



**Written submission of the
Validity Foundation – Mental Disability Advocacy Centre
to the United Nations Human Rights Committee**

**concerning the implementation of Article 25 of the International Covenant
on Civil and Political Rights
with respect to the adoption of the List of issues prior to reporting for**

Hungary

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Introduction

1. The Validity Foundation – Mental Disability Advocacy Centre (*hereinafter: “Validity”*) is an international non-governmental human rights organisation which uses the law to secure equality, inclusion and justice for persons with mental disabilities worldwide. Validity’s vision is a world of equality where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person are fully respected; and where human rights are realised for all persons without discrimination of any form. Validity has participatory status at the Council of Europe, and observer status at ECOSOC.
2. This submission provides information on Hungary’s implementation of Article 25 of the International Covenant on Civil and Political Rights (ICCPR), specifically regarding the right to vote of persons with psychosocial and persons with intellectual disabilities. It does so with reference to Article 29 of the Convention on the Rights of Persons with Disabilities (CRPD) and is supplemented with suggested questions for the Committee’s list of issues prior to reporting for Hungary.

Hungary’s implementation of Article 25 ICCPR

3. Article XXIII paragraph (6) of the Fundamental Law of Hungary states that *“those disenfranchised by a court for (...) limited mental capacity shall not have the right to vote and to be voted for.”*
4. Based on the cited provision in the Fundamental Law of Hungary, Section 13/A of Act XXXVI of 2013 on Electoral Procedure permits the restriction of voting rights for individuals under guardianship:

“(1) Courts shall decide on exclusion from suffrage in decisions ordering placement under guardianship limiting legal capacity to act, decisions ordering placement under guardianship precluding legal capacity to act, and decisions issued in the course of proceedings aimed at reviewing guardianship.
(2) Courts shall exclude persons of legal adult age from suffrage whose capacity to reasoning¹ necessary for exercising suffrage
a) is greatly reduced permanently or recurrently owing to their mental state, unsound mind or pathological addiction; or
b) is permanently and completely lost owing to their mental state or unsound mind.”
5. Thus, under the Hungarian Act on Electoral Procedure, persons with intellectual disabilities and persons with psychosocial disabilities, continue to be exposed to be deprived of the right to vote and stand for election by a court decision establishing a guardianship measure.
6. Furthermore, Section 181 paragraph (1) of the Act XXXVI of 2013 on Electoral Procedure does not say explicitly that persons with all forms of impairment may use the assistance in voting by a person of their own choice. According to Section 181 paragraph (1) of the Act XXXVI of 2013 on Electoral Procedure, *“[v]oters who cannot read or are prevented from voting by a physical handicap or any other cause may use the assistance of a person of their choice – or, for lack of such assistants, the joint assistance of two members of the polling station commission.”*

¹ In Hungarian: “Belátási képesség”.

7. This provision of the Hungarian Act on Electoral Procedure is not in line with the Article 29 (a) iii) of the CRPD, according to which States Parties shall “[e]nsure 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: [...] 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.”
8. In 2012, in its Concluding Observations on Hungary, the United Nations Committee on the Rights of Persons with Disabilities (CRPD Committee) was “very concerned about the provision in the State party’s new Fundamental Law which permits a judge to remove the right to vote from those with ‘limited mental ability’, and that legislation allows for the right to vote of persons with intellectual or psychosocial disabilities to be restricted if the person concerned has been deprived of his or her legal capacity.”² The Committee recommended that “all relevant legislation be reviewed to ensure that all persons with disabilities regardless of their impairment, legal status or place of residence have a right to vote, and that they can participate in political and public life on an equal basis with others.”³
9. In 2013, in the case of *Bujdosó and others v. Hungary*, the CRPD Committee found in relation to the Fundamental Law that “an exclusion of the right to vote on the basis of a perceived, or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the Convention.”⁴ The Committee went on and concluded “that article XXIII, paragraph 6 of the Fundamental Law, which allows courts to deprive persons with intellectual disability of their right to vote and to be elected, is in breach of article 29 of the Convention.”⁵
10. In its 2020 report on the Inquiry concerning Hungary under article 6 of the Optional Protocol to the CRPD, the CRPD Committee called on Hungary to “[r]estore the rights of all persons with disabilities to vote and be elected, including by ensuring that all persons with disabilities are registered in electoral registries and fully participate in elections.”⁶
11. Recognising that deprivation of the right to vote and stand for election in a guardianship procedure specifically concerns persons with intellectual disabilities and persons with psychosocial disabilities, in 2022, the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (“OSCE ODIHR”) found that “[t]hose declared of limited mental capacity may be disenfranchised by an individualized

² UN Committee on the Rights of Persons with Disabilities, ‘[Concluding observations on the initial periodic report of Hungary, adopted by the Committee at its eighth session](#)’, CRPD/C/HUN/CO/1, 22 October 2012, para 45.

³ Ibid., para 46.

⁴ UN Committee on the Rights of Persons with Disabilities, ‘[Zsolt Bujdosó and five others v. Hungary](#)’, CRPD/C/10/D/4/2011, 16 October 2013, para 9.4. In para 9.6, the Committee added that “[h]aving found the assessment of individuals’ capacity to be discriminatory in nature, the Committee holds that this measure cannot be purported to be legitimate. Nor is it proportional to the objective to preserve the integrity of the State party’s political system.”

⁵ Ibid.

⁶ UN Committee on the Rights of Persons with Disabilities, ‘[Report of the Committee on the Inquiry concerning Hungary under article 6 of the Optional Protocol to the Convention](#)’, CRPD/C/HUN/IR/1, 17 September 2020, para 110 (f).

court decision, contrary to international standards”⁷ and called on Hungary to restore the right to vote of all persons with disabilities: “[r]estrictions of the voting rights of persons with mental and intellectual disabilities (...) should be removed.”⁸

12. The OSCE ODHIR made clear in the Election Observation Mission Final Report on the Hungarian Parliamentary Elections and Referendum of 3 April 2022, that “[t]he [Hungarian] authorities informed the Election Observation Mission that some of the recommendations they had deemed not to be in line with Hungarian democratic and legal traditions would not be addressed”⁹ and “for example, prior to ODIHR recommendations to fully repeal restrictions on the voting rights of persons with intellectual disabilities, in line with international standards, and to repeal discriminatory voting rights based on marital status are considered by the authorities not to be in line with Hungarian legal tradition,”¹⁰ therefore the Government refused to address them.
13. In 2022, in its concluding observations on the combined second and third periodic reports of Hungary, the CRPD Committee recommended that Hungary:
“(a) Repeal article XXIII (6) of the Fundamental Law and section 13/A and all related provisions of Act XXXVI of 2013 on the electoral procedure, and recognize the right to vote and stand for election of all persons with disabilities without any individualized judicial evaluation of a person’s ability or capacity to vote;
(b) Amend section 181 (1) of Act XXXVI of 2013 on the electoral procedure through recognizing the right of all persons with disabilities to access assistance to vote provided by a person of their own choice;
(c) Ensure that electoral and voting procedures, facilities and election materials provide reasonable accommodation for persons with severe impairments and are appropriate and accessible for all persons with disabilities regardless of impairment;”¹¹
14. In 2023, in its Report on follow-up to the inquiry concerning Hungary, the CRPD Committee called on Hungary “to restore the rights of all persons with disabilities to vote and be elected, including by ensuring that all persons with disabilities are registered in electoral registries and fully participate in elections.”¹²
15. In sum, persons with intellectual disabilities and persons with psychosocial disabilities can be deprived of their right to vote and stand for election in Hungary due to legal provisions that link the exercise of their political rights to legal capacity status. The thematic study on participation in political and public life by persons with disabilities published by the Office of the United Nations High Commissioner for Human Rights (OHCHR),¹³ which is well reflected in the General Comment No. 1. of the CRPD Committee¹⁴ and the CRPD

⁷ Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe: ‘[Election Observation Mission Final Report on the Hungarian Parliamentary Elections and Referendum of 3 April 2022](#)’, p. 14-15.

⁸ Ibid.

⁹ Ibid., p. 6.

¹⁰ Ibid., p. 9, footnote 25.

¹¹ UN Committee on the Rights of Persons with Disabilities, ‘[Concluding observations on the combined second and third periodic reports of Hungary](#)’, CRPD/C/HUN/CO/2-3, 20 May 2022, para 57.

¹² UN Committee on the Rights of Persons with Disabilities, ‘[Report on follow-up to the inquiry concerning Hungary](#)’, CRPD/C/29/2 – Annex IV, 17 October 2023, para 59 (i).

¹³ Office of the United Nations High Commissioner for Human Rights, ‘[Thematic Study on Participation in Political and Public Life by Persons with Disabilities](#)’, A/HRC/19/36, 21 December 2011. Cf. paras. 22-24 of this submission.

¹⁴ UN Committee on the Rights of Persons with Disabilities, ‘[General comment No. 1, Article 12: Equal recognition before the law](#)’, CRPD/C/GC/1, 19 May 2014. Cf. paras. 25-26 of this submission.

Committee's jurisprudence,¹⁵ make clear that these legal capacity status based restrictions of the right to vote and stand for election are "*inconsistent with the obligations that States Parties have undertaken under Articles 2, 12 and 29 of the Convention [CRPD] and should be eliminated as a matter of priority from legislation and practices.*"¹⁶

16. It is almost only persons with disabilities who are negatively affected by the above-mentioned provisions of the Act on Electoral Procedure, which is a clear case of disability-based discrimination that is prohibited by Article 26 of the ICCPR and more clearly set out in Article 5 (and defined in Article 2) of the CRPD.
17. Moreover, based on the below analysis of the interpretation of Article 25 ICCPR in light of Article 29 CRPD, the existence of these provisions in the legal system of Hungary also constitutes a violation of Article 25 of the ICCPR.
18. Finally, Section 181 paragraph (1) of the Act XXXVI of 2013 on Electoral Procedure must say explicitly, in line with Article 29 (a) iii) of the CRPD, that persons with all forms of impairment may use the assistance in voting by a person of their own choice.

Interpreting Article 25 ICCPR in light of Article 29 CRPD

19. ICCPR Article 25 recognises that "*every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.*"
20. In 1996, in its General Comment No. 25, the Human Rights Committee explained that in relation to reasonable restrictions "*established mental incapacity may be a ground for denying a person the right to vote or to hold office.*"¹⁷ In other words, it was envisaged that the existence of a psychosocial disability ("mental health problem") or intellectual disability may in some circumstances be seen as a justifiable reason to restrict a person's right to political participation.
21. The CRPD takes a different approach and in its Article 29 provides that "*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 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...*"
22. The thematic study on participation in political and public life by persons with disabilities published by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in December 2011, and presented to the Human Rights Council in March 2012 emphasises that "*the legal landscape has changed dramatically since the adoption of the Human Rights Committee's general comment in 1996. Today, it may be argued that the majority of voting restrictions 'are no longer compatible with the prohibition of*

¹⁵ UN Committee on the Rights of Persons with Disabilities, '[Zsolt Bujdosó and five others v. Hungary](#)', CRPD/C/10/D/4/2011, 16 October 2013. Cf. para. 26 of this submission.

¹⁶ Supra note 13, para. 70.

¹⁷ UN Human Rights Committee, '[General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service \(Art. 25\)](#)', CCPR/C/21/Rev.1/Add.7, 12 July 1996., para 4.

*discrimination in articles 2, para. 1, and 25 or with the present-day understanding of democracy'. This holds true, in particular, with regard to limitations of the right to vote and stand for election on the basis of psychosocial or intellectual disabilities.”*¹⁸

23. The OHCHR Thematic Study goes on to point out *“this provision [Article 29 of the CRPD] does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, any exclusion or restriction of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability would constitute ‘discrimination on the basis of disability’ within the meaning of article 2 of the Convention.”*¹⁹
24. The Thematic Study examines the argument that any restriction or curtailment of the right of a person with a disability to participate in public life may not in fact be based on disability itself but rather on a lack of legal capacity. Such a restriction, the report states, would be *“inconsistent with the provisions of Article 12, paragraph 2 of the Convention, which recognises that persons with disabilities enjoy legal capacity ‘on an equal basis with others in all aspects of life’. This provision does not provide any exception. It only requires States parties to take appropriate measures ‘to provide access by persons with disabilities to the support they may require in exercising their legal capacity’. Consequently, deprivation of legal capacity based on a perceived or actual mental illness or psychosocial disability may constitute a violation of the obligations set out in Article 12 [of the CRPD].”*²⁰
25. The CRPD Committee has also been clear in its interpretation of Articles 12 and 29 of the CRPD when noted in its General Comment No. 1 that, *“denial or restriction of legal capacity has been used to deny political participation, especially the right to vote, for certain persons with disabilities.”*²¹ It has pointed out that, *“legal capacity is indispensable for the exercise of civil, political, economic, social and cultural rights”*²² as *“the denial of legal capacity to persons with disabilities has, in many cases, led to their being deprived of many fundamental rights, including the right to vote.”*²³
26. The CRPD Committee emphasised that *“a person’s decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising their political rights, including the right to vote, the right to stand for election and the right to serve as a member of a jury.”*²⁴ The unequivocal right of persons with disabilities to exercise their right to vote was upheld in the case of *Zsolt Bujdosó and five others v. Hungary*,²⁵ in which the CRPD Committee found that *“Article 29 does not provide for any reasonable restriction or exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes*

¹⁸ Office of the United Nations High Commissioner for Human Rights, ‘[Thematic Study on Participation in Political and Public Life by Persons with Disabilities](#)’, A/HRC/19/36, 21 December 2011, para 28.

¹⁹ Ibid., para 29.

²⁰ Ibid., para 30.

²¹ UN Committee on the Rights of Persons with Disabilities, ‘[General comment No. 1, Article 12: Equal recognition before the law](#)’, CRPD/C/GC/1, 19 May 2014, para 48.

²² Ibid., para 8.

²³ Ibid.

²⁴ Ibid., para 48.

²⁵ UN Committee on the Rights of Persons with Disabilities, ‘[Zsolt Bujdosó and five others v. Hungary](#)’, CRPD/C/10/D/4/2011, 16 October 2013.

discrimination on the basis of disability, within the meaning of article 2 of the Convention."²⁶

27. Consequently, national election laws, like the one in force in Hungary, that allows for the disenfranchisement of persons with disabilities following an individualised judicial assessment is in violation of the CRPD.
28. In sum, excluding persons with disabilities from the political community by placing them under guardianship and depriving them of their right to vote and stand for elections either through automatic disenfranchisement or by an individual court decision, is a violation of International Human Rights Law and leads to further exclusion, invisibility and disempowerment of persons with psychosocial disabilities and persons with intellectual disabilities and exacerbates their stigmatisation.
29. The CRPD recognises that it is not enough to allow all persons with disabilities to vote and stand for elections. Article 5 of the CRPD explicitly incorporates a duty to provide reasonable accommodations where requested in the realisation of all rights, including the right to vote and stand for elections. Article 2 of the CRPD recognises that the failure to provide these reasonable accommodations is a form of discrimination. Furthermore, Article 9 of the CRPD contains an obligation to ensure accessibility of facilities and services and Article 29 of the CRPD reiterates this in the specific context of access to voting procedures, facilities and materials.²⁷
30. In light of these developments in International Human Rights Law, Validity respectfully invites the UN Human Rights Committee to interpret and apply Article 25 of the ICCPR in harmony with the contemporary standards of the CRPD. Accordingly, when compiling list of issues prior to reporting for Hungary, we suggest addressing the country's implementation of Article 25 of the ICCPR from the perspective that the existence of a psychosocial and/or intellectual disability should not be interpreted as a ground to restrict political rights guaranteed under Article 25 of the ICCPR, whether indicated by an automatic curtailment of that person's legal capacity to act, or whether restricted through an individualised court decision.

Suggested questions for the Human Rights Committee's List of Issues Prior to Reporting for Hungary

31. What steps, if any, are being taken to revise Hungary's legislation – including repealing Article XXIII, paragraph (6) of the Fundamental Law and Section 13/A of the Act XXXVI of 2013 on Electoral Procedure – so that all persons with disabilities, including those under guardianship, can vote and be elected on an equal basis with others?
32. What steps, if any, are being taken to amend Section 181 paragraph (1) of the Act XXXVI of 2013 on Electoral Procedure to expressly allow all persons with disabilities to use the assistance in voting by a person of their own choice?

Final remark

33. We confirm that this submission can be posted on the OHCHR website for public information purposes.

²⁶ Ibid., para. 9.4.

²⁷ Cf., for example, UN Special Rapporteur on the rights of persons with disabilities Catalina Devandas Aguilar, '[Report to the Human Rights Council](#)', A/HRC/31/62, 12 January 2016, para 19.