



NGO Submission on the Rights of Persons with Disabilities  
with respect to the Sixth Periodic Report of

HUNGARY

under the International Covenant on Civil and Political Rights (ICCPR)  
for consideration at the 122<sup>nd</sup> Session (March – April 2018) of  
the Human Rights Committee

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Submitted by:

Validity Foundation – Mental Disability Advocacy Centre (MDAC)

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## SUMMARY

1. This information is submitted by the Validity Foundation, formerly the Mental Disability Advocacy Centre ("MDAC"), with regard to the sixth periodic report of Hungary to the Human Rights Committee (HRC) under the International Covenant on Civil and Political Rights ("ICCPR"). Validity is an international non-governmental human rights organisation which undertakes strategic litigation, advocacy, research and campaigns to advance the human rights of persons with mental disabilities internationally. Validity was founded in 2002, is headquartered in Budapest, Hungary, and has held ECOSOC special consultative status since 2011.
2. This submission provides information regarding the human rights of persons with intellectual disabilities and persons with psychosocial disabilities ("persons with mental disabilities") in Hungary, with a focus on human rights violations resultant upon the country's discriminatory systems of guardianship and forced institutionalisation. Specifically, information is provided on the right to life (art. 6), freedom from torture and other cruel inhuman or degrading treatment (art. 7), the rights to liberty, freedom of movement and choice of residence (arts. 9 and 12), equality before the law and fair trial (arts. 14 and 26), the rights of the child (art. 24), and political participation (art. 25).
3. In addition to the above, we are deeply concerned by recent developments which limit, restrict and directly target the activities of independent non-governmental and civil society actors in Hungary. Legislative developments affecting the operation of organisations which receive foreign funding, government-sponsored mass media campaigns against the operations of independent human rights actors and reprisals against representatives of civil society are having a chilling effect in the country, undermining the democratic process and infringing on freedom of expression and association (arts. 18, 19 and 22). A particularly worrying aspect has been the direct targeting of human rights defenders.

## CONTEXT

4. Validity has been involved in advocating for the human rights of persons with mental disabilities in Hungary since the organisation was established in 2002 and prior to the country's accession to the European Union in 2004. Our work over the 15 years has been focused on tackling some of the most widespread and systematic human rights violations faced by this section of the population including guardianship and large-scale institutionalisation of persons with disabilities, and related violations including denial of political participation, torture and ill-treatment and discriminatory legal and policy frameworks. In 2004, Validity published research on the use of cage beds and ill-treatment in psychiatric and social care facilities in the country,<sup>1</sup> followed by an analysis and operation of the guardianship system in 2007.<sup>2</sup>
5. 23,864 adults with disabilities remain confined in long-term residential institutions denying them the right to independent living and inclusion in the community, a number which has only seen a marginal decrease over the last decade.<sup>3</sup> In addition, Hungary retains one of the highest rates of guardianship of persons with disabilities per capita in the world, with an estimated 60,000 persons with disabilities denied the right to exercise their legal capacity.<sup>4</sup> Frequently, placement under guardianship is used to facilitate institutionalisation without the consent of the person concerned.

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<sup>1</sup> MDAC, *Cage Beds: Inhuman and Degrading Treatment or Punishment in Four EU Accession Countries* (Budapest: 2003), available at [http://www.mdac.org/sites/mdac.org/files/English\\_Cage\\_Beds.pdf](http://www.mdac.org/sites/mdac.org/files/English_Cage_Beds.pdf).

<sup>2</sup> MDAC, *Guardianship and Human Rights in Hungary: Analysis of Law, Policy and Practice* (Budapest: 2007), available at [http://www.mdac.info/sites/mdac.info/files/English\\_Guardianship\\_and\\_Human\\_Rights\\_in\\_Hungary.pdf](http://www.mdac.info/sites/mdac.info/files/English_Guardianship_and_Human_Rights_in_Hungary.pdf).

<sup>3</sup> Hungarian Central Statistical Office (KSH), 'A tartós bentlakásos és átmeneti elhelyezést nyújtó szociális intézményekben ellátottak az intézmény típusa szerint (1993-)' ['The number of residents in residential social care homes according to the type of institutions (1993-)', available at [http://www.ksh.hu/docs/hun/xstadat/xstadat\\_eves/i\\_fsi001.html](http://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_fsi001.html).

<sup>4</sup> KSH data of March 2015 as reported by: Commissioner for Fundamental Rights, Report on Case Number AJB-2709/2016 (Budapest: June 2016), 37, available at

6. Despite ratification of the United Nations (“UN”) Convention on the Rights of Persons with Disabilities (“CRPD”) and its Optional Protocol (“OP-CRPD”) in 2007, reforms of these systems have been halting, leaving the majority of persons with disabilities in the country excluded from their communities and denied the right to exercise autonomy in many areas of their lives. Validity is particularly concerned about recent investments into the expansion of disability-based institutionalisation in Hungary through the misuse of public and European Union (“EU”) financing to build new congregate living settings for persons with disabilities.<sup>5</sup> In addition, a new Civil Code which came into force in 2014 legislated a new system of supported decision-making for persons with disabilities which nevertheless bears striking similarities to the current system of guardianship and which fails to meet standards set out by the UN Committee on the Rights of Persons with Disabilities (“CRPD Committee”).<sup>6</sup>

## SPECIFIC SUBMISSIONS

### Right to life (art. 6)

7. During 2016, Validity conducted human rights monitoring of a number of residential institutions for adults and children with disabilities as part of a broader initiative in four EU countries.<sup>7</sup> A concern was raised about the death of a young person in one institution, following which Validity requested information about the numbers of deaths in such institutions from the central government agency which maintains and supervises residential facilities (Directorate-General for Social Affairs and Child Protection (“SZGYF”). We also pointed out the state’s procedural and investigative obligations related to deaths in places of detention in light of the closed nature of such settings, the involuntary nature of person’s placement in such facilities, and state obligations under the ICCPR, Convention against Torture (“CAT”) and the European Convention on Human Rights (“ECHR”). Subsequently, Validity has uncovered deaths following monitoring at another residential institution, Topház Special Home in Göd, where we uncovered seriously degrading conditions and abusive practices threatening the life, dignity and health of residents.<sup>8</sup>
8. In response to our enquiry, the Director-General of SZGYF informed us that **4,042 deaths** occurred in state social care institutions in 2015. No breakdown was provided on causes of death or the outcomes of any investigations. The Director-General stated that deaths in detention are regarded as “deaths under exceptional circumstances” in Hungary, triggering administrative procedures and investigations including police enquiries and autopsies. However, the Government does not consider persons with disabilities in residential institutions to be “deprived of liberty” meaning that no such investigations are undertaken. In a concerning comment, the Director-General also stated that national legislation which domesticated the Optional Protocol to the Convention against Torture (“OP-CAT”) should be reviewed and amended to make these exclusions clear.
9. The very high numbers of deaths in which no investigations are conducted raises serious concerns about the state’s systematic failure to protect and fulfil the right to life of persons with disabilities in institutions. Validity submits that persons detained in institutions against their will, including through the operation of substitute consent granted by guardians, must be regarded as deprived of liberty

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[https://www.qjbh.hu/documents/10180/2500969/Jelent%C3%A9s+a+gondnoks%C3%A1gi+rendszer+vizsg%C3%A1lat%C3%A1r%C3%B3l+2709\\_2016/3938285b-9498-4417-b012-95a74ed88ac9?version=1.0](https://www.qjbh.hu/documents/10180/2500969/Jelent%C3%A9s+a+gondnoks%C3%A1gi+rendszer+vizsg%C3%A1lat%C3%A1r%C3%B3l+2709_2016/3938285b-9498-4417-b012-95a74ed88ac9?version=1.0).

<sup>5</sup> Validity, Hungarian Civil Liberties Union (HCLU) and the European Network on Independent Living (ENIL), ‘Hungarian Government must suspend and redesign deinstitutionalisation projects’, joint statement, 26 February 2018, available at: <http://validity.ngo/hungarian-government-must-suspend-and-redesign-deinstitutionalisation-projects/>.

<sup>6</sup> CRPD Committee, ‘General Comment No. 1: Article 12 – Equal recognition before the law’, Eleventh session (31 March–11 April 2014), CRPD/C/GC/1, 19 May 2014.

<sup>7</sup> Thirty residential institutions were visited across Bulgaria, Czech Republic, Hungary and the United Kingdom under an initiative co-funded by the EU entitled ‘Identifying and preventing abuse against children with mental disabilities in institutions’. More information: [www.mdac.org/charm-toolkit](http://www.mdac.org/charm-toolkit).

<sup>8</sup> MDAC, *Straightjackets and seclusion: An investigation into abuse and neglect of children and adults with disabilities in Hungary* (Budapest: 2017), available at [www.mdac.org/tophaz](http://www.mdac.org/tophaz).

and bringing them under the state's effective control.<sup>9</sup> As such, deaths of persons in such circumstances should be comprehensive with the purpose of ensuring accountability and preventing impunity, at avoiding denial of justice and making reforms to prevent repeated violations of the right to life.<sup>10</sup>

*Proposed recommendations:*

- Persons with disabilities in institutions by virtue of guardianship must be regarded as deprived of liberty. All deaths of persons with disabilities in institutional settings should be thoroughly and independently investigated, taking into account the enhanced obligations of the state with respect to persons deprived of liberty.
- Comprehensive and disaggregated statistics on deaths in institutional settings should be immediately published, providing information about the setting, disability, cause and investigations in each case, what independent investigations have taken place and the outcomes of these.

Freedom from torture and other cruel, inhuman or degrading treatment (art. 7)

10. Last year, Validity uncovered shocking conditions and abuses against 220 persons with disabilities at the Topház Special Home, approximately 30km from Budapest, following a number of monitoring visits earlier in the year.<sup>11</sup> Established in 1977, the institution was founded in a former castle and was subsequently expanded to house children and adults with intellectual, developmental, mobility and physical impairments, as well as people with multiple and profound disabilities and those with complex care needs. All residents at the institution are under guardianship depriving them of the opportunity of leaving. Residents are clustered in five closed wards, each of which holding approximately 40 residents in shared bedrooms.
11. During a series of visits, Validity monitors found overwhelming evidence of systematic torture and ill-treatment against the residents including adults and children placed in metal cage beds, a child in an informal straitjacket, many residents with untreated open wounds, widespread signs of malnutrition, neglect and chemical restraint, as well as allegations of pervasive violence, including sexual and gender-based violence. Degrading practices were also found including group showering, punishments such as soaking residents in cold water, using socks to restrict the movement of children with profound impairments and removing handles from doors. The basic needs of numerous residents were found to be lacking, including an obvious lack of basic and emergency health care, a complete lack of stimulation, denial of education and no attempts at maintaining privacy.
12. Validity alerted the police to our findings in May 2017, following which a criminal investigation was opened. Publication of our report brought widespread national and international attention, following which the Ministry of Human Capacities established an investigation and fired the director of the institution concerned. In addition, the Ombudsman published a report following an on-the-spot inspection of the institution which fully corroborated Validity's findings and which found "serious violation of the patients' human dignity and other fundamental rights".<sup>12</sup>

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<sup>9</sup> Human Rights Committee, Draft General Comment No. 36 of the International Covenant on Civil and Political Rights on the right to life, CCPR/C/GC/R.36, 1 April 2015, para. 66; and Human Rights Committee, General Comment No. 35 of the International Covenant on Civil and Political Rights on liberty and security of person, CCPR/C/GC/35, 16 December 2014, para. 5.

<sup>10</sup> Human Rights Committee, Draft General Comment No. 36 of the International Covenant on Civil and Political Rights on the right to life, CCPR/C/GC/R.36, 1 April 2015, para. 31

<sup>11</sup> MDAC, *Straightjackets and seclusion: An investigation into abuse and neglect of children and adults with disabilities in Hungary* (Budapest: 2017), available at [www.mdac.org/tophaz](http://www.mdac.org/tophaz).

<sup>12</sup> Office of the Commissioner of Fundamental Rights, 'Unlawful conditions in the Topház Special Home in Göd – conclusions of the investigation conducted by the Commissioner for Fundamental Rights', May 2017, available at <http://www.ajbh.hu/en/web/ajbh-en/-/unlawful-conditions-in-the-topphaz-special-home-in-god-conclusions-of-the-investigation-conducted-by-the-commissioner-for-fundamental-rights>.

13. Since publication of our findings, the Hungarian Government has repeatedly refused further access to Topház for us to provide emergency assistance to the victims, or to allow us to act as legal representatives. Whilst the Government adopted a 30-point plan to respond to the emergency, it is impossible to verify the current situation of residents due to the continuing denial of the authorities to cooperate. In July 2017, a number of special procedures mandates sent a joint urgent appeal to the Hungarian Government regarding our findings,<sup>13</sup> to which the Government responded in August 2017,<sup>14</sup> stating that criminal investigations were ongoing. We have no further information on the outcome of these investigation, whether the victims have been provided with emergency assistance, rehabilitation or redress.

*Proposed recommendations:*

- Ensure the provision of emergency medical and other assistance to victims of torture and ill-treatment at Topház Special Home in Göd. Independent access of non-governmental organisations and representatives of civil society should be guaranteed without hindrance.
- Take immediate steps to ban practices which result in torture or ill-treatment in all institutional settings for persons with disabilities, including physical, chemical and mechanical restraint, seclusion and isolation, and the use of informal restraint techniques.
- A robust system of independent monitoring and investigations should be established with the power to investigate all incidents of abuse

Rights to liberty, freedom of movement and choice of residence (arts. 9 and 12)

14. Persons with disabilities in Hungary are systematically and habitually denied the right to liberty, free movement and choice of residence as a result of the country's continuing investment and expansion of the system of institutionalisation combined with a failure to invest in community-based services and the support necessary to promote independent living in the community. A medicalised model of disability still dominates the organisation and provision of public services to persons with disabilities in the country, meaning that 23,864 persons with disabilities continue to be required to live in long-stay residential institutional settings. Although there are no official statistics, a very high percentage of persons in institutions are under guardianship meaning that they are unable to leave such facilities of their own volition.

15. In combination with the state's obligations under ICCPR Article 9 and 12, Hungary also holds obligations to promote the right to independent living and inclusion in the community for all persons with disabilities by virtue of Article 19 of the CRPD. The articles require the state to give due recognition, on an equal basis with others, of the right for persons with disabilities to choose where and with whom they live and to support community integration.

16. The country's first deinstitutionalisation strategy, adopted in 2011, originally envisaged a 30-year time period for achieving the transition of persons with disabilities back to the community. The length of the period was criticised by the CRPD Committee,<sup>15</sup> following which the period has subsequently been reduced to 19 years under the "Long-term concept for the deinstitutionalisation

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<sup>13</sup> Reference UA HUN 4/2017 of 14 July 2017, submitted by the Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standards of physical and mental health; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences – available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=23188>.

<sup>14</sup> Permanent Mission of Hungary to the United Nations Office, to the World Trade Organization and Other International Organizations in Geneva, Communication No. 103/2017/HU/GVA, 29 August 2017 – available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=69226>.

<sup>15</sup> CRPD Committee, Concluding observations on the initial periodic report of Hungary, CRPD/C/HUN/CO/1, 22 October 2012, para. 33.

of large social care homes for people with disabilities 2017-2036" ("DI strategy").<sup>16</sup> However, since 2011, only some 660 persons with disabilities have moved out of large institutions and it is not clear how many of these have moved into inclusive settings in the community.

17. Further, instead of closing institutions and replacing them with community-based alternatives, reforms of the Social Management and Social Benefits Act carried out in 2012 allowed development of new institutional settings entitled "protected housing". Such forms of protected housing include flats for six persons, "group homes" for 12 persons, and living centres for up to fifty persons. Each of these setting are congregate institutional living settings for persons with disabilities which contradict the rights of persons to choose their place of residence, who they live with, and their right to inclusion in the community, as well as falling foul of the standards set out under Article 19 of the CRPD.<sup>17</sup> Indeed, investment into such institutions also diverts resources away from the development of community-based living arrangements, individual support services required for persons with disabilities to exercise their liberty and freedom of movement, and increasing the accessibility of general public services to achieve inclusion.
18. In fact, Validity believes that certain developments related to the Government's deinstitutionalisation strategy amount to **retrogressive steps** by virtue of the investment into and expansion of the institutional architecture in the country. In November 2011, the National Development Agency ("NDA"), which was responsible for the use of EU Structural and Investment Funds ("ESI Funds"), published a 23 million EUR tender to implement the national DI strategy (half from ESI Funds) to finance the process. At the end of the project, approximately 660-670 people with disabilities resident in six large residential institutions were transferred to new institutions rather than supported to move back into the community. In January 2017, another tender was published which allocated a further 70 million EUR to projects under the DI strategy to be completed by the end of 2018.<sup>18</sup> Analysis of the 29 approved applications shows that they will result in the building of almost 200 new smaller institutions affecting almost 2,500 persons with disabilities – a move which has drawn serious concern from civil society in Hungary<sup>19</sup> and will result in **trans-institutionalisation** of the persons concerned and will increase the overall capacity of institutional care in the country. Two further tenders were published in March 2017 allocating a further 181 million EUR, affecting an estimated 7,500 more persons with disabilities. Rather than advancing the rights to liberty, freedom of movement and choice of residence of persons with disabilities, the programmes will simply shift people to newer institutions, many of which are being built at the extremities of the country, in rural areas distant from populated conurbations, on isolated plots and in some cases on dangerous on unsuitable plots such as flood-prone areas.
19. As such, institutionalisation continues to be perpetuated through specific legislative provisions and the deliberate policy of the Government to allocate vast public resources in the maintenance and

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<sup>16</sup> 'A fogyatékossggal élő személyek számára ápolást-gondozást nyújtó szociális intézményi férőhelyek kiváltásáról szóló 2017-2036. évekre vonatkozó hosszú távú koncepcióról' ['Long-term concept on the deinstitutionalization of nursing and caring homes for people with disabilities covering the period between 2017 and 2036'], available at <http://www.kormany.hu/download/c/23/f0000/kiv%C3%A1lt%C3%A1s%C3%B3l%20sz%C3%B3l%C3%B3k%C3%B3k%20koncepci%C3%B3.pdf>.

<sup>17</sup> See also: CRPD Committee, General Comment No. 5 on living independently and being included in the community, CRPD/C/GC/5, 27 October 2017, in particular para 16(c) which states: "Neither large-scale institutions with more than a hundred residents nor smaller group homes with five to eight individuals, nor even individual homes can be called independent living arrangements if they have other defining elements of institutions or institutionalization. Although institutionalized settings can differ in size, name and set-up, there are certain defining elements, such as obligatory sharing of assistants with other and no or limited influence over whom one has to accept assistance from; isolation and segregation from independent life within the community; lack of control over day-to-day decisions; lack of choice over whom to live with; rigidity of routine irrespective of personal will and preferences; identical activities in the same place for a group of persons under a certain authority; a paternalistic approach in service provision; supervision of living arrangements; and usually also a disproportion of persons with disabilities living in the same environment."

<sup>18</sup> Call for proposals available in Hungarian here: <https://www.palyazat.gov.hu/efop-222-intzmnyi-elltsrl-a-kzssgi-alap-szolgltatsokra-val-ttrs-fejlesztse>.

<sup>19</sup> Validity, Hungarian Civil Liberties Union (HCLU) and the European Network on Independent Living (ENIL), 'Hungarian Government must suspend and redesign deinstitutionalisation projects', joint statement, 26 February 2018, available at: <http://validity.ngo/hungarian-government-must-suspend-and-redesign-deinstitutionalisation-projects/>.

building of new institutions. Overall, the number of institutional places has risen since the 1980s, reaching a total of 90,631 places in institutions in 2016.<sup>20</sup>

*Proposed recommendations:*

- Abolish the system of involuntary institutionalisation and deprivation of liberty of persons with disabilities, including then this is justified on the basis of substitute consent provided by guardians.
- Enact an enforceable right for persons with disabilities to choose where and with whom they live on an equal basis with others, including the provision of personalised services and reasonable accommodations to achieve this. The denial of reasonable accommodations to persons with disabilities should be recognised in legislation as a form of discrimination.
- Halt programmes of investment which maintain, renovate or expand the system of institutionalisation of persons with disabilities, including investments provided by the European Union. Financing should instead be directed to the achievement of deinstitutionalisation, the development of community-based support services and the provision of personal assistants which enable all persons with disabilities to exercise their rights to liberty and inclusion in the community.

Equality before the law and fair trial (arts. 14 and 26)

20. Hungary continues to maintain a discriminatory system of guardianship for persons with disabilities which results in the imposition of serious limitations on exercise of their legal capacity and autonomy, despite obligations to abolish and replace the system with supported decision-making as required under the CRPD. In total, 60,000 persons with disabilities remain under guardianship,<sup>21</sup> one of the highest per capita rates in Europe,<sup>22</sup> a figure that has barely changed in recent years.
21. In 2013, the Hungarian Parliament adopted a new Civil Code which entered into force in 2014 which legislated and codified plenary guardianship rather than abolishing it. Fully restricted legal capacity ('*cselekvőképesség teljes korlátozása*')<sup>23</sup> renders all legal statements made by wards null and void and authorises guardians to act on their behalf, with no requirement that guardians respect the will and preferences of the persons concerned. In addition, the Civil Code introduced a system of partial guardianship ('*cselekvőképesség részleges korlátozása*') where specific areas of legal capacity are denied and wards require the authorisation of a guardian to render their decisions legally valid.<sup>24</sup> Both systems breach the principle of equality before the law, rendering persons subject to the decision-making authority of their guardians and denying them direct access to justice. They amount to substitute decision-making systems which should be abolished and replaced with support for persons with disabilities to exercise their legal capacity.<sup>25</sup>
22. In addition, the Civil Code also introduced a new system of supported decision-making, however there are serious flaws with the legislative provisions and implementation. Supported decision-making is only available to people who "due to a minor decrease in their mental capacity need help in dealing with some of their affairs and in making decisions".<sup>26</sup> Supporters are appointed by the

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<sup>20</sup> This number includes beds in homes for the elderly, homes for psychiatric patients, homes for people with disabilities, homes for people with addictions, and homeless shelters. The Government has stated that it does not have central disaggregated statistics on the numbers of persons with disabilities across each of these forms of institutional placement. See: KSH, *supra* fn 5.

<sup>21</sup> The National Office of the Judiciary put the figure at 60,592 persons at 31 March 2015. Reported in: Commissioner for Fundamental Rights, Report of the Commissioner for Fundamental Rights, case number AJB-2709/2016 (2016), p. 35, available at [https://www.qjbh.hu/documents/10180/2500969/Jelent%C3%A9s+a+gondnoks%C3%A1gi+rendszer+vizsg%C3%A1lat%C3%A1r%C3%B3l+2709\\_2016/3938285b-9498-4417-b012-95a74ed88ac9?version=1.0](https://www.qjbh.hu/documents/10180/2500969/Jelent%C3%A9s+a+gondnoks%C3%A1gi+rendszer+vizsg%C3%A1lat%C3%A1r%C3%B3l+2709_2016/3938285b-9498-4417-b012-95a74ed88ac9?version=1.0),

<sup>22</sup> MDAC, *Legal Capacity in Europe: A Call to Action to Governments and to the EU* (Budapest: 2013), p. 35, available at [http://www.mdac.info/sites/mdac.info/files/legal\\_capacity\\_in\\_europe.pdf](http://www.mdac.info/sites/mdac.info/files/legal_capacity_in_europe.pdf).

<sup>23</sup> Section 2:21(1) of Act V of 2013 on the Civil Code.

<sup>24</sup> Sections 2:10 and 2:20 of Act V of 2013 on the Civil Code.

<sup>25</sup> CRPD Committee, 'General Comment No. 1: Article 12 – Equal recognition before the law', Eleventh session (31 March-11 April 2014), CRPD/C/GC/1, 19 May 2014.

<sup>26</sup> Section 2:38(1) of Act V of 2013 on the Civil Code.

Guardianship Authority with the consent of the person concerned,<sup>27</sup> however persons are restricted to receiving support from two supporters, and supporters themselves can provide support to up to 45 persons simultaneously.<sup>28</sup> This, combined with the fact that supporters may also act as guardians, means that the system lacks efficacy for persons with disabilities and is closely tied to the parallel system of guardianship, as opposed to being aligned with the will and preferences of persons concerned. Further, persons receiving support are automatically stripped of certain rights including parental rights, or to hold various forms of public office.<sup>29</sup> To date, the number of persons accessing supported decision-making has remained very small (just 91 persons by the end of 2015)<sup>30</sup> due to limited knowledge of the measure on the part of public official, families and persons with disabilities themselves.

23. It can be concluded that the system of guardianship represents a legislative system that **systematically and habitually** discriminates against persons with disabilities by denying 60,000 persons equality before the law. It also fails to adequately provide or acknowledge support to persons with disabilities to exercise their legal capacity on an equal basis by others.

*Proposed recommendations:*

- Provide legislative recognition of the legal capacity of all persons with disabilities in all aspects of their lives without exception, including the right of direct access to justice and the provision of procedural and age-appropriate accommodations where these are required.
- Abolish the system of guardianship of persons with disabilities, including full and partial restrictions on legal capacity.
- Amend the supported decision-making system to ensure that it is available to all persons with disabilities regardless of their level of support needs. Support arrangements must always be based on the will and preferences of the person concerned, including in the appointment of support persons. It is recommended that supported decision-making be separated institutionally from the current guardianship system.

Rights of the child (art. 24)

24. Children with disabilities continue to be subjected to various forms of discrimination on the basis of their disability due to which they are denied adequate protection and the conditions necessary to promote their development. In particular, a lack of public community-based services means that almost 8,000 children are placed in residential institutions<sup>31</sup> including a disproportionately high number of children with disabilities. There is legislative obligation to ensure that children under 12 years of age are placed with foster parents where they cannot live with their biological families, however children with severe disabilities, those with serious illnesses and children with multiple siblings are explicitly excluded in a discriminatory manner.<sup>32</sup> Similar to the situation for adults with disabilities, the Hungarian Government continues to invest in the maintenance of child care institutions rather than family-type placements or fostering, most recently in April 2016 through an ESIF-funded tender valued at 9.7million EUR.<sup>33</sup> Institutions can be large, in some cases containing

<sup>27</sup> Section 2(3) a) and Section 7 of Act CLV of 2013 on supported decision-making.

<sup>28</sup> Sections 7(5)-(6) of Act CLV of 2013 on supported decision-making.

<sup>29</sup> Persons receiving support cannot be foster parents or act as a notary public, judicial executor, judge or prosecutor pursuant to sections 2(6), 90, 94, 127 and 129 of Act CCLII of 2013 on the amendment of certain laws.

<sup>30</sup> Statistics provided by the Hungarian Civil Liberties Union ("TASZ") from information sent by the Hungarian Central Statistical Office, 25 August 2016.

<sup>31</sup> KSH, 'Gyermekeketthonban és nevelőszülőknél ellátott gyermekek és fiatal felnőttek a gondozás időtartama szerint (2004-)' ['The number of children and young adults in children's homes or at foster parents according to the length of care (2004-)', available at [http://www.ksh.hu/docs/hun/xstadat/xstadat\\_eves/i\\_fsg009.html](http://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_fsg009.html).

<sup>32</sup> Sections 7(2) and 79(4) of Act XXXI of 1997 on child protection and custody administration

<sup>33</sup> Call for proposals to replace or refurbish children's homes or to create necessary places therein, (Gyermekeketthonok kiváltása, gyermekeketthonok korszerűsítése, hiányzó gyermekeketthoni kapacitások létrehozása), EFOP-2.1.1-16, available in Hungarian here: <https://www.palyazat.gov.hu/efop-211-16-gyermekeketthonok-kivlta-gyermekeketthonok-korszerstse-hinyz-gyermekeketthoni-kapacitsok-ltrehozsa>.



over 100 beds for children.<sup>34</sup> The practice of institutionalising children with disabilities can result in serious forms of neglect and harm, damaging the developmental process and negatively impacting on their future inclusion in society.

25. Children with disabilities are also at heightened risk of serious human rights violations including torture and other forms of ill-treatment. Reports of the Commissioner for Fundamental Rights acting in his capacity as the designated National Preventive Mechanism under OP-CAT have found that children with psychosocial disabilities are often placed in isolation, in some cases for over 48 hours,<sup>35</sup> subjected to the unnecessary use of neuroleptics,<sup>36</sup> violence,<sup>37</sup> and involvement in child prostitution.<sup>38</sup>
26. The systematic neglect and violence against children with disabilities in institutions was also recently exposed in Validity's report on monitoring visits to the Topház Special Home.<sup>39</sup> One children's ward visited in early 2017 uncovered evidence of children placed in metal cage beds, a lack of any form of physical, sensory or educational stimulation, numerous children with muscle contractures evidencing a lack of physical therapy, the use of informal restraints (socks over hands and arms to prevent movement of children with physical impairments), shockingly poor physical and dental hygiene conditions, the suspected use of neuroleptic and other sedative drugs, a child in a straightjacket, and measures restricting freedom of movement including the removal of door handles. A number of children also appeared to be seriously malnourished.

*Proposed recommendations:*

- Remove discriminatory legislative provisions that deny children with severe disabilities, serious illnesses or multiple siblings from being fostered.
- Ensure that accessible and individualised support services are provided to families of children with disabilities in the community to ensure they can continue living at home or in a family-type environment.
- Immediately investigate all allegations of abuse against children with disabilities at the Topház Special Home. Report back to this Committee on the outcomes of all investigations and their outcomes within 6 months.

Political participation (art. 25)

27. Pursuant to the Fundamental Law, persons whose legal capacity has been partially or fully limited may be deprived of their right to vote by a judgment of the court. In 2015, 48,494 persons with disabilities were deprived of the right to vote as a result of their placement under guardianship.

*Proposed recommendation:*

- Ensure universal suffrage for all, including all persons with disabilities. Abolish all restrictions on the political participation of persons with disabilities, instead ensuring that reasonable accommodations are provided to enable political participation including voting and standing for elected office.

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<sup>34</sup> Even though one 'children home' cannot care for more than 48 children, complexes of such institutions – just as in the case of the Cseppkő Children's Home in Fót, for example – in practice can still constitute mega-institutions with more than 100 beds.

<sup>35</sup> Case Report AJB-704/2016 on OPCAT visit to the Zita Special Children's Home of the Somogy County Child Protection Directorate, p 12-13, Case Report AJB-705/2016 on OPCAT visit to the Special Children's Home of the Károlyi István Children's Centre, p 17.

<sup>36</sup> Case Report AJB-705/2016 on OPCAT visit to the Special Children's Home of the Károlyi István Children's Center.

<sup>37</sup> Ibid.

<sup>38</sup> Case Report AJB-704/2016 on OPCAT visit to the Zita Special Children's Home of the Somogy County Child Protection Directorate, Case Report AJB-1603/2016 on OPCAT visit to Cseppkő Gyermekotthon.

<sup>39</sup> *Straightjackets and seclusion, supra* fn 8.

## Freedom of expression and association (arts. 18, 19 and 22)

28. Validity is deeply concerned about concerted government attacks on civil society organisations in Hungary, including the adoption of legislative provisions designed to target organisations which receive foreign financing, deligitimisation of those organisations which promote human rights, and increasingly onerous regulatory provisions which restrict the operations of NGOs. Government-sponsored mass media campaigns have repeatedly attacked the work of independent human rights organisations in the country, promoting distrust and are having a chilling effect of freedom of speech and association.
29. As an international human rights organisation based in Budapest, Validity has also been subjected to targeted acts of reprisals from the government since we published evidence of ill-treatment and torture at Topház Special Home last year. Following release of our report, high officials of the government have publicly accused our organisation of fabricating our findings and have made defamatory claims that we have breached data protection legislation by publishing anonymised images of the evidence we uncovered. In addition, state representatives have initiated both administrative and criminal complaints against this organisation for conducting our human rights monitoring work in Hungary.
30. On 21 June 2017, three Special Rapporteurs sent an urgent communication to the Hungarian Government expressing concern about our findings from Topház as well as public statements made by high officials against our organisation, intimidation and threats of criminal proceedings.<sup>40</sup> The Hungarian Government denies the allegations,<sup>41</sup> however we believe that administrative and criminal proceedings remain pending.
31. Validity utterly refutes the allegations made by representative of the Hungarian state and demands the right to carry out our human rights activities without threats of reprisals, including when publishing allegations of torture and ill-treatment in state institutions in Hungary.

### *Proposed recommendations:*

- Immediately halt attacks on independent non-governmental organisations in Hungary, including legislation which stigmatises the work of foreign-funded NGOs, places undue regulatory or administrative burdens on such organisations, or which interferes with the independence of civil society.
- Guarantee freedom of expression of representatives of civil society, including the right of publication of matters concerning human rights in the public interest. Adopt amendments to legislation to prevent such persons being subjected to criminal or administrative proceedings.

For further information, please contact:

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<sup>40</sup> Reference UA HUN 3/2017 of 21 June 2017, submitted by the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders, available online at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=23133>.

<sup>41</sup> Permanent Mission of Hungary to the United Nations Office, to the World Trade Organization and Other International Organizations in Geneva, 18 August 2017 – available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=69226>.