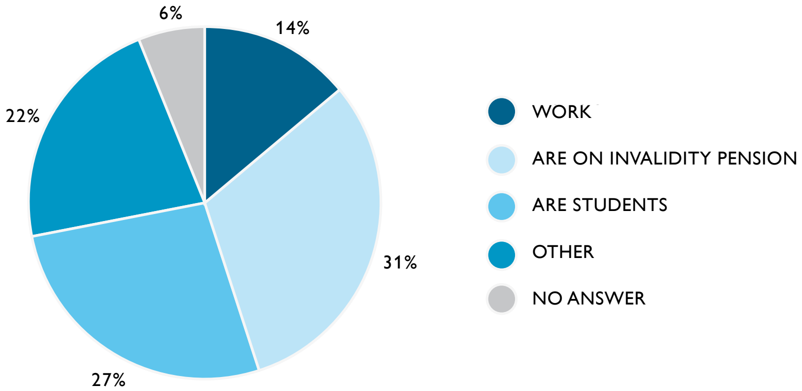
2. *States Parties shall ensure that persons with disabilities are not held in slavery or in servitude and are protected, on an equal basis with others, from forced or compulsory labour.*

THE SITUATION IN GENERAL AND THE CHARACTERISTICS OF CURRENT LAW

The *employment rate of* persons with a reduced capacity to work, including *persons with disabilities, is extremely low.* According to estimates, this rate is *less than 10 percent* in the case of working-age persons with disabilities, *most of whom work in sheltered workplaces, in supported jobs.* The rate of employment has not grown since the ratification of the UN Convention but has in fact deteriorated, due to the decline in financial support. These employees were particularly hard hit by the economic crisis and the declining efficiency of the Hungarian economy because relatively more jobs for persons with disabilities were terminated than other positions.

Several statutes contain provisions that seek to further the employment of persons with a reduced work capacity. *All these were created before the UN Convention was ratified and the ratification has had no discernible positive effect on legislation, the application of law or budget planning.*

Employment of adults with autism, age 28 or older.



THE LEGAL ENVIRONMENT AND THE APPLICATION OF LAW

a) On the basis of the **current Civil Code,**[1] a great many persons with disabilities in Hungary have been placed under guardianship. Very often, the *guardianship is plenary*, which deprives the person under guardianship of their legal capacity to act, which has serious consequences in all areas of life, including employment.[2] It is unclear and intensely debated by Hungarian experts, whether persons with no capacity to act can become the subjects of contracts of employment, even if the contract is signed by their guardians. As a result, many employers refuse to offer employment contracts to persons under plenary guardianship, which hinders the employment of persons with disabilities.

Since the **new Civil Code**[3] has not entered into force, the legal institution of complete incapacity to act has not been abolished, as a result of which not everyone in Hungary has access to the constitutional right to work.

b) The Act on Employment[4] requires employers with more than 20 employees to fill 5 percent of the positions with persons with disabilities, or else pay a *rehabilitation contribution*. Until recently, the relatively low amount failed to encourage employers to chose the former option and paying the tax-like contribution was the preferred course of action. *The fee was radically raised in January 2010 and now equals the minimum wage.*[5] Though it is still impossible to accurately assess the results of the measure, *there is certainly a growing demand for employees with a reduced work capacity*. At the same time, disabled employees represent a far less significant portion of this growth than persons with less serious impairments.

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1. Act IV of 1959 on the Civil Code [1959. évi IV. törvény a Polgári Törvénykönyvről]

2. Rights of People with Intellectual Disabilities – Access to Education and Employment – Monitoring Report: Hungary. Open Society Institute: EU Monitoring and Advocacy Program (EUMAP), Mental Health Initiative (MHI), 2006. http://www.osmhi.org/contentpics/145/Rights%20of%20People%20with%20Intellectual%20Disabilities.pdf

3. Act CXX of 2009 on the Civil Code [2009. évi CXX. törvény a Polgári Törvénykönyvről]

4. Act IV of 1991 on the promotion of employment and unemployment benefits [1991. évi IV. törvény a foglalkoztatás elősegítéséről és a munkanélküliek ellátásáról]

The Act on Employment also offers benefits for employers on the open labour market who employ persons with a reduced capacity to work.

Support can be requested for the expenses of creating a position (e.g. to make the workplace accessible) and support for wage costs can be drawn for a year, if the employer undertakes to maintain the position for a further three years.

> Furthermore, preferential support is provided for the *retraining of employees.* That those concerned cannot avail themselves of this support is due to the underdeveloped and rigid system of retraining, in which there are very few opportunities and methods that enable persons with disabilities to participate in the labour market. Most institutions that offer training, retraining or vocational training do not provide persons with disabilities with accessible venues and information and communication technologies, *nor do they have the special devices and technologies or competent trainers needed.* It is also true that most persons with disabilities do not have the basic training or motivation necessary for efficient retraining.
>
> The fact that the institutions of training, retraining and vocational training lack the supporting technologies that facilitate work also means that neither employers, nor persons with disabilities, are familiar with these technologies.

A publication of the Hungarian Central Statistical Office (HCSO) [Központi Statisztikai Hivatal, KSH], *Társadalmi jellemzők és ellátórendszerek 2008* [Social characteristics and social transfers 2008] also proves this:
In all, 36 percent of those employed with a reduced capacity to work, claim they need help to be able to work. The kinds of assistance were complementary, yet one third of those concerned chose only one type. A further third considered two types of assistance necessary and only the remaining third said they needed all the types of assistance available to be able to do work that agrees with their qualifications, financial and other requirements. 606,892 out of 938,010 persons with a reduced capacity to work did not require a change in their working conditions.

The implementation of the legal requirements is the responsibility of **Employment Centres** [Munkaügyi Központok], which have local rehabilitation commissioners, county rehabilitation groups and Rehabilitation Information Centres. *This is a relatively well-developed network, with the appropriate number of competent staff. Yet the frequent reorganization of the administrative system and the ongoing lack of funds make its position permanently unstable.*

c) The Act on Vocational Training,[6] which could facilitate training for the first profession, has very few concrete positive provisions on the opportunities open for the vocational training of persons with disabilities. Most institutions of vocational training that are open to all have *neither the physical requirements and accessible information and communication technologies, nor the competent professionals to train persons with disabilities.* The system of vocational training is extremely rigid and inflexible and does not allow persons who have certain skills but not others to learn only certain parts of a trade, barring many persons with disabilities who could master, if not all, then some facets of a profession. There are a few segregated vocational training institutions but their operation has become increasingly precarious over the past few years, forcing the best trainers to leave them.

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[5] Rehabilitation contribution which amounted to 177,600 HUF per person per year in 2009 were raised in 2010 to 964,500 HUF.

[6] Act LXXVI of 1993 on vocational training [1993. évi LXXVI. törvény a szakképzésről]

d) The Act on Rehabilitation Benefit and the government decree on complex rehabilitation[7] introduced a new form of financial support to replace the practice of automatically providing an invalidity pension. The legal instruments are accompanied by a new assessment system, in which the committees concentrate not on the lost ability to work but propose rehabilitation procedures that help the utilization of the work ability that remains. The rehabilitation benefit can be given for a maximum of three years, during which time the person with reduced work capacity enters into a cooperation agreement with the employment organization for the sake of their own rehabilitation. The objective is essentially commendable but several elements of the system of rehabilitation have not been established yet and consequently the positive effect of the measures is still indiscernible.

e) The Act on Employment requires a **measure to set the rules for the accreditation of employers,**[8] which classifies workplaces according to their suitability for the employment of persons with reduced work capacity. Depending on their grade, employers are entitled to varying levels of support, in accordance with the conditions of dedicated measures. These supports follow current regulations of the EU.

This group of measures also regulates the operation of employers that work in a sheltered environment but make produces for the market. This sector is still the largest employer of persons with disabilities, who usually work at segregated workplaces, for relatively low wages, doing manual labour that requires low qualifications. Lacking advanced technology, funds to acquire such technology, indeed, an interest in developing their facilities, these organizations cannot possibly prepare their employees for the open labour market and cannot function as transitional places of employment. The funds that seek to encourage the employment of persons with a reduced work capacity have steadily decreased in recent years, leading to the termination of a considerable number of work positions. The open labour market cannot compensate even for a fraction of these lost positions, what with the generally declining employment figures.

f) The act on equal treatment[9] provides protection for persons with disabilities and other disadvantaged groups against possible discrimination in the world of employment. The act is essentially in harmony with the relevant EU regulations, with the exception of reasonable accommodation, the rules of which it fails to formulate.

Unlike the UN Convention, Hungarian law does not consider the absence of reasonable accommodation in employment a form of discrimination based on disability and does not even define the concept.

Apart from this, the act 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.* The act empowers labour unions and other advocacy organizations to act and intervene whenever these provisions are violated.

[7] Act LXXXIV of 2007 on rehabilitation benefits [2007. évi LXXXIV. törvény a rehabilitációs járadékról] Government Decree 321/2007 (5 December) on complex rehabilitation [321/2007. (XII.5.) kormányrendelet a komplex rehabilitációról]

[8] Government Decree 176/2005 on the accreditation of the employers of persons with reduced capacity to work, and on the rules of monitoring such employers [176/2005. (IX. 2.) Korm. rendelet a megváltozott munkaképességű munkavállalókat foglalkoztató munkáltatók akkreditációjának, továbbá az akkreditált munkáltatók ellenőrzésének szabályairól]

[9] Act CXXV of 2003 on equal treatment and the promotion of equal opportunities [2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról, Ebktv.]

Persons with disabilities can initiate proceedings with quite favourable conditions because the **Equal Rights Authority** [Egyenlő Bánásmód Hatóság, EBH] provides the possibility to defend one's rights at the place of infringement. The Authority can also issue sanctions of considerable prohibitive power. Nonetheless, there are very few discrimination cases involving persons with disabilities because there are very few of them employed

Labour unions are unfortunately not very active in the protection of the rights of employees with reduced capacity to work and there is in fact only one association of labour unions that offers dedicated support. It is probably not unrelated to this that very few employees with reduced work capacity are members of labour unions.

g) The Labour Code[10] also contains anti-discriminatory and protective provisions for the employment of persons with disabilities, thus court proceedings are an option open to both individuals and advocacy organizations. Though the act offers limited protection against dismissal after health impairment suffered at the workplace, employers can circumvent these provisions with relative ease because dismissal protection is not due to an employee on an invalidity pension. Whenever it is an option, most employees choose *invalidity pension*, financially disadvantageous but secure, over another position that could be offered. Only the 2007 act on rehabilitation benefits encourages employers and employees to continue the employment, yet most employers still do not take this option.

There are very few cases of enforcing disability-related rights in court procedures: not only because there are very few such employees but also because scarcely are they ready to confront their employers openly. There are obviously far more latent infringements but the employees' weak consciousness of their rights prevent most of these cases from reaching the light of advocacy or defence.

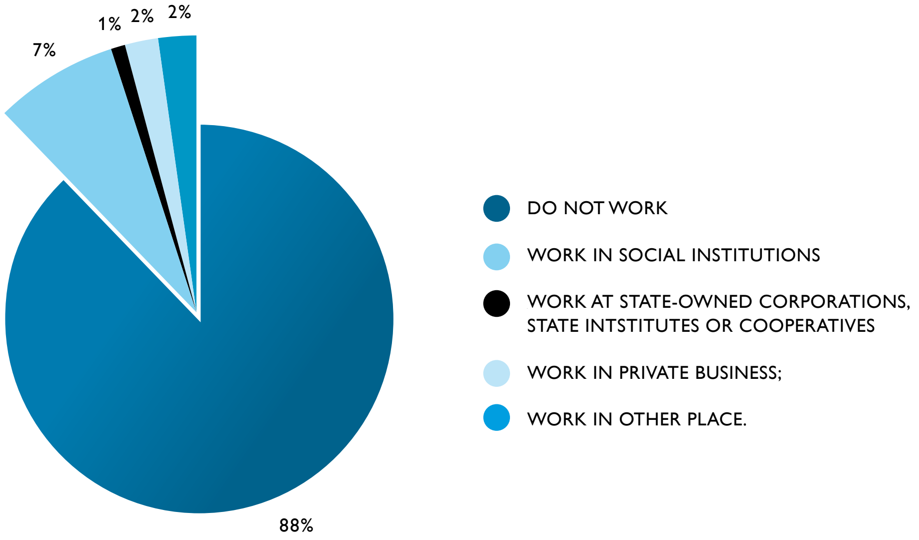
The Labour Code provides for the possibility of flexible and part-time employment, as well as of telework or e-commuting, which could open the world of employment for many persons with disabilities.

It is not the lack of adequate regulations but the reluctance of employers that makes *atypical employment so much rarer in Hungarian economy than in countries with a more advanced employment culture*, which effects not only persons with a reduced work capacity but all potential employees. Though there were programmes launched in recent years to popularize telework and part-time employment, these were not harmonized with the rules of taxation and social-security contributions, leaving employers with no interest in better utilizing this form of employment.

The relatively low internet penetration and the costs of a computer, which many persons with disabilities cannot afford, further hinders the spread of e-commuting. There are no aid schemes to provide persons with disabilities with a dedicated support to get access to computers; something many of them cannot solve with their own low incomes.

[10] Act XXII of 1992 of the Labour Code [1992. évi XXII. törvény a munka törvénykönyvéről]

Persons with autism – Do they work? If yes, in what area do they work?



h) The act on social services[11] regulates the employment of persons with the most severe disabilities in social institutions. In 2006, a programme to broaden employment opportunities was started; in 2009 and 2010, drastic cuts in support stalled and even reversed, this promising development, as a result of which there has been a considerable drop in the number of persons with severe disabilities employed in this framework.[12]

In a 2010 investigation into the conditions of an integrated social institution, the Parliamentary Commissioner for Civil Rights [Állampolgári Jogok Országgyűlési Biztosa, OBH-ÁJOB] pointed out that it is unconstitutional to allow social institutions not to offer employment. *"Failure to provide employment within the social institution," states the report, "or alternatively to promote employment in the sheltered or open labour market, constitutes an infringement of the constitutional right to work."*[13]

Several organizations have launched employment programmes, supported, among others, by the National Employment Public Foundation [Országos Foglalkoztatási Közalapítvány] and the Public Foundation for the Equal Opportunities of Persons with Disabilities [Fogyatékos Személyek Esélyegyenlőségéért Közalapítvány]. The **Salva Vita Foundation** is an important actor in this field, raising funds both in Hungary and internationally. Their project "Pure Chance" [Tiszta esély] is a unique initiative in Hungary, developed under the principle of sustainable development. The cleaning service offered in this project employs persons with disabilities, who use environmentally friendly cleaning products under the guidance of a professional mentor.

i) The principles of **Act XXVI of 1998 on ensuring equal opportunities for persons with disabilities** [1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról, Fot.] include the requirement of rehabilitation and in connection with this, the expansion of employment opportunities. The act provides that Parliament and the government must create a mid-term National Disability Programme [Országos Fogyatékosügyi Program],[14] and on its basis,

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[11] Act III of 1993 on social administration and social services [1993. évi III. törvény a szociális igazgatásról és szociális ellátásokról]

[12] The Parliamentary Commissioner for Civil Rights' report case number AJB 6540/2009.

[13] The Parliamentary Commissioner for Civil Rights' report case number AJB 2535/2010.

[14] Resolution of Parliament 10/2006 (16 February) on the new National Disability Programme [10/2006. sz. (II. 16.) OGY határozat az új Országos Fogyatékosügyi Programról]

a short-term action plan. These should include a programme to expand employment opportunities.

Regrettably, while these programmes do exist, no measures have been taken that produce practical results. The main reasons are as follows:

- there is no employment concept, even for the mid-term;
- there is no standard system of rehabilitation, a key part of which would be vocational rehabilitation;
- there are no budgetary allocations to improve the situation.

SUMMARY

a) The extremely low level of employment among persons with disabilities is one of the serious problems of Hungarian economy.

b) The most important statutes necessary to increase the level of employment are available but they are not implemented in the manner acceptable for persons with disabilities or desirable for the economy.

c) The rules of reasonable accommodation are missing from the Hungarian legal environment; these rules could be introduced by amending existing statutes, like the act on equal treatment.

d) The following actions need to be taken to increase the level of employment:

  - An act on rehabilitation must be enacted, to regulate the rehabilitation procedure and to create a standard system of rehabilitation;
  - Parliament must pass an employment concept, which must be completed with scheduled, compulsory budget plans;
  - Reliable regulations are needed, which provide the actors of economy with security and aid schemes must be created and operated to provide sufficient resources and encourage employment;
  - Motivational, preparatory, training, retraining and transitory employment schemes must be created and operated to help the participation of persons with disabilities in the labour market.
  - The public sector fails to provide increased opportunities of employment for persons with disabilities.

RECOMMENDATIONS

- The new Civil Code, which was developed with the participation of persons with disabilities and their NGOs and which contains such new rules for legal capacity (the capacity to act) that respect the dignity and autonomy of the person, should be put into force immediately;
- Considering that the level of employment among working-age persons with disabilities does not reach 10 percent, the Government should work out a strategy to increase the number of those persons with disabilities who can become active participants in the labour market;

- By amending Act CXXV of 2003 on equal treatment and the promotion of equal opportunities, the Government should create the rules of reasonable accommodation.
- Act CXXV of 2003 on equal treatment and the promotion of equal opportunities should have provisions against harassment at the workplace and discriminative wages, for the benefit of women with disabilities. Female employees with disabilities should be defined in the act as a distinct group that is entitled to protection.
- The Government should establish the legal basis for vocational training to enable persons who have certain skills but not others to learn only certain parts of a trade.
- Persons drawing an invalidity pension while being employed should also have statutory protection against dismissal.

Adequate standard of living and social protection

ARTICLE 28

1. *States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.*

2. *States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability and shall take appropriate steps to safeguard and promote the realization of this right, including measures:*

a) *To ensure equal access by persons with disabilities to clean water services and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;*

b) *To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;*

c) *To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;*

d) *To ensure access by persons with disabilities to public housing programmes;*

e) *To ensure equal access by persons with disabilities to retirement benefits and programmes.*

Article 70/E of **Act XX of 1949 on the Constitution of the Republic of Hungary** [1949. évi XX. törvény a Magyar Köztársaság Alkotmányáról] states that:
(1) Citizens of the Republic of Hungary have the right to social security; they are entitled to the support required to live in old age and in the case of sickness, disability, being widowed or orphaned and in the case of unemployment through no fault of their own.
(2) The Republic of Hungary shall implement the right to social support through the social security system and the system of social institutions.

According to Article 4 of Chapter 2 of the Appendix to 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]:
"The social services provide persons with disabilities with three special types of financial aid and four special types of personal assistance. About 410,000 persons with disabilities access financial or personal aid, though many access two or more services.

Most of those who access these services draw financial support. According to September 2005 data, 8,000 persons receive annuity for the blind, which is given to blind persons over the age of 18 who are not cared for in an institution. 122,000 persons receive a supplementary family allowance, available to persons with disabilities, children with long-term and chronic diseases and young adults with severe disabilities. 270,000 persons with severe physical disabilities who cannot use public transport receive transport support. According to the September 2005 data, the disability allowance a new financial aid introduced in 2001, was given to 100,000 persons.

2,299 persons are provided with personal specialist social care, dominantly by local governments, in 95 institutions. There are very few who are provided with temporary residence or live in shelters. 16,000 persons are cared for permanently in nursing homes and the rehabilitation institutions give home to 5,000. Most residential institutions provide care for persons with severe mental disabilities, while the rehabilitation institutions service mostly persons with physical and intellectual disabilities and the blind."[1]

We must note that most children with disabilities are not raised by their parents but receive special child care, i.e. live with foster parents, or, as the majority, in state-run residential institutions. Encouragingly, the latter now also include more intimate forms, so-called home institutions, which accommodate communities of eight to twelve.

The social protection of Hungarian persons with disabilities is served by several statutes and other legal instruments, cash benefits and benefits in kind. Cash benefits aim to "compensate for" the particular disadvantages of living with a disability, on the one hand, and the difficulty or impossibility of finding employment, on the other.

In 2010, after fifteen years of transforming its law and institutions, Hungary has regulations on social services that dominantly conform to the standards of the EU and the services of the residential institutions mentioned above are now complemented with services that assist independent life or living with one's family.

It is **Act III of 1993 on social administration and social services** [1993. évi III. törvény a szociális igazgatásról és szociális ellátásokról] that defines cash benefits and benefits in kind available to persons who are disadvantaged for any reason, as well as to children and families. In theory, all these are also available to persons with disabilities.

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[1] The new National Disability Programme: http://www.szmm.gov.hu/main.php?folderID=1295

These concrete services, which local governments or other organizations are obliged to render are as follows:

A) **Cash benefits**

- regular social benefit (Article 37/A),
- care allowance (Articles 41–44), a financial benefit for an adult providing care at home for a dependant person.

B) **Social services**

- food service (Article 62),
- family support (Article 64),
- help in homes fitted with systems to request assistance (Article 65),
- supporting service (Article 65/C),[2]
- day care (Article 65/F),
- home for persons with disabilities (Article 69),
- rehabilitation institution for persons with disabilities (Article 74),
- nursing home for persons with disabilities (temporary institution) (Article 83),
- residential home for persons with disabilities (Article 85/A).

”

The act also defines several forms of day care and residential institutions for psychiatric patients and persons with pathological addictions.

As described in the discussion of Article 19, it is cause for concern that there have been considerable changes in the funding of the services and the identity of those responsible for rendering them. *Current regulations prefer placement in residential institutions over community-based services.* This is also corroborated by detailed data on the numbers of those who access the individual services, presented in the article mentioned.

The dysfunctions of the social services are also related to the state of affairs described in Article 26; its findings show that *there are considerable inequalities in access to social rehabilitation, the elimination of which is hindered by the stagnating development of the institutional system.*

The above-mentioned act on social services also has provisions on the employment of the users of the services within the social institutions. Social employment has two forms, vocational rehabilitation and skill developmental employment.[3] *Our findings with regard to Article 5 show that the current regulations are discriminative.*

Act XXVI of 1998 on ensuring equal opportunities for persons with disabilities [1998. évi XXVI. törvény a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról, Fot.] has provisions on the *disability benefit.*
Article 22. The disability benefit is a monthly allowance to a person with a severe disability that seeks to promote equal opportunities. The benefit is to provide – regardless of the income of the person with a severe disability – financial aid to moderate the social disadvantages that derive from the severe disability.

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[2] Cf. the comments on the implementation of Article 20 of the Convention.

[3] Cf. the comments on the implementation of Article 27 of the Convention.

The definition of severe disability and how the disability benefit is to be transferred can be found in *Government Decree 141/2000 (9 August) on the rules of assessing and reviewing severe disability and of paying the disability benefit* [141/2000. (VIII. 9.) Korm. rendelet a súlyos fogyatékosság minősítésének és felülvizsgálatának, valamint a fogyatékossági támogatás folyósításának szabályairól].

Further cash benefits that intend to "compensate for" the *special costs of living with a disability* include the *annuity for the blind* and a supplementary *family allowance* available to families raising children with disabilities.[4] When the person with disability becomes of age, they may be entitled to the latter on their own right.

Of the three cash benefits, a person with disability may be entitled to only one.

The following measures promote the social protection of persons with disabilities, try to make their life easier:

- Government Decree 85/2007 (25 April) on fee discounts in public transport [85/2007. (IV. 25.) Korm. rendelet a a közforgalmú személyszállítási utazási kedvezményekről] provides persons with disabilities – with the exception of persons with psychosocial disabilities – and those accompanying them with considerable discounts.
- Government Decree 231/2006 (22 November) on social discounts on citizen energy bills [231/2006. (XI. 22.) sz. Korm. rendelet a lakossági energiafelhasználásának szociális támogatásáról] provides discounts for persons with disabilities and their families.
- Government Decree 164/1995 (27 December) on transport benefits for persons with severe physical disabilities [164/1995. (XII.27.) sz. kormányrendelet a súlyos persons with physical disabilities közlekedési kedvezményeiről] provides persons with disabilities with financial support to purchase and modify road vehicles.
- Articles 9–10 of Government Decree 12/2001 (13 January) on state aid for housing [12/2001. (I.31.) Korm. rendelet a lakáscélú állami támogatásokról] provide support for persons with physical disabilities to make their home physically accessible. It must be noted that the amount has not changed for decades.
- Measures that seek to help persons with disabilities find work and keep their jobs. [5]

As regards pensions, the most important for persons with disabilities are the invalidity pension and the invalidity allowance.

Act LXXXI of 1997 on social security pension benefits [1997. évi LXXXI. törvény a társadalombiztosítási nyugdíjellátásról] states that:
Article 23
(1) A person is entitled to invalidity pension if
a) *they lose, due to health impairment, or loss of physical or mental ability, at least 67 per cent of their ability to work and no improvement in this condition can be expected within a year (henceforth: invalid),*

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[4] Cf. Act LXXXIV of 1998 on family support [1998. évi LXXXIV. törvény a családok támogatásáról]; Government Decree 223/1998 on the implementation of Act LXXXIV of 1998 on family support [223/1998. (XII.30.) kormányrendelet az 1998. évi LXXXIV., a családok támogatásáról szóló törvény végrehajtásáról] specifies a higher family support for families raising a child with a disability, or single parents raising a child; Decree 5/2003 of the Ministry of Health, Social Affairs and Family [5/2003. (II.9.) ESzCsM rendelet a magasabb összegű családi pótlékra jogosító betegségekről és fogyatékosságokról].

[5] Cf. the comments on the implementation of Article 27 of the Convention.

b) *have had the required length of employment and*
c) *is regularly out of work, or their income is significantly lower than before the invalidity set in.*

Act LXXXIV of 2007 on rehabilitation benefits [2007. évi LXXXIV. törvény a rehabilitációs járadékról] seeks to further the social reintegration of persons with health impairment, by offering, in the presence of certain conditions, rehabilitation, rather than an invalidity pension that relies on those remaining abilities of the person that can be developed, as well as an income substitute for the period of rehabilitation that is proportionate to the original income.

Council of Ministers' Decree 83/1987 (27 December) on the invalidity allowance [83/1987. (XII. 27.) sz. MT rendelet a rokkantsági járadékról] states that:
Article 1
(1) The person who loses all their ability to work before the age of 25 or who sustains a minimum health impairment of 80 percent and draws no pension or accident pension, is entitled to an invalidity allowance.

> The amount of the invalidity pension and the invalidity allowance since 31 December 2009 is as follows.
> Pursuant to Article 23 of Government Decree 168/1997 (6 October), the minimum of invalidity pension is:
> HUF 28,500 for invalidity class III
> HUF 29,800 for invalidity class II
> HUF 30,850 for invalidity class I.
> Pursuant to Article 5/(3)/a of Government Decree 242/2008 (1 October) the amount of the invalidity allowance is HUF 33,300.[6]

Further provisions important for an adequate standard of living and social protection can be found in Decree 1/2003 (21 January) of the Ministry of Health, Social Affairs and Family on medicines prescribable with support from the social security and the amount of support [1/2003. (I.21.) ESzCsM rendelet a társadalombiztosítási támogatással rendelhető gyógyszerekről és a támogatás összegéről], and Decree 14/2007 (14 March) of the Ministry of Health on providing social security support for medial aids and on ordering, marketing, repairing and lending such aids with support from the social security [14/2007. (III.14.) EüM rendelet a gyógyászati segédeszközök társadalombiztosítási támogatásba történő befogadásáról, támogatással történő rendeléséről, forgalmazásáról, javításáról és kölcsönzéséről].

Furthermore, health care provides free prescriptions, medical aids and bandages.

The Hungarian social protection system provides a variety of services to persons with disabilities, yet the sum of these services and the conditions of their availability fail to provide appropriate social protection. Though there are no statistical data, it is practical knowledge that persons with disabilities and their families form marginalized strata of society.

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6. For the sake of comparison, Article 11 of Government Decree 168/1997 (6 October) sets the minimum amount of old age pension at HUF 28,500. In its Resolution 32/1998 (25 June), the Constitutional Court (Alkotmánybíróság) of the Republic of Hungary states that "the right to social security as defined in Article 70/E of the Constitution includes the provision by the state, through its social services, of a minimum level of subsistence that is essential to the success of the right to dignity."

7. Cf. the comments on the implementation of Article 20 of the Convention.

RECOMMENDATIONS

- Research should be launched into the actual social status of persons with disabilities and their families, to reveal the rate of those living in (extreme) poverty and to identify the relationship of social benefits and living standards.
- Only persons with severe disabilities are entitled to disability benefit, causing persons with disabilities who are not entitled and who cannot find employment to have almost no income. The actions to solve this problem should ensure that the persons with disabilities concerned can live as visible citizens, at an adequate standard of living, with social protection.
- Support for the transport of persons with disabilities should be developed and more services should be available at the place of residence, so that Article 28 of the Convention could be fully satisfied.[8]
- There is only limited support for the housing of persons with disabilities. There is a need for a legal environment that supports independent living and alternatives to institutional care, including supported housing.
- The amount of the invalidity pension and the invalidity allowance may constitute a violation of Article 28 of the Convention, as well as of other related Articles; to provide real subsistence, the opportunity of a life as independent as possible, these two benefits, as well as the minimum old-age pension, should be raised considerably.
- It is also necessary to launch a programme of social rental housing for persons with disabilities (to purchase or build units) and to make the units accessible.
- Young persons with disabilities should be educated for independent life in a household, to ensure that they are familiar with services, know the possibilities of physical accessibility and have appropriate financial skills (savings, loans, etc.).
- The conditions necessary for the introduction of housing loans for persons with disabilities should be created.
- Homes with personal assistance should be operated, with state support.
- It must be ensured that no one be placed in a residential institution for financial reasons.
- Supporting, community-based, day and temporary services should be started and extended, so that the rate of those accessing them could be raised from 10 percent to at least 50 percent.
- The decision about accessing a service should be the right of the person concerned, even in the case of those who are at present under guardianship.
- A special life start aid should be introduced for persons with severe disabilities, similarly to the available child protection benefit.

[8] According to Article 5 of Chapter II of the Appendix to the new National Disability Programme: "Social exclusion is a consequence of the low education level as well as the low employment rate of persons with disabilities. Integration is made even more difficult by the fact that rehabilitation services are accessible only in larger settlements, and the purchase of aids for independent living is impossible just from one's own resources."

Participation in political and public life

ARTICLE 29

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:
a) *Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:*
i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
ii. Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
iii. Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;
b) *Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:*
i. Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
ii. Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

Article 70 of the Constitution of the Republic of Hungary provides that all adult Hungarian citizens residing in the territory of the Republic of Hungary have the right to be elected and have the right to vote in Parliamentary elections, local government elections or minority self-government elections.

However, the Constitution does not grant the right to vote to persons who – subject to a final legal judgement – are under plenary or partial guardianship; who are barred from participating in public affairs; who are incarcerated; or who are under compulsory institutional care rendered in criminal proceedings.

Article 70 (4) sets forth that all Hungarian citizens have the right to participate in public affairs, and further, to hold public office in accord with their fitness, education and professional ability.

Pursuant to Hungarian election law in effect, persons who do not possess full legal capacity have no active or passive right to vote. This bars the majority of persons with mental and psycho-social disability from the right to vote. Hungary's Constitution does not allow for deliberation with respect to whether or not the person deprived of his/her legal capacity under guardianship possesses the right to vote, and the exclusion applies to all persons with restricted legal capacity under guardianship. This is irrespective of which groups of affairs the court had restricted their legal capacity in. Since deprivation of the right to vote is automatic, the court has no discretion to take into account a person's individual circumstances and to make an individualized ruling about whether or not the individual is also unfit to participate in public affairs.

Since participation in national elections (Article 28/D–E.) and local referenda[1] and people's initiatives is contingent upon the right to vote, persons with disabilities who do not possess full legal capacity are excluded from these as well. Nor do persons with disabilities deprived of full legal capacity have the right to work as civil servants.

Hungary's Parliamentary Commissioner's Office (OBH), in its **ombudsman report OBH 2405/2009,** issued sharply worded criticism with respect to the voting rights of persons with disabilities. The report highlights that "*contrary to obligations set forth in the UN Convention on the Rights of Persons with Disabilities and the European Convention on Human Rights persons placed under guardianship and those held in captivity automatically lose their right to vote under the Constitution.*"[2]

With respect to *electoral procedure*, the Convention provides that the voting process establishments and materials must be accessible.

Act C of 1997 on Electoral Procedure [1997. évi C. törvény a választási eljárásról] (Ve.)[3] *does not contain provisions regarding accessibility, nor does it contain provisions about equal access in locating and designing polling premises.*

Article 61 (2) of the Ve stipulates that – with exceptions set forth under the Act – votes may be cast only at the polling station assigned in accord with the voter's domicile. In the event that the assigned polling station is not accessible, a person with physical disability is not entitled to request to exercise his/her right to vote at another accessible polling station.

> Act C. of 1997 on Electoral Procedure stipulates that a mobile ballot-box should be provided to voters unable to go to the polling station.

Article 62 (2) of the Ve. provides that "the necessary number of polling booths required for the smooth running of voting but a minimum two shall be set up in the polling station." *People in wheelchairs are provided so-called table polling booths that do not violate the right of secret ballot. However, the Ve. does not require that at least one polling booth must have a wider entrance.*

Article 68 (2) of Ve. ensures substantial assistance for voters who cannot read, or are prevented from voting by other physical disability or any other cause. These voters are entitled to use the assistance of another voter, in the event there is no such person available, they can request the joint assistance of two members of the ballot counting committee.

This form of assistance is most useful to persons who are blind or have partial vision who are exercising their right to vote in the absence of ballots in Braille or

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[1] Article 45, Act LXV of 1990 on Local Governments http://www.mtaki.hu/docs/cd2/Magyarorszag/6-1990-65ang.htm

[2] Ombudsman report number OBH 2405/2009 „Sérül a fogyatékos emberek választójoga [The Voting Rights of Persons with Disabilities are Breached]" http://www.parlament.hu/angol/act_c_of1997.htm

[3] Act C of 1997 on Electoral Procedure, Article 61 (3). http://www.parlament.hu/angol/act_c_of1997.htm

in enlarged letters because they are prevented from independently casting their vote. Despite this provision, deaf and hard of hearing persons may find themselves at a disadvantage when communicating with the election committee.

Under regulations currently in effect, election information technology is under no obligation to provide information materials adapted to the special communications needs of persons with disabilities.

On October 1, 2009, after two persons with disabilities contacted the **Hungarian Anti-Discrimination Foundation (MADA)** President about the European Parliamentary elections held on June 7, 2009, a MADA representative addressed a letter to the **President of Hungary's National Election Committee (OVB) about the political rights of persons with disabilities.** The letter proposed OVB facilitate a professional consultation in order to prevent the problems described in the said complaints, will not arise during the Parliamentary elections of 2010.[4]

Since there was no response to the letter, on December 3, 2009, the MADA representative turned to the Hungarian **Equal Treatment Advisory Board** to initiate measures which would enable voters with disabilities to exercise their rights in the 2010 elections. These measures should be in compliance with fundamental electoral principles and with no accessibility barriers (e.g. the issue of information pamphlets and ballots in Braille and in enlarged print).[5] In a letter dated February 15, 2010, the Advisory Board turned to Hungary's **Ministry of Municipalities** and the **Minister of Justice and Law Enforcement,** drawing up recommendations with respect to the amendment of Act C. of 1997 on Electoral Procedure (Ve.) and Ministry of Municipalities Decree 35/2009. ÖM rendelet.[6] *"We propose that the Ministry investigate the possibility of the Decree's necessary and feasible amendment, and that when members of electoral bodies are prepared, and in the course of the latter providing information of public interest, they pay special attention to asserting the secret ballot requirement to include persons with disabilities in the event of voting by mobile ballot box or with the assistance of a helper."* [7]

In a response dated March 16, 2010, the **Ministry of Municipalities'** Undersecretary of State for the public sector and co-ordination, stated that *a comprehensive overview of the Ve. had not taken place,* therefore, the rules governing the voting of persons with disabilities have not yet changed. However, within the framework of the Ve the Minister of Municipalities, with *due consideration for the technical and financial possibilities of the day,* determines the actual details of how the voting takes place He also said that the funding available for elections is insufficient to cover the cost of making polling stations accessible, therefore it is not possible to mandate these modifications.

Additionally, he referred to the December 31, 2010, deadline, which is prescribed in **Act XXVI. of 1998[8] about making public buildings accessible.** The implementation of these provisions would also solve the problem of polling stations. The Undersecretary also mentioned that all polling stations for the 2010 elections would have a *paper booth, ensuring voting by secret ballot for citizens with physical disabilities.* Furthermore, he stated, that the National Election Office's Web site[9] *is blind or visually impaired persons* and the Election Information Service provides all requested assistance, ensuring access to information.

The previously quoted Ombudsman's report (OBH 2405/2009) found serious deficiencies with persons with disabilities exercising their voting rights. As the result of its investigation the Ombudsman issued the following findings:

"…voting procedures are not satisfactory in the event that the ballot counting committee cannot communicate with a voter with disabilities in the appropriately professional manner. Polling establishments are not deemed accessible if they do not enable persons with disabilities to exercise their right to vote on an equal basis with others. It is not of

[4] Letter of the Hungarian Anti-Discrimination Foundation's (MADA) representative to the president of Hungary's National Election Committee. 1 October 2009, Ref: 147/2009.

their own free volition but, rather, under constraint that voters with disabilities avail themselves of voting via mobile polling box or table voting booth *so long as polling establishements, polling stations and polling booths are not made accessible.*
Election materials are not easily understandable in the event that information with respect to the election does not reach persons with disabilities, or is incomprehensible to them because it is not made available in Braille or enlarged letter format, is not close-captioned or translated into sign language, or its wording is excessively complex."

With respect to participation in public life and political organisations, the Hungarian Constitution, guarantees everyone in the Territory of the Republic of Hungary, the right of association entitling individuals to establish or join organisations for purposes not prohibited by law.[10] **Act II of 1989 on the Right of Association,**[11] [1989. évi II. törvény az egyesülési jogról] does not exclude persons with disabilities from social organisation membership. *However, there are numerous legal provisions barring persons under plenary or partial guardianship from attaining certain positions or memberships.*[12] *Similar restrictions can be found in legislation with respect to other subjects of economic activity and other civil society organisations.*

NGO ACTIVITIES

On December 16, 2009, Dr. Ádám Kósa was elected president of the reconstituted **European Parliament Disability Intergroup,** the only committee expressly focused on persons with disabilities, in Strasbourg. In the previous parliamentary cycle this inter-fraction group on disability had played an informal role and had informal authority, but Dr. Ádám Kósa, member of European People's Party, aspire's to create a more significant position in the European Parliament. Dr. Ádám Kósa's election is unique because it is the first time a person with a disability, who is also a new member of the European Parliament, is elected to this position.

The Hungarian **Down Foundation** participated in the European project entitled *"My Opinion, My Vote"* – funded by the Grundtvig Multilateral, Projects, the European Education, Audiovisual and the Culture Executive Agency's Lifelong Learning Programme,- had two main goals. The first goal was to assist persons with mental disability in exercising their political rights, and to help them become citizens who are actively engaged in public affairs. Its second objective was to draw decision makers attention to the importance of persons with mental disability being able to exercise their political rights.[13] Under the aegis of this programme, the political knowledge of persons with mental disabilities was expanded. They were encouraged to form substintiated opinions, even on political issues, and to raise their voice about these issues during local, national and European Parliament elections.

The **National Council of Disabled Persons' Organisations** (FESZT), a national umbrella organisation for persons with disabilities, crafted a campaign for the 2009 European Parliament elections. The campaign's goal was *to make pre-*

5. Letter of the Hungarian Anti-Discrimination Foundation's (MADA) representative to Hungary's Equal Treatment Advisory Board. 3 December 2009, Ref.: 149/2009.

6. Ministry of Municipalities Decree 35/2009. (XII. 30.) ÖM on the Implementation of Act C. of 1997 on Electoral Procedure with respect to the election of members of parliament

7. Letter of the Equal Opportunity Authority to the Undersecretary of State for the public sector and co-ordination of the Ministry of Municipalities. 15 February 2010, EBH/438/2010.

8. http://text.disabilityknowledge.org/The-Law.htm

9. Information Web page of the National Election Office: www.valasztas.hu

10. Article 63

11. http://www.ecnl.org/dindocuments/255_lawassociationseng1989.pdf?PHPSESSID=00f9444c0d56d457ac38d89887e82bdd

12. Article 1 (4) d), Act IV of 2006 on Business Associations; Article 30 b), Act X of 2006 on Co-operatives; Article 27 (5) a), Act CXXI of 1999 on Chambers of Commerce; Article 18, Article 46 (1), Act XXII of 1992 on the Labour Code

13. http://www.myopinionmyvote.eu/index.php?option=com_frontpage&Itemid=1

campaign information and bodies accessible to persons with disabilities. Additionally, the campaign encouraged persons with disabilities to run as candidates in the European Parliament elections.

Likewise in 2009, prior to the European Parliament elections, organisations advocating for persons with disabilities reported to the Parliamentary Commissioner's (Ombudsman's) Office (OBH) about legal, physical, and communication barriers that make exercising the right to vote harder for them. Based on these reports, the OBH drafted a report on the subject.[14]

SUMMARY

The following violate those set forth in Article 29 of the UN Convention on the Rights of Persons with Disabilities:

- Provisions of the Hungarian Constitution which state that in the event that a person is placed under guardianship he/she is automatically deprived of his/her right to vote;
- Lack of provisions ensuring physical and info communication accessibility electoral procedures, establishments and materials; exisiting solutions that violate the general, equal and direct right to vote by secret ballot, the prohibition of discrimination and the principle of equal opportunity;
- The exclusion of persons with disabilities from decision making positions in civil society organisations.

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[14] Report number AJB 2405/2009 can be downloaded from: http://www.obh.hu/allam/jelentes/200902405.rtf

RECOMMENDATIONS

- Article 70 (5) of Hungary's Constitution needs to be amended;
- Rules governing legal capacity should be revised and consistently implemented;
- There should be a full revision of electoral regulations;
- The law on electoral procedure should incorporate the requirement of complex removal of barriers to accessibility, as a result of which not only buildings serving as venues for elections, but, generally speaking, electoral procedures (posters) would become barrier-free and accessible to persons with disabilities;
- The political parties should make it a priority to make their election campaigns and political messages accessible (via info-communications, including sign language interpreting and writing in Braille) to persons with disabilities.

Participation in cultural life, recreation, leisure and sport

ARTICLE 30

1. *States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:*
a) *Enjoy access to cultural materials in accessible formats;*
b) *Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;*
c) *Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.*
2. *States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.*
3. *States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.*
4. *Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.*
5. *With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:*
a) *To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;*
b) *To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;*
c) *To ensure that persons with disabilities have access to sporting, recreational and tourism venues;*
d) *To ensure tha tchildren with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;*
e) *To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.*

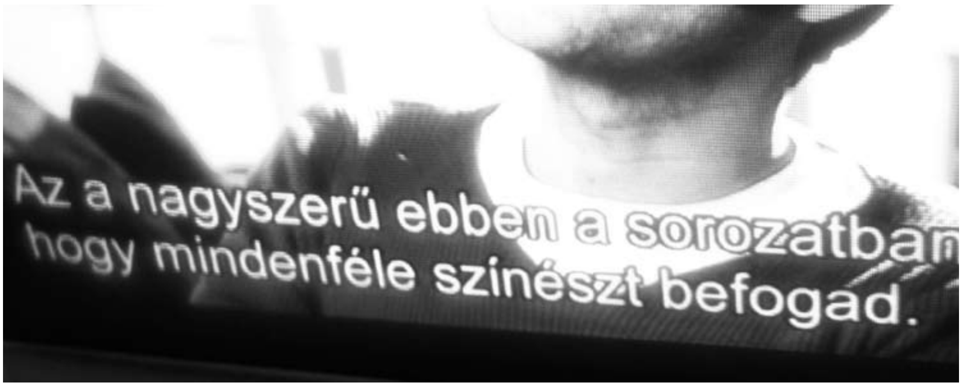
The Constitution of the Republic of Hungary makes few specific provisions with respect to the rights set forth in Article 30 of the Convention on the Rights of Persons with Disabilities:

Article 70/F.
(1) The Republic of Hungary guarantees the right of education to its citizens.
(2) The Republic of Hungary shall implement this right through the dissemination and general access to culture, free compulsory primary schooling, through secondary and higher education available to all persons on the basis of their ability, and furthermore through financial support for students.
Article 70/G.
(1) The Republic of Hungary shall respect and support the freedom of scientific and artistic expression, the freedom to learn and to teach.
Article 70/B. (4) Everyone has the right to leisure time, to free time and to regular paid vacation.

Act XXVI of 1998 on the Rights of Persons Living with Disability and Their Equal Opportunities [1998. évi XXVI. törvény. a fogyatékos személyek jogairól és esélyegyenlőségük biztosításáról, Fot.][1] sets forth provisions with respect to sports and culture as an equal opportunity target area and stipulates that appropriate measures must be taken to enable persons with disabilities to access educational, cultural, sports and community establishments. With a view to establishing conditions required for access to sports, access to sporting and recreational facilities must be ensured.

ACCESS TO CULTURAL ACTIVITIES

Article 30 of the UN Convention stipulates that States Parties take appropriate measures to enable persons with disabilities to enjoy access to cultural documents, television programmes, films, theatre and other cultural activities, in accessible formats. The Article also provides that they enjoy access to venues for cultural productions or services (theatres, museums, cinemas, libraries, etc.)



Point 4. of Article 30 also prioritizes deaf culture: "*Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.*"

With respect to culture, Hungary's **National Disability Programme** [Országos Fogyatékosügyi Program, OFP][2] emphasises integration, equal access and access to cultural goods. Point 3.7 of the OFP stipulates that "*with regard to the European Union Directives and the development of technology, such programmes are to be launched that help access of various groups of people with disabilities to cultural goods. It means making cultural public institutions (theatres, cinemas, etc.) physically and communication-wise accessible, and making the exhibited objects of museums accessible, for example to people with visual and hearing disabilities.*"

The OFP emphasises that support must be provided to amateur and professional artists with disablities, art associations and societies, the goal of which is to shape social consciousness as well. There are still deficiencies, however, in implementation, e.g. sign language interpreting is seldom offered for theatrical performances, and museum group visits offering sign language interpreting are also few and far between.[3]

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[1] http://text.disabilityknowledge.org/The-Law.htm

[2] www.szmm.gov.hu/download.php?ctag=download&docID=13.

[3] Dr Gergely Tapolczai, „ENSZ Egyezmény elemzése a hallássérültek szemével [The Analysis of the UN Convention Through the Eyes of the Hearing-Imparied]," SINOSZ [the Hungarian Association of the Deaf and Hard of Hearing] http://www.sinosz.hu/sites/default/files/kultura_ENSZ.pdf (only in Hungarian)

A 2008 study reports that **deaf and hard of hearing persons** frequently come up against powerful barriers in this area. Cultural content in accessible formats is not available, museums do not offer exhibition tours with sign language interpreting, and subtitling of television programmes is only possible if separate funds therefore are raised, and only at television stations who have been successful at raising such funds. Furthermore, grant money have been steadily deminishing since 2008. *In Hungary deaf culture based on sign language is not recognized.*
In 2008, the Hungarian Association of the Deaf and Hard of Hearing [Siketek és Nagyothallók Országos Szövetsége, SINOSZ] contributed to creating access to public education opportunities in accessible formats via sign-language interpreted tours at the integrated event *"Museum's May Day – Everyone's May Day"* under the aegis of its TREASURE programme. July witnessed the **Misztrál Festival,** Hungary's biggest accessible outdoor cultural event, where entertainment was offered in info-communication accessible formats.The event was staged again in 2009. On September 19–20, it staged the *"Invisible Culture Festival,"*[4] partnering with NGOs and the media. Additionally, SINOSZ has been mentoring ERGO SUM a theatrical ensemble comprising hearing-impaired persons for many years.

SINOSZ participated in designing tenders for TV-subtitling for the national media. It also urged media outlets awarded these tenders to produce awareness-raising spots for broadcasting prior to their subtitled programmes and to partner with deaf activists in putting them to use.

"Numerous circumstances still impede cooperation between persons with disabilities and the media," said Dr. Beáta Borza of the Parliamentary Commissioners (Ombudsmans) Office of Hungary (OBH) at a talk organised by the **Nonprofit Media Center and the Institute for Applied Communications Science** on February 9, 2010. Persons with disabilities point to programme structure, access to media content, and media employment opportunities as the greatest source of problems. Besides representation in the media, persons with disabilities also grapple with limited access to Hungarian programming because its content is still not offered in accessible formats. György Mikesy of the Civil Workshop has said that as a hearing-impaired person 80 per cent of all his television viewing is with the BBC, with programmes on Hungarian channels only accounting for the residual 20 percent thereof due to the fact that *so few programmes are made with subtitling or offer add-on sign language interpreting.*[5]

Adopted on November 9, 2009, Hungary's an **Act CXXV of 2009 on Hungarian Sign Language and the use of Hungarian Sign Language**[6] [2009. évi CXXV. törvény a magyar jelnyelvről és a magyar jelnyelv használatáról] instituted major change for public service television stations by mandating, as of July 1, 2010, providing subtitling or sign language interpreting for public service announcements and news programmes, as well as, commencing 2010, at least a daily 2 hours of programming (feature films, children's and youth programmes, and programmes made for persons with disabilities) offering subtitling or sign language interpreting. The law stipulates that as of 2015 all programming must provide closed-captioning or sign language interpreting.

SINOSZ's deaf employees have adapted *The Little Prince* by Antoine de Saint-Exupéry to sign language under the **Grundtvig Sign Library international project,** and the adapting *The Boys of Pál Street* by Ferenc Molnár is underway. These

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[4] http://www.wfdeaf.org/calendar.aspx

[5] „Szűk mozgástérben – fogyatékossággal élők a médiában" [Little Wiggle Room – Persons with Disabilities in the Media], February 9, 2010 Article available in Hungarian http://www.emasa.hu/print.php?id=6441

[6] http://www.fszk.hu/fszk/tudastar/jogszabaly/hazai/A_jelnyelvi_torveny_angolul.pdf

efforts provide a fascinating intellectual journey, via the works of world literature brought to life in sign language, for sign language using deaf people, as well as hearing people learning sign language. The path is now open to community screenings and discussions of the film. Financed by EU funds, this two-year project (2009–2010) is built around the concept of "*Lifelong Learning*".

At the same time, we must give mention to the fact that under **Hungarian copyright law**[7] it is the publisher's or author's prerogative to grant permission for publication in electronic form of copyright-protected print works. In consequence – as **OBH report 5312/2006** also pointed out - the *"deficiency in legal regulation causes the danger of indirect discrimination."*

Therefore, we emphatically recommend the amending of copyright legislation which would enable converting a work into accessible formats, thereby facilitating access by special needs persons to digital materials.

> The **Baltazár Theatre**[8] is Hungary's only professional theatre company comprised of *mentally challenged actors.* Since its founding in 1998, the ensemble has created ten theatrical productions. Baltazár Theatre's goal is that its productions – in the making and in the showing – overcome social exclusion, thereby changing social perceptions of persons with disabilities. The educational programme launched in 1999 by the Baltazár Theatre Foundation, which operates the theatre company, has instituted an entirely new mentality: it is via quality artistic rather than therapy-driven training that it has enabled persons with disabilities to make a living from their talent. The Baltazár Arts Centre opened for training in September 2005, offering integrated artistic training open and available to all.

ACCESS TO RECREATION, LEISURE AND SPORTING ACTIVITIES

Point 5, Article 30 of the UN Convention on the Rights of Persons with Disabilities provides that persons with disabilities must be enabled to participate on an equal basis with others in recreational, leisure and sporting activities. It is important that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system.

With respect to the principle of integration, the **National Disability Program** (OFP) emphasizes the importance of sports as well, sports being a fine community-shaping tool and sports also being conducive to shaping social consciousness, of diminishing the causes of social exclusion. In the chapter "Improving the Quality of Life of People with Disabilities" the OFP stipulates that access to sporting and wellness facilities is to be provided because sports activities also have a rehabilitative component for persons with disabilities.

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[7] http://www.wipo.int/clea/en/details.jsp?id=2213

[8] http://www.baltazarszinhaz.hu/index.php?lang=en

[9] Dr Gergely Tapolczai, „ENSZ Egyezmény elemzése a hallássérültek szemével [The Analysis of the UN Convention Through the Eyes of the Hearing-Imparied]," SINOSZ [Hungarian Association of the Deaf and Hard of Hearing] http://www.sinosz.hu/sites/default/files/sport_ENSZ.pdf (only in Hungarian)

The OFP also deems support for disability sports important and, further, highlights the significance of training: it is important that disability sports also be included in teacher, coach and remedial teacher training. Moreover, professionals already in the field must be given specialized further training. Hungarian law is comparatively commendable with respect to sports, except for the protracted problem, and a sensitive one, for deaf sports bonus for medals won.[9]

Recreational and mass sports for persons with disabilities are supported by the **Miklós Wesselényi National Youth and Leisure Sports Public Foundation,** their competitive and premier-league sports by the **Aladár Gerevich National Sports Public Foundation.**

Hungary's **Act I of 2004 on Sports**[10] [2004. évi I. törvény a sportról] stipulates that it is *"the state's responsibility to facilitate practical implementation of citizens' right to physical education and sports, to support sporting activity in the framework of civic organizations conducted in an honorable manner and with due regard to equal opportunity, herein also including disability sports. The Act also provides that the state supports competitive sport, participation in the international sports arena and, therein, ascribes outstanding importance to the Olympic and Paralympics ideal."*

The Sports Act established the **Hungarian Paralympic Committee** [Magyar Paralimpiai Bizottság, MPB] as an independent public body under the aegis of integration and equal opportunity. With respect to Paralympics, the MPB discharges identical responsibilities with the Hungarian Olympic Committee (MOB) and wields identical authority with respect to its sports. *"Another reason why it was established is that the organizational framework of disability sports should match that of healthy persons' sports."* In accord with Hungarian Paralympic Committee's current legal status, the Act specifically stipulates who, as a public body, its members can be, and specifies conditions for membership.[11]

Under the Act on Sports, disability sports are represented by the **Hungarian Sport Federation for People with Special Needs**[12] [Fogyatékosok Nemzeti Sportszövetsége, FONESZ], a public body functioning with the voluntary participation of national sports associations operating in the area of disability sports.[13] Among FONESZ's top-priority responsibilities is to represent disability sports' interests vis-à-vis state bodies, local governments, public sports foundations, sports associations, and other social organizations. It coordinates the activities of sports associations and other member organizations, provides them shared office space, as well as professional sports, business, legal, and IT services, announces calls to tender, puts forth position statements with respect to sports policy issues and is active in international sports organizations.[14]

The act also provides that building a new sports facility or upgrading an existing one will only be permitted if it provides accessible use thereof to athletes and spectators with disabilities.[15, 16]

Owing to the differences between the two bodies' roles and standing, extreme funding differences characterise the various categories of impairment.

[10] http://www.sport-in-europe.eu/index.php?option=com_content&task=view&id=27&Itemid=116

[11] Comment, Act I of 2004 on Sports

[12] http://www.fonesz.hu/DesktopDefault.aspx?menuid=12595

[13] Its member organisations: Sports Association of the Hungarian Hearing-Impaired [Magyar Hallássérültek Sportszövetsége], Hungarian Special Olympics Association [Magyar Speciális Olimpia Szövetség], National Sports, Cultural and Interest Protecting Association of Hungarians with Organ Transplants [Magyar Szervátültetettek Országos Sport, Kulturális és Érdekvédelmi Szövetsége], Sports Assocation of Physically-Impaired Hungarians [Magyar Mozgáskorlátozottak Sportszövetsége], Hungarian Special Sports Association [Magyar Parasport Szövetség], Sports Association of the Visually-Impaired Hungarians [Magyar Látássérültek Sportszövetsége]

[14] Article 44, Act I, 2004 on Sports

[15] Article 63, Act I, 2004 on Sports

[16] Emberi Jogok Igen! A fogyatékossággal élő személyek jogai c. képzési kézikönyv [Human Rights. Yes! The Rights of Persons with Disabilities], Training handbook, pp. 227–228 (Only in the Hungarian version)

> *“Paralympics competitors, their trainers, a few dozen persons received HUF 295 million after 2004, HUF 729 million after 2008, the total topping the HUF 1 billion mark in rewards from the state, whilst tens of thousands under FONESZ receive the same overall funding to cover a four year period. This engenders enormous tension between disabled and disabled, and between disabled and healthy. A system alien to sports has emerged which overwrites internal solidarity”* – comments the president of FONESZ.
> MPB president Zsolt Gömöri has acknowledged that *“Paralympics bonuses are excessive, with the most successful athlete receiving more than the annual funding allotted to professional sports.”*[17]

Since 2004, governments of the day strove to reduce the gap in funding between athletes achieving outstanding results at the Special Olympics and their healthy counterparts. Accordingly, as of 2004, the **Hungarian Olympic Committee** (MOB)[18] granted Special Olympics competitors, over and above the annuity paid to MOB athletes, funding in the amount equivalent to one-off, performance-based bonuses. Unfortunately, only the physically and visually impaired exclusively are eligible for funding under this bonus system. *Officers of MPB and FONESZ have tried on several occasions to rectify this situation, however to date no substantive talks have come forth on the government’s behalf.*

A separate sports association represents the hearing-impaired, with funding from the state for operating costs, so they are not disadvantaged in this area. However, owing to communications difficulties, their access to recreational and leisure sports accessible to the healthy is more difficult.

The principle of equal treatment – which also affects other disability sports – came to the fore again in conjunction with bonuses to deaf athletes who made sports history at the **21st Summer Deaflympics in 2009.** The Sports Secretariat of the Ministry for Municipalities of the government of the day put forth a variety of professional arguments, but ultimately rejected bonuses for the deaf on the grounds that although bonuses may be awarded, there is no obligation to do so, moreover, amid the economic crisis there were no available funds therefore. In light thereof, the Sports Association of the Hungarian Hearing-Impaired filed a complaint on behalf of deaf athletes with Hungary’s **“Equal Treatment Authority”** [Egyenlő Bánásmód Hatóság, EBH] on October 27, 2009, requesting an inquiry into the matter.[19] According to a prior EBH statement, *“in disability sports the principle of equal treatment of athletes who attain international accomplishments arising from identical professional foundations is impaired.”*

The **Hungarian Special Olympics Association** plays a noteworthy role on Hungary’s sports scene. Since 1989, “it has planned, organised and managed regular training and competitive sports programmes for persons with mild, moderately severe and severe mental impairment and for persons with multiple disabilities. Annually, some 2,000 to 3,000 athletes compete against each other at our events. Currently, our athletes train and compete in 19 adopted branches of sports, namely: athletics, table tennis, power lifting, bowling cycling, handball, speed skating, figure skating, roller skating, judo, basket ball, soccer, Motor

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17. „Duplán működik a kettős mérce. Fogyatékossport: két paralimpiára egymilliárdos jutalom, kontra folyamatos forráshiány és túl sok köztestület, [„The Double Standard Strikes Doubly. Disabilities Sports: HUF 1 billion for two Sepcial Olympics versus ongoing shortage of funds and too many public bodies]" Magyar Nemzet, 03.06. 2010 http://www.mno.hu/portal/699204?searchtext=fogyatékossport,%20paralimpia (Only in Hungarian)

18. http://www.mob.hu/engine.aspx?page=MOB_english

Activities Training Programme (MATP), floor hockey, skiing, tennis, badminton gymnastics, swimming."

At the same time it is important to work toward a state of affairs whereby the competitive sports in different categories of disability attain similar chances for funding. There are major financing discrepancies among sports for persons with different kinds of disabilities. In short, funding is distributed disproportionately between the Paralympic movement (the phsyically and visually impaired) and between other disability groups (the mentally and hearing impaired, persons with organ transplants).

At the international conference "*Competitive Sports Opportunities for Persons with Disabilities and its Impact on Social Integration*" staged on November 27, 2009 in Budapest,[20] renowned Hungarian experts were brought in by the Hungarian Paralympic Committee (MPB) as presenters. Speakers included Dr. Ferenc Török, chairperson of the **National Sports Council's** [Nemzeti Sporttanács, NST] finance preparatory committee, who discussed lack of transparency in the system of state funding, the *lack of cooperation between sports associations and the Ministry for Municipalities (ÖM) with respect to the distribution of state funding to sports.*

He also expressed concern over the distribution of funds based on non-professional criteria. In response to Dr. Török's presentation, NST chair Dr. Tamás Sárközy presented his position, namely that the **introduction of single-channel funding** in disability sports is pivotal, and emphasised that sports appropriations should only be allotted to competitive disability sports. The funding of recreational sports ought to be taken over by the Ministry for Social Affairs and Labour and the Ministry of Health. "*This would be in alignment with well-functioning Western European models.*"

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19. Procedure number EBH 9/13/2010. The EBH, in a decision dated April 22, 2010, found that the Ministry for Municipalities involved in the procedure had violated the requirement of equal treatment by failing to award – in contrast with athletes with identical performances at the 2010 Winter Olympics and Special Olympics - performance bonuses to Hungarian deaf athletes who won medals and points at the 2009 Deaflympics The Ministry for Municipalities was thereby found guilty of direct discrimination. The EBH has ruled that the Ministry for Municipalities must eliminate the legal breach, that is, to pay performance bonuses to the deaf athletes.

20. http://www.hparalimpia.hu/index.php?c=hirarchivum&tol=40&kod=330
(only in Hungarian)

DPOS AND NGOS ACTIVITY

SINOSZ continues to develop the **SINOSZ Sports Center** year-by-year, increasing the number of leased hours for recreational and competitive sports activities for **Deaf and Hard of Hearing** athletes. The organisation's goal is to make the Sports Center self-sustaining. In compliance with its Charter, SINOSZ continues to provide 11.5 hours a week at no charge to hearing-impaired athletes.

A sporting event for **visually impaired** persons and persons with other types of disabilities, the "*Run in the Light*" **Deloitte Running Gala** was staged for the fifth time in 2008. When the event was first launched in 2004, it was sponsored by Hungary's Ministry for Social Affairs and Labour,[21] while in 2008 it was backed by the Helios Movement Academy Association, the Recreational and Sports Association of the Visually Impaired, the Foundation for Democratic Youth, and Multeam Advertising Agency Ltd.

The Running Gala is an annual half-day event staged at the Athletic Center located on Budapest's Margaret Island, with an average participation of 500-600 persons. Of this number, 200-250 are blind or have other disabilities, and 300 persons are seeing helpers, supporters, and Waldorf school students. With a national recreational sports programme, it meaning HELIOS would like to promote recreational sports, physical exercise and healthy living among persons with disabilities. Its goal is to get the healthy and the impaired to engage in sports together, that persons with disabilities become better acquainted even amongst themselves, and to draw media attention to the needs of recreational disability sports.

According to the Helios Movement Academy's statement, "although there are sports organisations catering to persons with disabilities, these are involved in sports either within the school system, or within the institutional framework of competitive and premier league sports. *We believe that the rather large numbers of persons with disabilities excluded from the institutional framework or who have never been part thereof in the first place, need opportunities for physical exercise and sports.*"

In preparation for the Run in the Light Deloitte Running Gala, for the past six years a total of nearly 100 **visually impaired** persons have participated in weekly gymnastics and training for the race as well as attending a one-week training camp. The project's goal is to engage more and more visually impaired persons and persons with other disabilities in our recreational sports and health conserving movement, thereby facilitating social integration. Through our work we would like to help eliminate social prejudice.

Founded in October 2006, the **Recreational Sports Association of the Visually Impaired** (LÁSS), organises weekly training for visually impaired runners on Margaret Island with the involvement of personal helpers and volunteers. During the winter, ice skating is available at the Westend Shopping Center's Ice Terrace in Budapest. In 2009, LÁSS's "*Sports for Everyone – a Seminar of Sharing Good Practices*" project won the award of the Mobility-Youth in Motion Programme in the "Outstandingly Innovative Project Experimenting with Novel Training Methods" category.

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[21] See May 2006 Running Gala at: http://www.szmm.gov.hu/main.php?folderID=1052&articleID=5665&ctag=articlelist&iid=1. Post-2006 ministry funding data is not available

RECOMMENDATIONS

- The government should guarantee the principle of equal treatment for athletes who attain international accomplishments in disability sports arising from identical professional foundations;
- The government should eliminate funding anomalies in disability sports;
- The government should establish a separate and efficient funding system for competitive sports and recreational sports;
- The government should guarantee access to integrated sports and recreational events for persons with disabilities, be it student Olympics or street race for runners;
- The government should also guarantee access to trainings, be it via a sign language interpreter, e.g. in coach training, sports manager training, courses for professional managers of athletes requiring special training;
- The government should monitor children's sports activities, and guarantee integrated participation, integrated sports classes with hearing school mates;
- The government should provide for accessible communications formats with respect to recreational programmes (e.g. wellness services), as well as with respect to services of organisers of sporting and tourism activities (e.g. broadcasting sports events via sign-language interpreting or subtitling);
- Equal access must be guaranteed to cultural events, making available accessible physical and communications formats, and making objects exhibited at museums accessible to, for instance, visually and hearing-impaired persons;
- The government should craft a strategy and action plan (in cooperation with NGOs) for providing subtitling or sign language interpreting for public service announcements and news programmes, mandated by law as of July 1, 2010, as well as, commencing 2010, at least a daily 2 hours of feature films, children's and youth programmes, and programmes made for persons with disabilities offering subtitling or sign language interpreting;
- The employees of public cultural institutions (e.g. libraries, museums, theatres, cinemas should be provided training in disability affairs;
- Funding should be provided for integrated training in the arts with the participation of students and teachers with disabilities;
- The government should influence attitudes by supporting private and public service media which involve persons with disabilities in programme design, which take specific – measurable – steps to enable equal access to media content, and create media employment opportunities;
- Hungarian copyright regulation should be amended, so that converting a work for non-commercial purposes so it enables access for persons with disabilities to these works would constitute an exception to copyright protection as set forth under the European Union's legal principles with respect to copyright.

SEGMENT OF THE REPORTING RELEVANT TO THE SPECIFIC SITUATION OF BOYS, GIRLS AND WOMEN WITH DISABILITIES

Women with disabilities

1. *States Parties recognise that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.*
2. *States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.*

Women with disabilities are frequently subject to multiple discrimination, both on account of their gender and on account of their disability. *The Republic of Hungary's legal system does not specifically designate multiple discrimination as such.* Although in and of itself this does not exclude the possibility of multiple discrimination being a prohibited behaviour, but neither does it provide legal protection in the event that both forms of discrimination occur simultaneously.

Hungarian statutory provisions do not make a single reference, either, to women with disabilities. Therefore, women with disabilities are invisible to the Hungarian legal system. True, the introduction to Hungary's **National Disability Programme** [Országos Fogyatékosügyi Program, OFP] states that "*women with disabilities and people of ethnic minorities living with disabilities can be hit by multiple discrimination. Therefore an important basic principle is that the different measures must be planned on the basis of individual needs.*"[1] However, contrary to its declared goal, the OFP contains no provisions with respect to women with disabilities.

The programmes of Hungary's **National Development Agency** [Nemzeti Fejlesztési Ügynökség, NFÜ], the government agency in charge of national development, 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 the social group of women with disabilities.

In the Hungarian government's fourth and fifth report on **the Convention to Eliminate All Forms of Discrimination against Women** (CEDAW) only tangentially do we find information with respect to women with disabilities. The report devotes only one paragraph to the issue, which enumerates Hungarian legislation with respect to persons with disabilities (Act XXVI of 1998 on the Rights of Persons Living with Disability and Their Equal Opportunities, and resolution 100/1999. [XII.10] OGY on the New National Programme of Disability Affairs). These laws likewise do not contain any references to women and girls with disabilities.

Boosting awareness also plays an important role in overcoming the double discrimination affecting women with disabilities. *Hungary's NGOs are not aware of any government funding to help reduce social stereotypes vis-a-vis women with disabilities, and for women with disabilities to demonstrate their values, familial and social roles to mainstream society.* The government has not assumed a role in funding

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[1] The New National Programme of Disability Affairs can be downloaded at: http://www.szmm.gov.hu/main.php?folderID=1295

awareness-raising programmes for women with disabilities to familiarise themselves with their abilities and limitations.

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. Inspite of this, no national or institutional surveys have been conducted in this area at custodial institutions for persons with disabilities in Hungary.

DPOs address the special needs of women with disabilities within the context of programmes or work groups established therefore. However, such programmes are still rather few and far between because there are no grants, which specifically designate women with disabilities as their target group.

NGOS ACTIVITY

With respect to the 2007–2010 period, special mention must go to the **De juRe Foundation** and to **National Federation of Disabled Persons' Associations** [Mozgáskorlátozottak Egyesületeinek Országos Szövetsége, MEOSZ] initiatives. On December 11 2009, they held a training for the assertion of self-interest entitled "Accessible Motherhood," in the wake of which the Foundation launched a research project on the subject in January 2010. In 2008–2009, MEOSZ conducted research within the framework of the EU Daphne programme on health care services available to women with disabilities, organising two work group meetings and an international conference on the subject on April 3, 2009. We will elaborate on both programs in the chapter on Article 25 Health Care.

In 2008, the **Free School of Disability Studies** Magdolna Jelli memorial series[2] offered lectures by distinguished international and Hungarian experts to introduce the UN Convention on the Rights of Persons with Disabilities. On September 25, the world-famous American professor Rosemarie Garland-Thomson analysed the multiple disadvantaged situation of women with disabilities, especially with respect to persons with disabilities who, in recent years, have become visible in the arts and pop culture.[3]

SUMMARY

In light of the above, it is important to emphasise that the Hungarian state has not done enough to meet its obligations under Article 6 of the UN Convention. The state has not taken any measures whatsoever in this area sinceHungary ratified the Convention. We therefore urge the Hungarian state to recognise the lack of equal opportunity for Hungarian women and girls with disabilities and to take the necessary legislative steps to eliminate discrimination against them.

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[2] Magdolna Jelli was a decisive figure in advocating for persons with disabilities in Hungary. The promoter of the idea of self-determination and independent living in Hungary, she was a fierce protector of the rights of persons with disabilities, founded and subsequently headed the Association for Independent Living. Being severely disabled herself, Magdolna Jelli set an example with her own life, by showing that despite living with disabilities she was capable of an active and colourful life.

[3] Free School of Disability Studies, Gusztáv Bárczi Special Education Faculty of the Lóránt Eötvös University of Sciences (ELTE GYFK), autumn semester, 2008.

RECOMMENDATIONS

- Legislation 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.

Children with Disabilities

1. *States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.*
2. *In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration. States.*
3. *Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, have their views given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right.*

Due to experiences resulting from the Convention on the Rights of the Child, drafters of the CRPD used a twin-track approach to the Convention. This approach addresses the issue of children not only within the context of a single Article therein, but in all Articles of the Convention which could impact the life of children with disabilities.

Children with disabilities are disadvantaged on several counts: on account of being children and on account of being disabled. Therefore, facing multiple disadvantages they should be accorded special protection under both international human rights conventions and individual state regulatory systems.

In Hungary, numerous legislative measures provide legal guarantees for children and particularly for children with disabilities.[1] Also, numerous child protection programs have come into being, in some cases attaining outstanding results in their target areas. With respect to individual Articles, we will elaborate on legislative measures as well as practical issues which must be addressed in the future in a targeted manner at the governmental level in order to improve the situation of children with disabilities in Hungary.

At the same time, we would like to highlight a positive example, the children's

[1] Articles 16 and 67 of the Constitution;
Article 6 of Act XXXI of 1997;
Act LXXIX of 1993.

right project launched in 2008 by Hungary's **Parliamentary Commissioner for Civil Rights** (Ombudsman).[2] This program's goal is the following: (1) to investigate in Hungary the implementation of children's rights, (2) the extent to which Hungarian law is familiar with and knowledgeable about children's rights, and (3) to explore opportunities for the rights and the legal implementation of children, who cannot reside with their families. The program examined several areas where rights of children with disabilities had been violated. For example, it scrutinised the status of adoption, problems in education and the world of children's homes. Additionally, in 2009 the Civil Rights Ombudsman launched a separate project entitled *"Different With Dignity"* to study the extent to which the rights of persons with disabilities were asserted. The goal of the program *"was to gauge and spotlight irregularities vis-à-vis the rights of persons with disabilities, and, not least, to help persons with disabilities assert their rights."* This program supported numerous investigations of violations to the rights of children with disabilities.

The goal of the Stockholm strategy: "Building a Europe for and with Children 2009–2011" is, among others: to support member states in implementing international norms applicable to children's rights; to implement into all Council of Europe policies and actions a child rights perspective; and to support a national approach within member states. The child rights perspective must be holistic and all-encompassing; consequently, it must embrace the right of the child to be cared for, to be protected, to participate, and it must consider gender perspectives. The goal is to guarantee that every child has an adequate standard of living, social protection, the best possible health care and education, protection from violence, abuse and exploitation, and the right to participate in decision making. A prioritised strategy of the program is to promote children's access to justice, the elimination of violence against children, and it wishes to set extraordinary focus on children particularly at risk, including children with disabilities.[3]

Nonetheless, despite some positive actions, we believe that the condition of children with disabilities – being multiply disadvantaged – has not garnered due acknowledgement at the state level. This condition results in grave disadvantages which extend to almost all aspects of life. To overcome these issues, a strategy anchored in an adequately funded stakeholder group from the government and civil society is required.

> Children with disabilities frequently suffer infringement of their rights in Hungary. In conjunction with our report, we wish primarily to underscore the following:
>
> - Lack of early intervention;
> - Exclusion from the educational system;
> - Children who cannot live with their families and are raised in live-in institutions and student homes catering to a large number of children;
> - Access to justice.

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[2] "OBH Gyermekjogi project", szerk. Dr. Kovács Orsolya Ágota [OBH Children's Rights Project, ed. Dr. Ágota Orsolya Kovács], in: OBH Projektfüzetek 2009/3 [OBH Project Booklets, 2009/3]. (Only in Hungarian)

[3] Az Építsük Európát a gyermekekért a gyermekekkel 2009–2011 „Stockholmi stratégia" [The Stockholm strategy: Building a Europe for and with Children 2009–2011] Source: Ministry of Social Affairs and Labour. More information on the program in English at http://www.coe.int/t/transversalprojects/children/first_announcement/Connection_en.asp

LACK OF EARLY INTERVENTION

Access to conditions conducive to physical, social, mental, verbal, and personal development of children with disabilities is not always ensured in early childhood. A 2009 study examined the institutional system of early intervention in Hungary.[4]

The most important findings of empirical research were the following:

- In 2007, the number of children in need of early development can be estimated at 9,000–10,000, of which the number of children who likely actually receive such services is approximately 5,000–6,000. Simply put, nearly 30 percent of children are not provided for.
- Regional inequalities are striking in the system of social services. For example, whereas Budapest boasts half of the country's early childhood development institutions, its numbers are below average in the region of Northern Hungary.
- Both perinatal centers and expert committees suffer from a shortage of expert professionals. Institutions are overburdened and there is a long waiting time for expert committees. As a result, children with special educational needs do not obtain timely access to appropriate services.
- The institutional system for early intervention lacks equilibrium. There is considerable role piling and there is a great deal of both vertical and horizontal overlap among services. In Budapest the paths to receive services for patients are undecipherable.

In Hungary, autistic children receive a diagnosis 2–3 years later than their counterparts in the EU.[5]

EXCLUSION FROM THE EDUCATIONAL SYSTEM

Until recently, school age of children who have grave or multiple disabilities were shut out of the educational system and were not subject to mandatory school attendance. They were unofficially categorized as "unteachable." *As of June 15 2006, the category of "unteachable" student has been abolished. However, the Education Act still stipulates only 20 hours a week of formal school tuition*[6] for children formerly deemed "unteachable." The law continues to remain discriminatory on several points. First, the content of children's mandatory formal schooling has not been unequivocally defined. Second, severely disabled children are not allowed to participate in child development activities after the regular school classes.

Currently, out of the 2,800–3,000 children with severe and multiple disabilities, only 150 receive school-based child development services.

As of 2010, the establishment of schools for child development will be mandatory in nursing-care and rehabilitation institutions. This practice is concerning because it offers long term support to large live-in institutions and it will lead to increased social exclusion for this group.

[4] Source: Public Foundation for the Equal Opportunities of Persons with Disabilities [Fogyatékos Személyek Esélyegyenlőségéért Közalapítvány, FSZK]

[5] Autizmus – Tény – Képek [Autsim – Fact – Pictures]. Hungarian Autistic Society and Foundation for Researching the Present [Autisták Országos Szövetsége és Jelenkutató Alapítvány], Budapest, 2009.

[6] Act No. LXXIX of 1993 on Public Education. [1993. LXXIX. törvény „A közoktatásról"] http://www.okm.gov.hu/letolt/english/act_lxxxix_1993_091103.pdf

CHILDREN WHO CANNOT LIVE WITH THEIR FAMILIES AND ARE RAISED IN LARGE LIVE-IN INSTITUTIONS AND STUDENT HOMES

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.

According to a 2002 **UNICEF** report, 317,000 children with disabilities lived in large institutions in the Eastern European region. In 2004, approximately 2,000 children lived in such institutions in Hungary.[7] A **Hand in Hand Foundation** [Kézenfogva Alapítvány] survey revealed that inhabitants of these populous live-in institutions arrived there at the average age of 12, which is still their childhood.[8]

Hungary's **National Disability Program** [Országos Fogyatékosügyi Program, OFP] emphasises that efforts must be made to integrate crèche, kindergarten and elementary school education. This would avoid placing children with disabilities – who are under ten years old – into student homes due to the lack of adequate services where they reside.

Additionally, the OFP has taken the initiative to establish the legislative, professional and funding groundwork to ensure children with disabilities are not forced to be placed in child protection services solely on account of their disability. The initiative also protects children with disabilities who are already being educated in children's homes (which are not integrated – let's put it also into the Hung. Version for better understating) by requiring them to be transferred to integrated children's homes.

The anti-discrimination signal system of the **Hand in Hand Foundation's** "Stand up for Yourself!" Program has encountered this problem on multiple occasions,[9] a more detailed elaboration of which will follow below in Article 24 in conjunction with educational rights.

The Ombudsman emphasises the following in conjunction with the presentation of the children's rights project.

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[7] Source: Hungarian Central Statistical Office (HCSO) (Központi Statisztikai Hivatal, KSH)

[8] "Stratégiai javaslat a súlyosan halmozottan fogyatékos gyermekek közoktatási befogadásához [Strategic Proposal for Including Severely and Multiply Disabled Children in Public Education]" Kézenfogva Alapítvány [Hand in Hand Foundation] (Manuscript in Hungarian)

[9] Esetjogi tanulmánykötet [Anthology of Case Law Studies], Kézenfogva Alapítvány [Hand in Hand Foundation], Budapest, 2009.

> Elementary schools, students homes and childrens' homes provide teaching and education for children with mild and moderately serious disabilities. In fulfilling their responsibilities they attend to both children living in a family setting as well as children cared for by child protection services. Replacement of these institutions has – obviously on account of the greater cost involved – progressed at a slower pace than that of institutions caring for healthy children. Petitions with respect to these types of institutions suggest that *children with disabilities, who are therefore more vulnerable,* are physically, and/or sexually abused. Although *sexual abuse has not been corroborated in a single instance, a few instances of physical abuse have, however been substantiated.* We have visited student homes that have a high standard of professionalism and where the treatment of children is exemplary. However, they were compelled to crowd children into dormitories in large numbers, sometimes 20 beds to a room. It is hard to create an environment of homelike intimacy amid such conditions. Child protection legislation stipulates remedial care must be provided for children age 12 years and older (in exceptional cases 10 years old) who are manifesting severe psychological or dissocial symptoms, or for those grappling with the usage of psychoactive substances. *In the course of remedial care, the child must be provided with health care and therapy needed to correct his/her personality in a manner appropriate to his/her condition and with due protection of the safety of other children.* A child placed in a remedial children's home or a remedial group within a children's home must – with due regard for his/her condition – be provided enhanced protection.
>
> Before Hungary's **Child Protection Act** (Gytv.) entered into force, placement and education of special needs children was – besides children's homes maintained by the Ministry (Social) – available only in a few children's homes primarily in the capital city of Budapest. Even several years after the Gyvt. entered into force, the distribution of remedial children's homes, remedial groups within children's homes, and remedial group homes for special needs children remains rather uneven nationwide. The need for this type of care is on the rise, with a growing number of children age 12 and older who are entering remedial child protection services. The educational process cannot be effective without training and continued education preparing professionals who are directly serving these children. Without proper training the kindergarten teacher-turned-educator or the cook-turned-childminder are unable to manage the problems of adolescent children in care who may already have been in a correctional facility or juvenile prison. It has been our experience that employees are afraid to work in a remedial group of special needs children. Occasionally, health care is not provided to these children because there is no available psychiatrist within reasonable reach. *The child's constitutional right to protection and care, and to the highest level of physical and psychological health is infringed,* if a child cannot receive remedial care because in the county of his/her residence there are no places or the number of places is insufficient, or the conditions, the staff and the equipment of the available institution is unsuitable for achieving the educational goal.

Congruent with the findings reported by the Ombudsman, the 2005 shadow report submitted by the **European Roma Rights Centre** (ERRC) to the Committee on the Rights of the Child, expresses concern over the large number of children with disabilities in the child protection and educational system. The report highlights the fact that disabled children in the state-run child protection system do not receive proper care. Further, the report emphasises the reducing of available care because stringent regulations governing remedial children's homes have led to numerous local governments eliminating places reserved for children with disabilities.[10]

In its Concluding Observations on Hungary,[11] the **Committee on the Rights of the Child** expressed its concern *"over the high rate of children placed in alternative care, often for financial reasons, many of them for a long period of time, including very young children and children with disabilities. It notes with regret that about half of these*

[10] The Report is available in English at: http://www.errc.org/cms/upload/media/02/8F/m0000028F.pdf

[11] In English (angolul): http://www.szmm.gov.hu/main.php?folderID=16268&articleID=30704&ctag=articlelist&iid=1

children are not in foster families, but institutions." An additional cause for concern is "the extremely low quality of many institutions and by the fact that children previously in state care subsequently are overrepresented among the homeless." With respect to children with disabilities the Committee expressed concern *"about the lack of an inclusion policy and integration mechanisms and inadequate assistance for children with disabilities."* (A more elaborate discussion will follow below in conjunction with educational rights, in the discussion on Article 24.)

In regard to this Article we deem it important to draw the Committee's attention to the tendency based on which an ever growing number of Romani children in child protection care are deemed mentally disabled. *"some of them presumably on the basis of erroneous diagnosis. Deeming a child mentally disabled based on erroneous diagnosis portends extremely grave consequences to his/her eventual life"*[12] – maintains the ERRC in its report. To substantiate the above assertions the data published in the ERRC shadow report reveals that "of those answering education-related questions among Romani children living in children's homes sought out by ERRC, 75.6 percent were deemed students with remedial educational needs. The equivalent ratio among children responding to education-related questions was 50 percent for half-Romani and 44.4 percent for non-Romani children, and 11.1 percent for children who were uncertain about their ethnicity."

ACCESS TO JUSTICE

Hungary significantly lags behind the Convention on the Rights of the Child's provisions, primarily with respect to the provisions of the Convention on the Rights of Persons with Disabilities. Although Act III and IV of 1952 Code of Civil Procedure and Act IV of 1952 on Marriage, Family and Guardianship contain some provisions, that give minor children a hearing in court procedure, *these acts of law continue to grant great leeway to the courts and guardianship authorities. For instance, these authorities have the right to deliberate whether or not to grant a hearing to minors under a certain age. Further, there is no legal guarantee that children with disabilities receive the necessary assistance set forth in the Convention to express their views and to formulate their interests.*

It is extremely important that in every case the following occurs: (1) the court and guardianship authority deliberate whether a child with disabilities is competent for a hearing, (2) that they provide detailed justification in the event that they do not find him/her competent and (3) the requirement that necessary assistance for the child to express his/her views be mandatory and proactively met.

In Hungary, there are significant deficiencies in the procedure of administrating justice with respect to children with disabilities in light of the fact that – just as in all other areas – the general principles of the Convention on the Rights of the Child stipulate a specific, normative and ethical approach to caring for children and for protecting their rights:

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[12] **12.** European Roma Rights Center: „Dis-Interest of the Child: Romani Children in the Hungarian Child Protection System. Budapest, December, 2007. www.errc.org/cikk.php?cikk=2930

- Freedom from discrimination contributes to avoiding marginalisation, stigmatisation, injury, or punishment of any child on the grounds of birth, gender, economic status, race, disability or any other reason.
- The best interests of the child signify a primary criteria with respect to handling any legislative, public administrative or court decision; in determining the mode of conducting procedures; and to providing assistance in handling clashes of interest with respect to children.
- The right of all children to life, survival and development must be unequivocally declared in legislative measures and it must become a top-priority criterion in all policy affecting children.
- The participation of children and respect for the child's views is a requirement in all decisions affecting the child and it signifies a necessary consequence of regarding the child as a legal subject.

NGO INITIATIVES TO ASSERT THE RIGHTS OF CHILDREN

It must be made possible for children with disabilities to live together with their families in an accessible environment. **The Hungarian Autistic Society** has for years been providing assistance to families in communications accessibility by advising parents raising autistic children and educators, within the framework of a special service, on picture communication and schedule cards.[13]

Acquainting children with the UN Convention is indispensible for raising their legal awareness. On September 17–18th 2008, the **Hungarian Association of the Deaf and Hard of Hearing** [Siketek és Nagyothallók Országos Szövetsége, SINOSZ] published "I have the right..." in Hungarian on the occasion of the *Invisible Culture Festival.* The publication is the child and youth-friendly version of the UN Convention on Persons with Disabilities. The goal of the book is to inform children about the applicability of the Convention to their life. Auxiliary materials made to accompany the book such as "quizidea" and molinos, are presented to youth in a playful manner at unconventional sign language classes at Sziget Festivals, Road Shows and other – hearing world – events in Hungary.

RECOMMENDATIONS

- The state should provide appropriate 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. The Committee furthermore suggests that institutionalization be used only as a measure of last resort, taking into account the best interests of the child. In this regard the State party 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."[14]

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[13] http://esoember.hu/index.php?option=com_content&task=view&id=957&Itemid=89

[14] Concluding Observations on Hungary of the Committee on the Rights of the Child. In English (angolul): http://www.szmm.gov.hu/main.php?folderID=16268&articleID=30704&ctag=articlelist&iid=1

- The participation of the child with disabilities in decision-making affecting him/her and respecting the child's views in all decisions affecting him/her should be mandated in procedural law and family law regulation. Furthermore, legislative guarantees should be established so that the child, when necessary, receives requisite assistance to express his/her view;
- The perspectives and special needs of the child with disabilities should be acknowledged in state policies and legislative mechanisms as those of a multiply disadvantaged group.

SEGMENT OF THE REPORT RELEVANT TO SPECIFIC OBLIGATIONS

Statistics and data collection

ARTICLE 31

1. *States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:*
a) *Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;*
b) *Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.*
2. *The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.*
3. *States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.*

Hungary's Act XLVI of 1993 on Statistics [A statisztikáról szóló 1993. évi XLVI. törvény][1] provides that the Hungarian Central Statistical Office (HCSO) is responsible for conducting a decennial population census. The most recent population census was conducted in 2001, in compliance with the 1999 Census Act (Act CVIII of 1999, 1999. évi CVIII. Törvény, Nszt.), during which data collection relating to health status also included a thorough survey of persons with disabilities. In the view of the Hungarian Association of the Deaf and Hard of Hearing [Siketek és Nagyothallók Országos Szövetsége, SINOSZ], however, "data relating to deaf and hard of hearing persons – should be handled with reservations, precisely on account of their special communications needs."[2]

The Mental Disability Advocacy Center (MDAC) and Hungarian Association for Persons with Intellectual Disabilities (ÉFOÉSZ) **addressed a letter to the President of the Republic of Hungary**[3] concerning legislation on the 2011 census, passed on 5 October 2009 (bill number T/10105). In their letter the two organizations asked the president not to sign the bill, since provision authorizing **disability data collection** was left out. These data are, however, indispensable for compliance with States Parties's responsibilities set forth under the UN Convention on the Rights of Persons with Disabilities, the letter said. The two organizations also expressed their concern that in Hungarian legislation the concept of disability does not include persons with psycho-social disability and thus this group would be left out the data collection of the 2011 population census as well.

On 21 October 2009, prior to the deadline designated for the promulgation of the law, the **President of the Republic of Hungary László Sólyom, remanded the bill to the Hungarian Parliament for reconsideration,** because he disagreed with point *a)* of Article 2 (1).[4] In his justification he expounded that the data sets specified under the Act on the 2011 Population Census differed on several points from those set forth under Act CVIII of 1999. For instance, there are closed data sets that are missing from the Act on the Population Census, including data relating to **health status (including disability),** as well as religion and fertility. Furthermore,

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[1] http://portal.ksh.hu/portal/page?_pageid=38,123598&_dad=portal&_schema=PORTAL

[2] Dr. Ádám Kósa and Dr. László Gábor Lovászy, Ph.D. (2008) A fogyatékossággal élő 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, p. 22.

[3] Gábor Gombos and Piroska Gyene: Levél a Köztársasági Elnökhöz [Letter to the President of the Republic], 7 October 2009

[4] László Sólyom: Levél Dr. Katona Béla elnök úr részére [Letter to House Speaker Dr Béla Katona], Országgyűlés [Hungarian Parliament], 21 October 2009. II-1/03986-3/2009

general data on nationality are not specified among the data to be collected, only data relating to national or ethnic minority status.

Several DPOs protested against the decision's health status data set. They recommended that these data be collected after the census primarily in representative surveys using other, more exact methods. As the bill's justification, and the president's reasoning also highlighted, complete coverage is the essence of population censuses. Surveying only a certain proportion of the population would not ensure local settlement specific data or, the quite frequently utilized sector data. As a result information underpinning area development projects and facilitating local decision making would be lacking.

Regarding health and disability data, the president, additionally pointed out that the bill's justification (Justification of Act CXXXIX of 2009 on the 2011 population census) likewise argued – in support of collecting national and ethnic minority data – that, among others, this was necessary for compliance with the prohibition of discrimination set forth under Article 70/A of the Constitution of the Republic of Hungary, and the mandate of equal opportunity.[5]

On 3 November 2009, following the president's decision, Member of the European Parliament Dr. Ádám Kósa issued an announcement calling on representatives of Hungary's political parties to amend bill number T/10105 in order to include authorization to collect disability data.[6] "If these data are not available to us, we ourselves will stifle the advancement of the disability cause in Hungary!" – wrote the MEP.

> The Hungarian Parliament adopted the proposals for disability data collection. It incorporated a separate provision relating to the disability data set into the new statutory regulation under **Act CXXXIX of 2009 on the 2011 Population Census** [2009. évi CXXXIX. törvény a 2011. évi népszámlálásról],[7] stipulating that response was voluntary. (Article 3 [2]). Under Article 7 (1) of the Act, the Hungarian Government set forth that establishing a data collection program in collaboration with disability advocacy organisations and other NGOs that would result in *"reliable, survey-based collection of disability data."*

The National Disability Council's (OFT) expert group is currently in consultations with Hungary's Central Statistical Office (HCSO) – the agency in charge of implementing the population census – regarding the questions on the questionnaire pertaining to disability data. The HCSO has raised financial concerns in conjunction with this on the grounds that expanding the questionnaire in this manner will, in its view, generate a substantial cost increase. A further difference of opinion between NGOs and the KSH also arose over the choice of questions. In the HCSO's view, only adopting the earlier national census questions relating to disability data on the new questionnaire can produce a suitable basis for comparison of results. At the same time NGOs are concerned at the HCSO stance and therefore reject it, since the wording and methodology of questions on prior questionnaires are contrary to definitions, fundamental principles and obligations set forth in articles under the Convention on the Rights of Persons with Disabilities.

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5. Article 70/A. (1), The Republic of Hungary shall ensure the human rights and civil rights for all persons on its territory without any kind of discrimination, such as on the basis of race, color, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever.

6. Hungarian News Agency (MTI) communique: A népszámlálás kockázatairól [On the Risks of the Population Census]

7. www.szmm.gov.hu/download.?ctag=download&docID=21675 (only in Hungarian)

Act LXIII of 1992 on the Protection of Personal Data and Public Access to Data of Public Interest [A személyes adatok védelméről és a közérdekű adatok nyilvánosságáról szóló 1992. évi LXIII. törvény] provides for the protection of data collected under the census. It does so by recording special data within the domain of personal data, such as health status data, among others, and stipulates specific safeguards for the collection and use of special data. Act Regarding HCSO's statistical data collection, XLVI of 1993 on Statistics provides that "*data referring to health condition*" may only be collected "*in a manner unsuitable for the establishment of personal identity, furthermore on the basis of a voluntary data supply by the natural person concerned or if so provided by the law.*"

Legal practice concerning the protection of health data will be discussed further in Article 22.

Although the analysis of the population census to be conducted in 2011 published on the HCSO Web site[8] 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. Partly to cut costs, the 2011 census introduces methodological innovations. A case in point is that planned population census methods include online questionnaires, furthermore, professional market researchers are engaged for the census worker network. It is clear from the response to the Mental Disability Advocacy Center's (MDAC) letter that the HCSO, for the time being, does not seriously deal with the issue of additional tasks arising from disability data collection that would actually guarantee implementation of census activity in compliance with the Convention's spirit. Thus, it can only be hoped that the priorities of economizing will not prove injurious to the data collection so important from the perspective of disability affairs in Hungary.

RECOMMENDATIONS

Owing to the circumstances mentioned above the authors of this report propose that Hungary's National Disability Council conduct substantive negotiations with Hungary's Central Statistical Office (HCSO) in order that:

- The program to foster appropriate collection of disability data should be discussed with disability advocacy organizations and other NGOs; the program should be adopted by competent bodies by the deadline set forth in legislation.
- Full participation of persons with disabilities should be guaranteed in the process of data collection and research;
- 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.

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

RESEARCH 2007–2010

EQUAL OPPORTUNITY

Hand in Hand Foundation, The Hungarian Autistic Society, Symbiosis Foundation 2009

Sociological study of „Ne hagyd magad/Don't let yourself!" **Disability anti-discrimination program** in urban local governments and multipurpose small region associations

Dr. Adrienn Gazsi, Dr. Szilvia Halmos, Dr. András Kristóf Kádár, Dr. Ágnes Molnár: *Az értelmi fogyatékos, autista és halmozottan fogyatékos emberek számára működtetett Ne hagyd magad! antidiszkriminációs jelzőrendszer tapasztalatai.* [Experiences of the „Ne hagyd magad/Don't let yourself!" Anti-Discrimination Signaling System Operated for Persons with Intellectual Disability, Persons with Multiple Disabilities and Persons with Autism], Hand in Hand Foundation, Budapest, 2009.

Dr. Szilvia Halmos, Dr. Adrienn Gazsi, Case Study Booklet: *Esetjogi tanulmányfüzet: Az értelmi fogyatékos, halmozottan fogyatékos, és autuista emberek számára működtetett antidiszkriminációs jelzőrendszer tapastalatairól.* [Experiences of the Anti-Discrimination Signaling System Operated for Persons with Intellectual Disability, Persons with Multiple Disabilities and Persons with Autism], Hand in Hand Foundation, Budapest, 2008.

The Hungarian Autistic Society and the Foundation for Contemporary Research, 2009

The publication entitled *Autizmus – Tény – Képek* [Autism – Fact – Pictures] contains the flash report of the National Autism Research 2008–2009's surveys: researchers conducting the study sought answers to the questions of how big, what age, what traits characterize (diagnosis received by) the **autistic population** in Hungary; they also questioned hundreds of families raising children/adults with autism about their everyday problems. The research was funded by Public Foundation for the Equal Opportunities of Persons with Disabilities (FSZK) and Ministry of Social Affairs and Labour (SZMM).

Gábor Petri, Réka Vályi (eds.), *Autizmus – Tény – Képek* [Autism – Fact – Pictures], Autisták Országos Szövetsége, Jelenkutató Alapítvány [The Hungarian Autistic Society, Foundation for Contemporary Research], Budapest, 2009.

EDUCATION – Students with Disabilities in higher education

Institute of Sociology of the Hungarian Academy of Sciences 2009–2010

Opportunities and possibilities for the social integration of young adults with disabilities in contemporary Hungary. The goal of the planned research study is to investigate **students with disabilities** in higher education, and, further, the role undertaken by higher educational institutions in teaching and training the studied group. The research study is funded by the National Office for Research and Technology (NKTH)[9]

Kurt Lewin Foundation (commissioned by the Office of the Commissioner for Educational Rights) 2005

A quantitative survey concentrating on students with disabilities at Hungarian higher educational institutions. The survey's goal is to collect information to find out whether or not higher educational institutions comply with statutory provision stipulating equal opportunity to discover what factors impede/assist students with disabilities at universities and colleges in pursuing their studies; and to learn what requirements and contents could be justifiably added to current legislative regulation. The survey outcomes would also facilitate the crafting of governmental strategy for boosting equal opportunity.

Ministry for Education 2004

Youth with disabilities in higher education: The Ministry for Education's survey shows that currently only approximately 400 students are pursuing studies in higher educational institutions. Youth with disabilities have one-thousandth the chance of non-disabled youth for participating in higher education. This despite the fact that experts unanimously agree that providing educational opportunities is the most effective method of facilitating social integration of youth with disabilities.

Public Foundation for the Equal Opportunities of Persons with Disabilities (FSZK) 2009

Research study entitled *Kérdőíves felmérés –* **főiskolai, egyetemi hallgatók** *körében. Rochester modellprogram – igényfelmérés c. kutatás összefoglaló* [Research Study Summary entitled Questionnaire Survey – Among University and College Students. Rochester Model Program – Needs Assessment], Fogyatékos Személyek Esélyegyenlőségéért Közalapítvány (FSZK) [Public Foundation for the Equal Opportunities of Persons with Disabilities (FSZK)], 2008.

EDUCATION – Language learning

ELTE Department of General and Applied Linguistics 2008

Publications – released or pending – on the language acquisition of deaf persons deriving from research conducted under the aegis of the **"Equal Opportunity in Language Acquisition"** project:

Kontra, E. H., & Csizér, K. (submitted for publication). An investigation into the relationship of foreign language learning motivation and sign language use among Deaf and hard of hearing Hungarians.

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[9] http://www.socio.mta.hu/page.php?item=347

Edit Kontra-Hegybíró (under publication). *Nyelvtanulás kétkézzel. A jelnyelv szerepe a siketek idegennyelv-tanulásában.* [Language Learning with Two Hands. The Role of Sign Language in the Foreign Language Learning of Persons Who Are Deaf]. Budapest: Eötvös Kiadó.

Edit Kontra-Hegybíró (2009). "A siketek joga az angolhoz [The Right of the Deaf to English]". In Tibor Frank and Krisztina Krisztina (eds.), *Anglisztika és amerikanisztika. Magyar kutatások az ezredfordulón.* [English and American Studies at the Turn of the Millennium] (pp. 395–404). Budapest: Tinta Könyvkiadó.

Edit Kontra-Hegybíró, Kata Csizér, & Anna Sáfár (January 2009). "Idegen nyelvek tanulása siketek és nagyothallók körében [The Learning of Foreign Languages by the Deaf and Hard of Hearing]." *Új Pedagógiai Szemle* [New Pedagogical Review], 59 (1), 72–83.

Kata Csizér, Edit Kontra-Hegybíró, & Anna Sáfár (2008). "A siket és nagyothalló feln_ttek idegennyelv-tanulási motivációja [The Foreign Language Learning Motivation of the Deaf and Hard of Hearing]." *Magyar Pedagógia* [Hungarian Pedagogy], 108 (4), 341–357.

Edit Kontra-Hegybíró (2008). "A jelnyelv szerepe a siketek idegennyelv-tanulásában [The Role of Sign Language in the Foreign Language Learning of the Deaf]." In Tamás Gecső and Csilla Sárdi (eds.), *Jel és jelentés* [Sign and Meaning] (177–184). Székesfehérvár: Kodolányi János Főiskola [Kodolányi János University of Applied Sciences]; Budapest: Tinta Könyvkiadó.

Edit Kontra-Hegybíró, Kata Csizér, & Anna Sáfár (2008). "Magyarországi siketek a jelnyelvről: egy kérdőíves kutatás eredményei [The Hungarian Deaf on Sign Language: The Results of a Questionnaire Survey]." *Alkalmazott Nyelvtudomány* [Applied Linguistics], 8 (1–2), 5–22.

Kormos, J., & Kontra, E. H. (eds.) (2008). *Language learners with special needs: A European perspective.* Clevedon: Multilingual Matters.

EDUCATION – Bilingual education for deaf children

Public Foundation for the Equal Opportunities of Persons with Disabilities (FSZK) 2009

The results of the study entitled „**Siket gyermekek kétnyelvű oktatásának** lehetőségei és korlátai [Opportunities for and Barriers to **Bilingual Education for Deaf Children**]." Concluding study.

The research study was funded by Hungary's Ministry for Social Affairs and Labour. Summary on the **education of deaf children** based on international specialist literature sources.

Klára Marton (1999). **Beszédükben súlyosan akadályozott gyermekek** iskolai oktatásának megoldatlan kérdései [Unresolved Issues of the Education in School of **Children with Severe Speech Disability**]. Presentation of the outcome of a questionnaire survey

SIGN LANGUAGE

Public Foundation for the Equal Opportunities of Persons with Disabilities (FSZK) 2009

A **magyar jelnyelv** regionális változatainak kvantitatív összehasonlító vizsgálata [The Quantitative Comparative Study of the Regional Variants of **Hungarian Sign Language**]. Compiled by: Edina Vándorffy-Lancz, under the aegis of the Collecting Regional Sign Changes and their Comparative Analysis program.

Mária Helga Szabó (2007). "**A Magyar jelnyelv szublexikális szintjének leírása [Description of sublexical level of Hungarian Sign Language]** Philosophiae Doctores (series) Budapest: Akadémiai Kiadó, p. 239

Csilla Bartha (2008). "**Nyelv, identitás és kisebbségek** – A nemzeti identitás fogalmának értelmezései egy országos kutatás tükrében [**Language, Identity and Minorities** – Interpretations of the Concept of National Identity in Light of a National Research Study]."

Helga Hattyár (2009). Developed, in conjunction with the Hungarian Language major, a 120-credit **Hungarian sign language accreditation material,** and the accreditation document required for establishing the Hungarian sign language specialized teacher model – both under the aegis of Social Renewal Operative Programme's (TÁMOP) TÁMOP 5.4.5 "Establishing the Professional Background to Removing the Barriers to Physical and Info-Communications Accessibility" project.

Helga Hattyár (2007–2008). "**A Magyarországi Siketek nyelvelsajátításának és nyelvhasználatának szociolingvisztikai vizsgálata [The Socio-Linguistic Study of the Language Acquisition and Language Use of the Deaf in Hungary]**". ELTE BTK Doktori disszertáció [Doctoral Dissertation Lóránd Eötvös University Faculty of Humanities, p. 303

Helga Hattyár (2009.) "**A sztereotípiák, előítéletek és attitűdök hatása a siketek nyelvelsajátítására [The Impact of Stereotypes, Prejudices and Attitudes on the Language Acquisition of the deaf].**" In: Anna Borbély; Ildikó Van_on-Kremmer; Helga Hattyár (eds.) Nyelvideológiák, attitűdök és sztereotípiák [Language Ideologies, Attitudes and Stereotypes] (15th Living Language Conference Párkány (Slovakia), 6 September 2008).

ACCESSIBILITY/REMOVING BARRIERS TO ACCESSIBILITY

Hungarian Road Association 2008

Commissioned by Hungary's National Development Agency Transport Operational Program (TOP) Management Authority (NFÜ 617/2008) Planning auxiliary material (study) in the domain of complex removal of barriers to accessibility in transport infrastructure.

Public Foundation for the Equal Opportunities of People with Disabilities 2007

Establishing the professional underpinnings for the removal of barriers to physical and info-communications accessibility. Preliminary feasibility study.

Public Foundation for the Equal Opportunities of Persons with Disabilities (FSZK) 2009

Aid for establishing accessibility to public services on an equal basis. Editor: András Pandula.

INDEPENDENT LIVING

Ministry of Social Affairs and Labour Department for Disability Affairs and Rehabilitation 2009 Together with the GKI Economic Research Co. and the Hand in Hand Foundation

Studies and presentation on the necessity of replacing large-scale residential institutions

Lóránd Eötvös University Faculty of Social Sciences and the Soteria Foundation, 2009–2010

The study entitled **„One Step Forward, Two Backwards…"** summarizes the first findings of the research study underway since July 2009. On the one hand it investigates the transparency of the utilization in Hungary of European Union funds earmarked for **the phasing out of large-scale institutions,** and, on the other, uncovers, via practical study of a specific area's concrete details, the fulfillment of strategic objectives set forth under European Union guidelines and Hungary's development plans.

Zsolt Bugarszki, Orsolya Eszik, Ágnes Soltész, István Sziklai, *„Egy lépés előre, kettő hátra" A nagy létszámú intézmények kitagolása és az önálló életvitel támogatása Magyarországon, az Európai Unió strukturális alapjainak felhasználásával.* ["One Step Forward, Two Backwards" Phasing Out Large-Scale Institutions and Supporting Independent Living in Hungary, Utilizing the European Union's Structural Funds]. Budapest, 2009–2010.

Commissioned by the Hand in Hand Foundation, conducted by the RUBEUS Association 2009.

Singing study of **young adults with disabilities** with a background of care under child protection services – Where does the road lead from child protection services? Research concluding study.

LEGAL COMPETENCE

Mental Disability Advocacy Center (MDAC) 2007

Guardianship and Human Rights in Hungary – Analysis of Law, Policy and Practice, Mental Disability Advocacy Center (MDAC), Budapest, 2007.[10]

HEALTH – The Rights of psychiatric patients

Mental Health Interest Forum (PÉF) 2007 Human rights in special children's homes.

Mental Health Interest Forum (PÉF) 2008 PÉF analyis – follow up study based on the 2001 study entitled „Ellátottak Emberi Jogai a Pszichiátriai betegotthonokban [The Human Rights of Patients in Psychiatric Care Homes].

Mental Health Interest Forum (PÉF), Health Insurance Supervisory Authority 2009 The status of patients' rights in hospital care.

REHABILITATION

Géza Bálint and Lajos Kullman (2009). "**Adalékok a komplex rehabilitáció magyarországi helyzetéhez [On the Status in Hungary of Complex Rehabilitation]**." *Népegészségügy* [Public Health], 2009/4

EMPLOYMENT

Institute of Sociology of the Hungarian Academy of Sciences

Conference entitled *Disability and Contemporary Hungarian Society* (2008).
Round table discussion between persons with disabilities and employers

Institute of Sociology of the Hungarian Academy of Sciences
Conference entitled *The Current State of Disability Affairs* (2009).

COLLECTING GENERAL STUDIES

The mission of a disAbilityknowledge.org is to support the development of the open society via promoting the dissemination of relevant disability related knowledge and providing E-Learning Access Point to Disability Studies. The creation, transfer, and dissemination of modern views, values and knowledge

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[10] http://www.mdac.info/documents/Hungary%20report_comprehensive_English.pdf

efficiently support the movements of people with disabilities, the policy making processes and professional development. We believe that relevant knowledge created by the movement of people with disabilities or researchers should be available not just to goals of the academic world, but to everyone. Supported by the Fulbright Commission & Brooklyn College, CUNY .

International cooperation

ARTICLE 32

1. *States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:*

a) *Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;*

b) *Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;*

c) *Facilitating cooperation in research and access to scientific and technical knowledge;*

d) *Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.*

2. *The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.*

Hungary's government is involved in diverse forms of international cooperation. Special mention herein must go to its activities in International Development Cooperation (IDC). Hungary has, since the early 2000s, contributed to international development as a donor country,[1] moving beyond its former aid recipient status. In the wake of EU accession, Hungary pledged to allocate 0.17 percent of its gross national income by 2010, and 0.33 percent thereof by 2015 to Official Development Assistance (ODA), and to support international development aid grants therewith. In contrast, Hungary's actual ODA contribution was 0.08 percent in 2007 and 0.075 percent in 2008 – thus it forseeable that Hungary will not be able to fulfil its pledged obligations and will not be able to meet the expectations of the international donor community in general and those of aid beneficiaries in particular.[2]

Hungary is not a member of OECD DAC, and, in consequence, does not submit detailed statistical data analysis to NGOs monitoring either OECD or ODA funds from which it could be determined whether or not they ensure, with due consideration for the requirements of equal opportunity, that international development programmes are inclusive of and accessible to persons with disabilities. Generally speaking, it may be stated that the monitoring and evaluation of international development and aid programs does not take place, there is no feedback of lessons learned, and neither has the Ministry for Foreign Affairs of Hungary, who is in charge of IDC policy, clarified either the methodology underpinnings or the specific public policy goals thereof over the past decade.[3] No impact studies have been conducted, and neither the department in charge of IDC, nor implementing organizations have investigated the access to said programs of hypothetical beneficiary groups.

The extent to which international development programs are inclusive of and accessible to persons with disabilities cannot be determined.

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[1] „ A magyar nemzetközi fejlesztési együttműködési (NEFE) politika [Hungary's International Development Cooperation (IDC) policy]," Hungary's Foreign Ministry, Budapest, 29 July 2003 http://www.mfa.gov.hu/kum/en/bal/foreign_policy/international_development/

[2] Judit Kiss, „Merre tart a magyar nemzetközi fejlesztéspolitika? [Where does Hungary's International Development Policy tend towards]?" (2nd Report of the HAND Aidwatch WG), Budapest, 2010, p. 7.

[3] Judit Kiss, „A magyar nemzetközi fejlesztéspolitika a számok tükrében [Hungarian international development policy in the light of numbers]," HAND Szövetség [HAND Association] , Budapest, 2007, p. 23.

What is known is that the Ministry for Foreign Affairs of Hungary supports a Hungarian Baptist Aid project involving physically disabled children in Cambodia (HUF 16 million in 2008); has built a playground for physically disabled children in Hanoi (Vietnam, EUR 7,000 in 2008); has renovated a day care center for persons with physical disability in Gauteng province (South Africa, EUR 11,700 in 2008).[4]

HUNGARIAN NGOS IN THE INTERNATIONAL DISABILITY MOVEMENT

In 2003, the **Council of Organizations of Persons with Disabilities** (FESZT) was established in Hungary.[5] It serves as an umbrella organisation of advocacy for people with disabilities in Hungary. The organisation is a member of the European Disability Forum (EDF), participates in the the work of the EDF Board, and, further, one of EDF's vice presidents is a FESZT officer. In 2008, FESZT experts participated in EDF activities with respect to the implementation of the UN Convention on the Rights of Persons with Disabilities, and in May 2008 the Hungarian Association for Persons with Intellectual Disability (ÉFOÉSZ) delivered a presentation on the subject of *Equality Before the Law* at a seminar organised under the aegis of the EDF General Assembly.
Also in 2008, Hungary presented a domestic example on the subject of „mainstreaming disability" at a conference of European ministers responsible for disability affairs organised during the period of Slovenia's EU presidency.

To influence European Union legal regulation affecting the life of persons with disabilities, FESZT has conducted the following lobbying activities:
In 2007, the EDF launched a signature collection campaign to initiate the adoption of an European Union directive with respect to the prohibition of discrimination based on disability. As a result of the campaign, some 1.3 million signatures were collected, of which the Hungarian movement of persons with disabilities collected the third largest number of signatures among European Union member states.

SINOSZ

As of may 2008, the President of the **Hungarian Association of the Deaf and Hard of Hearing** (SINOSZ), Dr. Ádám Kósa is member of the World Federation of the Deaf's (WFD) legal committee, and managing director Dr. Gergely Tapolczai is member of the Board of the European Union of the Deaf (EUD).

In June 2009, SINOSZ president Dr. Ádám Kósa was elected member of the European Parliament, and national board member Dr. László Lovászy currently also works for the EU, which gives him the opportunity to advocate for the interests of fellow deaf persons. at the European level.

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[4] „Beszámoló a magyar nemzetközi fejlesztési együttműködés 2008-ban megvalósított tevékenységéről [Report on the Implemented Activities of Hungarian IDC in 2008],"The Ministry for Foreign Affairs of Hungary, Budapest, 7 March 2009. Március, annexes 7 and 10 http://www.mfa.gov.hu/NR/rdonlyres/09524B2E-76D7-4DCC-ADF6-67D3E1A14FA7/0/InspiredByExperience.pdf

[5] FESZT member organisations: National Federation of Disabled Persons Associations (MEOSZ), Hungarian Association for Persons with Intellectual Disability and their Helpers (ÉFOÉSZ), Hungarian Association of the Deaf and Hard of Hearing (SINOSZ), Hungarian Federation of the Blind and Partially Sighted, the Down Foundation, Hungarian Special Arts Workshop Association.

On 16 December 2009 Dr. Ádám Kósa was elected president of the re-constituted *European Parliament Disability Intergroup in Strasbourg*. In the last parliamentary cycle, the Disability Intergroup held an informal role and legal authority, however, Kósa's (European People's Party) goal is to boost the group's role in the European Parliament. What is special about his election is that this was the first time that a person with disabilities and a novice MEP has been chosen to fill this post. The Disability Intergroup is the sole group in the European Parliament that expressly works towards achieving equal opportunity for persons with disabilities.

To develop its international relations, SINOSZ created a job position to oversee international relations and equal opportunities. Hosted by SINOSZ, the international conferences and events staged – jointly with the World Federation of the Deaf (WFD) and European Union of the Deaf (EUD) – since 2007 on the occasion of the International Day of the Deaf is a fine example of such international cooperation. The main goal of these events is *to make the UN Convention and its articles known to the public domestically and internationally, and to draw attention to whether or not domestic and international policies and programmes make due consideration for the rights of persons with disabilities.* Co-workers and association members with hearing disabilities have worked together – in a volunteer capacity – to plan, implement and evaluate these events.

Programmes 2007–2010

- 7 December 2007 – *A Life of Self-Determination – the Journey from New York to Budapest*, International Conference, the Hungarian Parliament, Budapest (attended by 450 civil society participants from Hungary and around the world).
- 8 December 2007 – a human chain along the Danube river bank, in front of the building of the Hungarian Parliament (with the participation of 5,000 persons with hearing disability from Hungary and around the world).
- 9 December 2007 – Coordinating talks between the SINOSZ board and representatives of organisations advocating internationally for the interests of persons with hearing disability.
- 19–20 September 2008 – „*Invisible Culture*” International Conference and Cultural Festival, Gödör Club, Budapest (attended by 3,500 persons with hearing disability and civil society participants from Hungary and around the world).
- 25 September 2009 – *Human Rights. Yes!* International Conference hosted by the Council of Europe European Youth Centre. The goal of this event was to present the „Human Rights. Yes!" training manual published in July 2009.[6] The event invited activists, human rights advocates, educators, persons with disabilities and decision makers to engage in joint deliberation and cooperation to address the fundamental issue: the majority of people are not aware of their own rights (attended by 300 persons with hearing disability and civil society participants from Hungary and around the world).

In September 2008, SINOSZ published the child and youth-friendly versions (in Hungarian and in English) of the UN Convention, which are being used in Yemen and the United Arab Emirates as well to sensitise youth with disabilities.

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[6] Human Rights Yes! Action and Advocacy on the Rights of Persons with Disabilities. 2009. http://www1.umn.edu/humanrts/edumat/hreduseries/TB6/html/Contents%20of%20"Human%20Rights.%20YES!".h http://www1.umn.edu/humanrts/edumat/hreduseries/TB6/html/Contents%20of%20"Human%20Rights.%20YES!".html

MEOSZ

The officers of Hungary's **National Federation of Disabled Persons' Associations** (MEOSZ) hold important posts in two European organisations. The vice president of Disabled People's International's (DPI) European Section (DPI Europe) is a MEOSZ officer and operates DPI-Europe's Central-Eastern European Centre. NGOs have and will continue to wield an important role in establishing and promoting a human rights approach to disability. In August 2009 MEOSZ staged a European regional conference on topics addressed by the UN Convention.
Another MEOSZ officer is the vice president of the International Federation of Persons with Physical Disability (FIMITIC). Advocating for persons with physical disability internationally, FIMITIC members are, above all, organisations operating in European Union member states. FIMITIC's European office is operated by MEOSZ's Central Hungary regional organisation. Originally, MEOSZ served as an organisation advocating for people suffering disability at work. Eventually, however, it became a European non-profit organisation with a primary focus on employment, the situation of women with disabilities and tourism.

Programmes 2007–2010

In September 2007, MEOSZ delegates attended the DPI World Assembly in Seoul, Korea, where the international community of persons with disabilities celebrated the adoption of the UN Convention. Further, by providing an in-depth presentation of the Convention's individual articles, they prepared attendees for facilitating the ratification process in their respective countries with a deep sense of commitment.

MEOSZ delegates attended FIMITIC's general assembly and conference in September 2007 in Dublin, Ireland, the topic of which was electronic technology in the service of the education, training and employment of persons with disabilities. MEOSZ attendees delivered presentations on training, distance learning and telecommuting in Hungary.

On 20 November 2007 MEOSZ staged a national seminar entitled „*With Us or Against Us? The Role of the Media and Advertising in the Social Inclusion of Persons with Disabilities.*" The seminar was organised, with European Union funding, under the aegis of the international project „Media and Disbility" in 2006–2008.

In 2007–2008 MEOSZ partnered with DPI-Europe to implement the project *Lighthouse I* with European Union funding, then, in 2009, the *Lighthouse II project* with Hungarian funding. The goal of the latter was to bring to light violation, in health institutions, of the rights of women with disabilities, and the drafting of recommendations jointly with experts in the field. MEOSZ published the outcomes of the project in Hungarian in „Women, Disability and Health."

In compliance with Article 30 of the UN Convention, *making tourism services accessible in a manner free of barriers* has also been incorporated into Hungarian government strategy. In September 2008, MEOSZ staged a European conference on the subject in Vác, Hungary, delivered a lecture in November 2008 at a conference in Austria, and also attended discussions in Pécs on making the European Capital of Culture programme series accessible to persons with disabilities. MEOSZ has also compiled, in English and in Hungarian, a compendium of accessible tourism for Budapest. Currently, MEOSZ is working together with a German disability NGO on compiling information on tourism opportunities for 2011 for persons with disabilities, and is also contributing to the training of personal helpers for travellers with disabilities.

The Central-Eastern European Centre, headed by MEOSZ, of DPI-Europe staged the seminar „*Time for Participation – implementation of the UN CRPD*" in Budapest on 29 August 2009. The Office of the High Commissioner for Human Rights was also represented at the event. The seminar was followed by DPI-Europe's General Assembly on 30 August 2009.

ÉFOÉSZ

The **Hungarian Association for Persons with Intellectual Disability and Their Helpers** (ÉFOÉSZ) holds memberships in international organisations advocating for persons with intellectual disability, among them Inclusion International and Inclusion Europe. ÉFOÉSZ is, further, also member of the European Disability Forum (EDF).

In June 2009, ÉFOÉSZ attended Inclusion Europe's General Assembly in Finnland, where it presented to participants changes in regulations governing competence in Hungarian law.

In 2009, Inclusion Europe launched a training seminar series, which ÉFOÉSZ attended on several occasions. The goal of the interactive seminars was to provide assistance to organisations advocating Europe-wide for persons with intellectual disability and their family members in implementing the UN Convention. In July 2009, ÉFOÉSZ presented to attendees the most important innovations in the changes to regulations governing competence in Hungary.

On World Disability Day 3 December 2009, ÉFOÉSZ represented Hungary at an international conference in Portugal, where it presented the most substantive changes in guardianship reform that had commenced with respect to the UN Convention in Hungary.

In 2009, ÉFOÉSZ also came out with an English language publication (The Experiences of the Implementation of Article 12 of the UN Convention on the Rights of Persons with Disabilities in Hungary) for NGOs operating in different parts of the world, in which it summed up its experiences with respect to changes in regulations governing competence, as well as the most important best practices of these new regulations.

In June 2009, with help from Inclusion International, ÉFOÉSZ launched a one-year experimental assisted decision making pilot programme in Tapolca, Hungary, to explore the practical potential for and problems of the functioning of assisted decision making, and to gather experiences with respect to implementation.

Joining forces with several European countries, ÉFOÉSZ participated, in 2008–2009, in the Europen Union-funded Daphne project, the goal of which was to prevent domestic abuse against children and youth with disabilities. In November 2009, ÉFOÉSZ presented the project's experiences in Hungary at its close-out conference in Bologna.

In 2010, ÉFOÉSZ launched a programme, based on networked cooperation, required for taking assisted decision making to the national level, with funding from Norway Grants.

The participation of Hungary's disability organisations in the work of European and international advocacy organisation sis impeded by limited funds available therefor in Hungary. Domestic resources are not available even to cover member fees in European and international organisations.

RECOMMENDATIONS

- Aid effectiveness should be measured and increased, projects should be evaluated before and after the fact, impact studies should be performed, especially with respect to equal opportunity and environmental impact, with the involvement of all concerned;
- The implementation of Hungary's IDC policy should be transparent, there should be accountability with respect to spending IDC funds, disaggregated statistical data should be avialable for achieving efficiency and for measuring impact.

National implementation and monitoring

ARTICLE 33

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

In our interpretation of Article 33 of the CRPD and our proposals for the development of the appropriate mechanisms we make references to a manual prepared by the UN, the OHCHR and the Inter-Parliamentary Union, called *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities.*[1]
It states the following:

At the national level, States parties must appoint one or more focal points within government to handle matters relating to implementation. States parties must also consider establishing or designating a coordinating body within government to facilitate implementation. Similarly, States parties must maintain, strengthen or establish an independent institution, such as a national human rights institution, to promote, protect and monitor the Convention.

Chapter 7 discusses monitoring on a national level in detail. On page 93, the manual states unambiguously:

Indeed, article 33 of the Convention requires States parties to establish specific mechanisms to strengthen implementation and monitoring of the rights of women, men and children with disabilities at the national level. The Convention requires States to:

- *Designate a focal point or* **focal points** *within government for implementation;*
- *Consider establishing or designating a* **coordination mechanism** *within government to facilitate related action in different sectors and at different levels and*
- *Establish an* **independent framework,** *such as a national human rights institution, to promote and monitor implementation of the Convention.*

The Convention stipulates that civil society, particularly persons with disabilities and their representative organizations, should participate fully in all aspects of this monitoring process, just as they are to be involved in the development and implementation of policies, programmes and legislation to implement the Convention.[2]

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[1] From Exclusion to Equality: Realizing the Rights of Persons with Disabilities. Handbook for Parliamentarians No. 14. United Nations Office of the High Commissioner for Human Rights, 2007. www.ohchr.org/Documents/Publications/training14en.pdf

[2] From Exclusion to Equality: Realizing the Rights of Persons with Disabilities, p. 93.

Article 33.3 makes a reference, among other things, to paragraph 3 of Article 4 (General obligations), according to which:

> *In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.*

According to Article 33.3 and Article 4.3, persons with disabilities and their representative organizations must be involved in all three monitoring mechanisms defined in Article 33.

GOVERNMENT MEASURES TAKEN BETWEEN OCTOBER 2007 AND APRIL 2010

It was at the October 2007 meeting of the **National Disability Council** [Országos Fogyatékosügyi Tanács, OFT][3] that the government informed NGOs about its plans with regard to the implementation and monitoring of the Convention. The government's position is that while paragraphs 1 and 2 of Article 33 of the Convention describe specific responsibilities, paragraph 3 merely states that the government should cooperate with NGOs that represent persons with disabilities. The government proposed that the OFT be appointed to coordinate the implementation of the Convention, as the body in Hungary in which represented are all the ministries, the Equal Rights Authority [Egyenlő Bánásmód Hatóság, EBH], and the civil society, i.e. persons with disabilities. The government suggested that first the articles of the Convention and the Hungarian legal system be surveyed, and then in the light of the results an action plan be drawn up, which was to be part of the National Disability Programme [Országos Fogyatékosügyi Program, OFP]. The latter already contained some actions that were to be taken in the field of disability-related issues in Hungary. The frame amount of HUF 1 million was designated for the survey of the Hungarian situation and the preparation of the action plan.

At this meeting, the Hungarian Association for Persons with Intellectual Disability [Értelmi Fogyatékossággal Élők és Segítőik Országos Érdekvédelmi Szövetsége, ÉFOÉSZ] presented a report on the implementation of Article 33,[4] emphasizing that appointing OFT for the task contradicted Article 33.2 of the Convention, and that the body did not even have the organizational arrangements necessary for the task.

Following a long debate, the OFT eventually advised the government[5] to make OFT responsible for the coordination of the national implementation of the Convention – following any necessary further social consultations. It also established the permanent committee called "Committee responsible for the domestic implementation of the UN Convention," instructed it to prepare a comparative

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[3] The minutes of the OFT meeting: http://www.szmm.gov.hu/download.php?ctag=download&docID=15256 (available only in Hungarian)

[4] Dr. Sándor Gurbai, Melinda Kovács: A Fogyatékossággal Élő Személyek Jogairól szóló Egyezmény 33. cikkének elemzése [An analysis of Article 33 of the Convention on the Rights of Persons with Disabilities]. ÉFOÉSZ, October 2007.

[5] Decision 4/2007 (30 October) of the OFT.

[6] Boglárka Benkó, János Fiala: National implementation process of the Convention on the Rights of Persons with Disabilities. Mental Disability Advocacy Center, Budapest, 15 August 2008. http://www2.ohchr.org/english/issues/disability/docs/consultation/Civilsocietyinputs/hungaryMDAC.doc

[7] OFT: http://www.eselyegyenloseg.hu/main.php?folderID=21206

analysis of the CRPD and the Hungarian legal system, and to use it to propose an action plan for the implementation of the Convention.

According to the plans, proposals for the amendment of relevant law are to be submitted to the government in the form of a draft **government decree** on the implementation of the *National Disability Programme*. The government decree would instruct the ministries with responsibilities for, and jurisdiction over, the given areas to implement the necessary changes. On the 29 January 2008 meeting of the ad hoc committee of the OFT, nearly ten disabled persons' organizations (DPOs), the Ministry of Justice and Law Enforcement (IRM), the Ministry of Social Affairs and Labour (SZMM) and the EBH were instructed to review the relevant legislation by 15 April 2008. Four reports were made available by that deadline, to a restricted audience. Since then, no decision has been put forward about the future of the studies or the process of implementation.

According to a report of the Mental Disability Advocacy Centre (MDAC), published on 15 August 2008,[6] with its decision of 30 October 2007, the OFT[7] undertook the responsibility of coordinating the implementation of the Convention. Other than that, no further agreement has been made between government bodies about the coordination of, and responsibility for, implementation.[8] The MDAC expressed concern over the legal status and composition of the OFT as a "national coordination body." The OFT works under the Ministry of Social Affairs and Labour, and its members are delegated by government and disabled persons' organizations.[9] The representatives of those DPOs that are not represented in the OFT are excluded from the consultation on disability policies and from social debate in general.

Unilaterally disregarding the October 2007 decision of OFT, in June 2008 the government's representatives in the Council suggested, with a proposal to amend *Government Decree on the detailed rules of the functioning of the National Disability Council, 67/2001, (30 April)* [Az Országos Fogyatékosügyi Tanács szervezetének és m_ködésének részletes szabályairól szóló 67/2001. (IV. 30.) kormányrendelet], which contained a "hidden" reference to Article 33.2, that the National Disability Council be made responsible for the promotion, protection and monitoring of the implementation of the Convention. The government did accept the motion with its Decree 1065/2008 (14 October).[10]
Due to its legal status and composition, however, the OFT does not meet the criteria of independence and proficiency that are outlined in Article 33.2 of the Convention[11] and the Paris Principles.[12]

On 1 October 2008, thirteen disability NGOs[13] (the Hungarian Disability Caucus, Magyar Fogyatékosügyi Caucus) wrote an open letter to the Prime Minister,[14] urging the government to fulfil its obligations under the Convention.[15] The letter stated that up to the date of signature, no decision had been made about a body whose responsibility would be national monitoring. For this reason, the NGOs proposed that the government initiate the establishment of the office of a disability ombudsman, to fulfil the country's international obligations. The NGOs also pointed out that the institution (institutions) responsible for the monitoring of

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8. Article 33.1 of the Convention: "States Parties… shall designate one or more focal points within government for matters relating to the implementation of the present Convention."

9. On the composition of OFT, see: http://www.eselyegyenloseg.hu/main.php?folderID=21203

10. 1065/2008. (X. 14.) határozat "A fogyatékossággal élő személyek jogairól szóló egyezmény végrehajtását ellenőrző szerv felkéréséről" [Government Decree 1065/2008 [14 October] "On the appointment of a body monitoring the implementation of the Convention on the Rights of Persons with Disabilities"]. www.szmm.gov.hu/openlink.php?linkID=1260 (only in Hungarian)

11. Convention Article 33.1-2. http://www.szmm.gov.hu/main.php?folderID=16485

12. Principles defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris on October 7–9, 1991, and adopted by the United Nations with General Assembly Resolution 48/134 of 1993. http://www2.ohchr.org/english/law/parisprinciples.htm the implementation of the Convention cannot be controlled by the government even indirectly.

Furthermore, the NGOs requested that until the office of the disability ombudsman be established and functional, the responsibilities of promotion, protection and monitoring as described in Article 33 of the Convention be delegated to the Parliamentary Commissioner for Civil Rights (OBH),[16] while the regulations relevant to the functioning of the OBH should explicitly define the ways in which persons with disabilities participate in the monitoring. The NGOs also called upon the government to declare its plans on the monitoring body prior to the upcoming first Conference of States Parties on 3 November 2008.

In his reply dated 14 November 2008, Péter Kiss, the Minister Responsible for the Prime Minister's Office (MEH) stated that when the Convention was ratified, the OFT established a permanent committee dedicated to the UN Convention, with the purpose of ensuring proficient implementation.[17]

The Minister did acknowledge that "the representation of the civil society in the OFT does not yet fully cover all the disability groups included in the Convention," as, for instance, MDAC is not a member of the Council, yet such organizations can help the implementation of the Convention with expert advice. The letter makes a reference to Government Decree 1065/2008, which delegates to the OFT the functions of promotion and protection, as described in Article 33.2 of the Convention. But since the Convention allows for the establishment of several independent mechanisms of monitoring, the Government is open to delegating the monitoring function to the OBH. The government has instructed the OFT to prepare such a decision (i.e. determine the personnel and financial requirements).

SUMMARY

In the light of consultations with civil society, the government's responses to the initiatives of NGOs, and the government's activity since the ratification of the Convention – none 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 body, the National Disability Council.

RECOMMENDATIONS

Focal points (Article 33.1)

The handbook of the UN, the OHCHR and the Inter-Parlamentary Union called *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities* says the following about focal points:

13. The organizations signing the open letter were: Hungarian Autistic Society [Autisták Országos Szövetsége, AOSZ], Hungarian Association of the Deaf and Hard of Hearing [Siketek és Nagyothallók Országos Szövetsége, SINOSZ], Hungarian Federation of the Blind and Partially Sighted [Magyar Vakok és Gyengénlátók Országos Szövetsége, MVGYOSZ], National Federation of Disabled Persons' Associations [Mozgáskorlátozottak Egyesületeinek Országos Szövetsége MEOSZ], Mental Disability Advocacy Centre [Központ a Mentális Sérültek Jogaiért Alapítvány, MDAC], Hungarian Association for Persons with Intellectual Disability [Értelmi Fogyatékossággal Élők és Segítőik Országos Érdekvédelmi Szövetsége, ÉFOÉSZ], Budapest Association of the Physically Disabled [Mozgássérültek Budapesti Egyesülete, MBE], Soteria Foundation [Soteria Alapítvány], Hand in Hand Foundation [Kézenfogva Alapítvány], Down Foundation [Down Alapítvány], Mental Health Interest Forum [Pszichiátriai Érdekvédelmi Fórum, PÉF], Central Hungarian Regional Association of the Blind and Partially Sighted [Vakok és Gyengénlátók Közép-Magyarországi Regionális Egyesülete, VGYKE].

States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention…[18] *Focal points could be a section or a person within a ministry or cluster of ministries, an institution, such as a disability commission, or a particular ministry, such as a ministry for human rights or a ministry for persons with disabilities, or a combination of the three.*

Though the CRPD does not name specific responsibilities with regard to any of the mechanism of monitoring implementation, for the sake of example the following work fields could be defined[19]:

- *Coordinate the activities of various ministries and departments on human rights and disability;*
- *Coordinate activities on human rights and disability at international, national, regional, county and local levels of government;*
- *Revise strategies and policies to ensure that the rights of persons with disabilities are respected;*
- *Draft, revise or amend relevant legislation;*
- *Raise awareness about the Convention and Optional Protocol within the government;*
- *Establish an action plan for implementation of the Convention;*
- *Monitor the implementation of the action plan on human rights and disabilities;*
- *Ensure that persons with disabilities participate in the development of policies and laws that affect them.*

> In our view, it is necessary to designate more than one focal points to improve the efficiency of performance, something that could be carried out by the ministry department primarily responsible for disability issues, the National Equal Opportunities Network [Országos Esélyegyenlőségi Hálózat] and the Equal Rights Authority.

Coordination mechanisms (Article 33.1)

The Manual suggests that the coordination mechanism should have the following characteristics (pp. 94–96):

- Consists of a permanent structure with appropriate institutional arrangements to allow coordination among intergovernmental actors;
- Ensures coordination at the local, regional and national/federal levels;
- Ensures the participation of persons with disabilities, organizations of disabled persons and NGOs by establishing a permanent forum for discussions with civil society.

The Manual notes that *often, existing coordination mechanisms on disability include representatives of various ministries (ministry of labour and social affairs, or ministries of finance, health, housing, education, employment), occasionally include representatives of local and regional authorities, and very often include organizations of persons with disabilities.*

14. The letter was sent to Ferenc Gyurcsány, Prime Minister of the Republic of Hungary; Péter Kiss, Minister Responsible for the Prime Minister's Office; Dr. Kinga Göncz, Minister of Foreign Affairs; Erika Sz_cs, Minister of Social Affairs and Labour; Dr. Tibor Draskovics, Minister of Justice and Law Enforcement. A copy was sent to Dr. Máté Szabó, Parliamentary Commissioner for Civil Rights.

15. Find the letter at http://www.mdac.info/images/page_image/2008-10-01%20ombudsman_level.doc (only in Hungarian)

16. http://www.obh.hu/allam/eng/index.htm

17. Reply letter of Péter Kiss, Minister Responsible for the Prime Minister's Office, to Mr. Oliver Lewis (MDAC), Budapest, 18 November 2008. Ref. no.: I-1/8238/2/2008.

18. Article 33.1.

19. From Exclusion to Equality: Realizing the Rights of Persons with Disabilities, p. 95.

> In our view, the National Disability Council could perform this function. However, we must emphasize again that it cannot be considered an independent mechanism, as it also represents the government.

Independent framework (Article 33.2)

The Manual cautions that *in establishing such a framework, the State is to take into account the "principles relating to the status and functioning of national institutions for the protection and promotion of human rights," as agreed by the United Nations General Assembly in 1993. These principles have become known as the "Paris Principles."*.[20]

20. From Exclusion to Equality: Realizing the Rights of Persons with Disabilities, p. 96.

The Paris Principles stipulate that these institutions should:

- Monitor the implementation of human rights obligations of the State party and report annually (at least);
- Report and make recommendations to the Government;
- Promote harmonization of national law and practice with international human rights standards;
- Encourage ratification of human rights treaties;
- Contribute to reports that States parties are required to submit to the United Nations treaty bodies on the implementation of human rights treaties;
- Cooperate with regional and United Nations human rights bodies as well as with human rights bodies of other States;
- Assist in the formulation of human rights education programmes;
- Raise public awareness about human rights and efforts to combat discrimination.

> To perform this responsibility, we propose that the Office of the Disability Ombudsman be established. However, since such an institution cannot be created overnight, we suggest that a disability section be established within the Office of the Parliamentary Commissioner for Human Rights to perform the above functions. ”

Furthermore, we propose to involve the Human Rights Committee of Parliament in the following functions:

- Monitoring the implementation of the CRPD;
- Promoting the harmonization of national law with the CRPD;
- Reviewing state reports.

OTHERS

Conference of States Parties

ARTICLE 40

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention.
2. The Conference of (the) States Parties shall be convened by the Secretary-General of the United Nations no later than six months after the entry into force of the present Convention. The subsequent meetings shall be convened by the Secretary-General of the United Nations biennially or upon the decision of the Conference of States Parties.

While the Hungarian government was represented at those two Conferences of the States Parties that have been held to date, civil society was not.

At the *first Conference of the States Parties* (31 October – 1 November 2008), Dr. György Könczei, who enjoyed the support of civil society, was elected into the Committee on the Rights of Persons with Disabilities.

At the *second Conference of the States Parties* (2–4 September 2009, New York), Hungary was one of the vice-presidents of the conference (along with Jordan, New Zealand and South Africa). The Hungarian government was represented by Edit Rauh, Secretary of State for Equal Opportunities at the Ministry of Social Affairs and Labour. In her opening speech, she stated: "According to available statistics, there are 577,000 persons with disabilities in Hungary – though experts say their number is in fact far higher."

The Secretary of State outlined the measures that had been taken in Hungary since the ratification of the Convention: in her view the most considerable progress had been made in the regulation of interpretation and education in sign language, and tourism services for persons with disabilities. "*It is our conviction – and now also our experience – that the introduction of the rights of the Convention into national policies is not only a gesture towards persons with disabilities, but also a real investment into society, because what is of benefit for persons with disabilities in the short term, is an advantage for us all in the long run.*"

At the conference, Ambassador Gábor Bródi acted as vice-chair of the roundtable discussion on accessibility and reasonable accommodation.[1]

At its 28 April 2010 meeting, the **National Disability Council** [Országos Fogyatékosügyi Tanács, OFT][2] proposed to the government that Dr. György Könczei, whose mandate has ended, be replaced in the Committee by Gábor Gombos from the Mental Disability Advocacy Centre (MDAC). To give weight to the proposal, the CAUCUS sent an *open letter to the Foreign Ministry and the Ministry of Social Affairs and Labour*, stating that "the Hungarian disabled persons' organizations unanimously support the nomination of Gábor Gombos, as someone whose activity in disability issues is acknowledged both in Hungary and internationally, who is an outstanding activist and advocate of disability rights, and who participated in the preparation of the Convention.".

RECOMMENDATIONS

- Civil society should be consulted before each Conference of the States Parties;
- The government should guarantee for the participation of civil society at the Conferences of the States Parties.

[1] The concept of reasonable accommodation is absent in Hungarian law.

[2] The minutes are available at: http://www.szmm.gov.hu/main.php?folderID=16256 (only in Hungarian)

Accessible format

ARTICLE 49

The text of the present Convention shall be made available in accessible formats.

The official Hungarian translation of the Convention is available at the website of the Ministry of Social Affairs and Labour [Szociális és Munkaügyi Minisztérium, SzMM].[1] The quality of the translation, however, has raised serious concerns.

With regard to **Article 1**, the inaccuracy of the definition of persons with disabilities must be pointed out:

"Fogyatékossággal élő személy minden olyan személy, aki hosszan tartó fizikai, értelmi, szellemi vagy érzékszervi károsodással él, amely számos egyéb akadállyal együtt korlátozhatja az adott személy teljes, hatékony és másokkal egyenlő társadalmi szerepvállalását." **[A person with disability is a person who lives with a long-term physical, mental, intellectual or sensory impairment, which together with several other barriers may hinder their full and effective participation in society on an equal basis with others.]**

The authentic versions, among them the English, provide examples of persons with disabilities (include...). The Hungarian translation (fogyatékossággal élő személy minden olyan személy) gives the false impression that the list is exhaustive, which makes the wording discriminative, and thus contrary to the Purpose of the Convention.

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* also covers persons with mental disorder, which the Hungarian translation fails to indicate.

The translation of **Article 12** is also inaccurate, and contravenes the principle of legal certainty:
"2. A részes államok elismerik, hogy a fogyatékossággal élő személyeket az élet minden területén másokkal azonos alapon megilleti a jog-, illetőleg cselekvőképesség." **[States Parties shall recognize that persons with disabilities enjoy capacity for rights and/or capacity to act on an equal basis with others in all aspects of life.]**

The English *legal capacity* covers both capacity for rights and the capacity to act.. The correct translation should be "jog- és cselekvőképesség" [*capacity for rights and/or capacity to act*]. "Illetőleg", which means and/or, was suggested before the ratification of the Convention, during discussions between NGOs and the government towards an agreement on the translation. It is a wording that is difficult to interpret and hence contravenes the principle of legal certainty.

In **Article 19**, the use of *intézményi* (institutional) is incorrect:
a) *a fogyatékossággal élő személyeknek másokkal azonos alapon lehetőségük van lakó-*

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[1] http://www.szmm.gov.hu/main.php?folderID=16485

helyüknek és annak megválasztására, hogy hol és kivel élnek együtt, és nem kötelezhetőek bizonyos megszabott körülmények között élni;
b) Persons with disabilities have access to a range of in-home, institutional and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

The Hungarian term for the English "residential" would be "bentlakásos". "Intézményi" is not a correct translation.

In **Article 27**, the solution for *reasonable accommodation* is not "észszerű alkalmazkodás" [i.e. adjustment], as it should be, but "észszerű elhelyezés" [i.e. placement or arrangement]:
i) biztosítsák, hogy a munkahelyen észszerű elhelyezés legyen biztosítva a fogyatékossággal élő személyek számára

"Észszerű elhelyezés" not only misinterprets the original but also contravenes the general principles that are closely related to the purpose of the Convention, according to which the absence of reasonable accommodation is a form of discrimination and is consequently prohibited.

The Braille version of the document was prepared by the National Association for the Blind and Visually Impaired [Magyar Vakok és Gyengénlátók Országos Szövetsége]. An easy to read, simple language version is available at the Hungarian Association for Persons with Intellectual Disability [Értelmi Fogyatékossággal Élők és Segítőik Országos Érdekvédelmi Szövetsége],[2] and can be downloaded from the website of the SZMM.[3] A DVD of the sign-language version is available from the Hungarian Association of the Deaf and Hard of Hearing [Siketek és Nagyothallók Országos Szövetsége].[4]

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[2] http://www.efoesz.hu/index.php?m=text&id=18

[3] The hungarian sign-language and easy-to-understand versions can be downloaded from http://www.szmm.gov.hu/main.php?folderID=16485

[4] www.sinosz.hu