

**Joint Submission of the Hungarian National Council of Persons with Disability (FESZT),  
the European Disability Forum (EDF) and the International Disability Alliance (IDA) on  
Hungary to the UN Committee on the Elimination of Discrimination against Women  
Pre-sessional Working Group, 54<sup>th</sup> session**

**HUNGARY**

This submission provides supplementary information from the Hungarian and international disability movement to State report submitted by the Hungarian government to the CEDAW Committee. This submission will cover Articles 2, 5, 7, 10, 11, 12, 13, 15 and 16 of the Convention on the Elimination of Discrimination against Women (CEDAW) and is based on the parallel report on the status of the rights of persons with disabilities<sup>1</sup>.

Hungary ratified the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol on 20 July 2007. It is clear that the human rights standards of the CEDAW and the CRPD intersect and reinforce each other when it comes to the rights of women and girls with disabilities. Throughout this submission, in addition to provisions of the CEDAW, references to CRPD provisions will also appear.

Suggested questions for the list of issues appear at the end of this document (p 11). Annex I attached contains references to women and girls with disabilities appearing in the State Report and in treaty body Concluding Observations on Hungary (p 13); and information about the organisations authors of this submission can be found at Annex II (p 15).

**Introduction**

There are approximately 577,000 persons with disabilities in Hungary, constituting 5.7% of the total population<sup>2</sup>. The number of women with disabilities is 294.138 according to the 2001 census. Their proportion among the total population is 2.9%.

There are inequalities between different parts of the country and different forms of settlements, because 68% of persons with disabilities live in villages or small towns.

The Hungarian Parliamentary Commissioner for Civil Rights (OBH) has carried out investigations on 400 complaints by persons with disabilities (0.8% of all cases). They show that women with disabilities face problems due to **communication barriers, accessibility, disability benefits, institutionalisation, employment and education**.<sup>3</sup> In addition, persons under guardianship, including women with disabilities, automatically lose the capacity to exercise their most fundamental civil and political rights.<sup>4</sup>

It is an unfortunate fact that makes the preparation of the report significantly more difficult that the statistical data and research results on the situation of women with disability in Hungary are virtually non-existent. The situation of persons with disability appears in more

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<sup>1</sup> "Disability rights or disabling rights?" prepared by the Hungarian Disability Caucus. Published by SINOSZ, MDAC and FESZT in August 2010.

<sup>2</sup> According to the most recent figures of the Central Statistics Office (KSH), in 2001.

<sup>3</sup> General Guide to the Parliamentary Commissioner's Office: <http://www.obh.hu/allam/eng/index.htm>

<sup>4</sup> According to the law, 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. This is in violation of equal recognition before the law of Article 12 of the CRPD.

and more basic and applied research works as a topic, but surveys specifically about women with disability are very rarely carried out, let it be about demographics, health care analysis, assessing their needs or their employment situation.

Hungarian society considers persons with disability as asexual creatures, which naturally implies that there is no space for gender-related topics such as the problems of multiple discrimination of women with disability, the advocacy and awareness-raising regarding the femininity and motherhood of women with disability, or depicting women with disability as women in the media and in public life. Such issues and topics, working out or implementing the model experiments of specific services are undertaken solely by non-governmental organisations dealing with women's issues or disability issues, and their financing is uncertain, typically solved by applying for project-based supports.

## Lack of policy concerning women with disabilities

Hungarian **statutory provisions do not make a single reference** to women with disabilities. Therefore, women with disabilities are invisible to the Hungarian legal system. Although Hungary's National Disability Programme<sup>5</sup> recognises that women with disabilities are subject to multiple discrimination, **no action plan has been developed** to address this.

Also, the **programmes of Hungary's National Development Agency<sup>6</sup> 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 women with disabilities.

## Multiple discrimination (Article 2)

The Constitution of the Republic of Hungary stipulates prohibition of discrimination as a general mandate of the law.<sup>7</sup> The Constitution and the Act CXXV<sup>8</sup> both require that men and women be treated equally. Article 8 of Act CXXV of 2003, on equal treatment and the promotion of equal opportunities prohibits all forms of discrimination based on any real or assumed disability. It also prohibits discrimination based on a real or assumed health condition.

Act CXXV establishes the Equal Treatment Authority (EBH)<sup>9</sup> as the body authorised to investigate cases where equal treatment is violated. The EBH's traits protected by law

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<sup>5</sup> Országos Fogyatékosügyi Program, OFP <http://www.szmm.gov.hu/main.php?folderID=1295>

<sup>6</sup> [Nemzeti Fejlesztési Ügynökség, NFÜ]

<sup>7</sup> (1) Everyone is equal under the law. Everyone shall have legal capacity.

(2) Hungary ensures fundamental rights to all, without any discrimination based on sex, race, colour, ethnic or social origin, national origin, handicap, language, religion, political or any other opinion, property, birth or other condition.

(3) Men and women have equal rights.

(4) Hungary shall institute measures aimed at achieving equality and preventing the lack of equal Opportunities. Article XIV of the Basic Law of Hungary

<sup>8</sup> 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.]

<http://www.egyenlobanasmod.hu/data/SZMM094B.pdf>

<sup>9</sup> Egyenlő Bánásmód Hatóság, EBH

include disability, and **in recent years there have been numerous investigations of disability-related matters.**<sup>10</sup>

There are **no specified statutes, policies or programs for women with disabilities** This is all the more regrettable because legislators have come to realise that women with disabilities are subject to multiple discrimination, both on account of their gender and on account of their disability.<sup>11</sup> **Hungary's legal system does not specifically designate multiple discrimination** as such. Although this does not exclude the possibility of multiple discrimination being a prohibited behaviour, it does not provide legal protection in the event that both forms of discrimination occur simultaneously. However, the Advisory Board of the Equal Treatment Authority issued a resolution on the definition of "other status" in April 2010 and according to this interpretation if somebody claims that s/he is discriminated against on more than one ground, multiple discrimination may be declared.<sup>12</sup>

Further, Hungarian **law does not recognise the requirement of reasonable accommodation.**<sup>13</sup> This makes it particularly **difficult to apply legal remedies for discrimination**, because persons with disabilities often suffer discrimination through the denial of reasonable accommodation.<sup>14</sup> The six-member Advisory Board affiliated with EBH, initiated a legislative modification to codify the reasonable accommodation requirements for persons with disabilities.

## Political and public life (Article 7)

### *Right to vote*

According to the new Basic Law of Hungary, in force from 1 January 2012, the court is entitled to decide on the right to vote of persons with disabilities upon an individualised assessment in the framework of the guardianship procedure. This means that the **political participation of women with disabilities remains limited** in Hungary in the case that the legal capacity of the person concerned is restricted, thus he/she is placed under guardianship. It is cause for concern that the courts, in possession of the psychiatric forensic opinion, will decide on the right to vote exclusively on the fact of the disability of the person.

In 2009, the Ombudsman 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

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<sup>10</sup> 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. <http://www.egyenlobanasmod.hu/index.php?g=cases.php>

<sup>11</sup> "Women with disabilities and minority ethnic people with disabilities may face multiple discrimination. Therefore, it is an important principle that measures should be based on individual needs." The National Disability Programme [Országos Fogyatékosügyi Program OFP] Chapter I.

<sup>12</sup> [http://www.egyenlobanasmod.hu/data/TTaf\\_201004.pdf](http://www.egyenlobanasmod.hu/data/TTaf_201004.pdf)

<sup>13</sup> "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; Article 2 of the UN Convention on the Rights of Persons with Disabilities

<sup>14</sup> 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". [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].

**lose their right to vote** under the Constitution.”<sup>15</sup> The report also 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.”<sup>16</sup> The OHCHR thematic study on participation in political and public life by persons with disabilities<sup>17</sup> reinforces that there is no reasonable restriction nor exclusion permitted regarding the right to political participation of persons with disabilities.

#### *Representation of women with disabilities in decision-making positions*

In Hungary, persons with disability are typically not in any influential, decision-making positions, or, if yes, almost exclusively only men with disabilities can be met in these positions, such as for example member of parliament, head of department of a ministry, managing director of a supported employment organisation, etc. Women with disability are practically not in a decision-making position, and therefore the likelihood of anyone turning the attention of the society and the public to their cumulatively disadvantageous situation decreases even further.

There are no **programs which could encourage women with disability to run for elections** at local and national politics and increase their visibility and participation in society.

#### *Lack of portrayal of women with disability in the media*

In the media, persons with disability appear only as human beings with disability, and not as men or women with disability. The topic of programs dealing with their problems is typically about their disability, and not about their own femininity or motherhood.

## **Education (Article 10)**

A study compiled in 2008 reports that *one* of the areas that most lags behind is education.<sup>18</sup> **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.

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<sup>15</sup> Hungary’s Parliamentary Commissioner’s Office (OBH), in its ombudsman report 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](http://www.parlament.hu/angol/act_c_of1997.htm)

<sup>16</sup> Report of the Parliamentary Commissioner on Civil Rights on case number OBH 2405/2009.

<sup>17</sup> [A/HRC/19/36](http://www.ohchr.org), 21 December 2011

<sup>18</sup> Dr. Ádám Kósa and Dr. László Gábor Lovász, Ph.D. (2008) A fogyatékosokkal 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.)

Therefore, it is no surprise that the level of education of persons with disabilities is lower than that of those without disabilities.<sup>19</sup> With respect to persons with disabilities:

- 32% did not finish primary school,
- 39% completed their primary education.
- 25% had vocational training or the diploma of a secondary school,
- 5% had a college or university degree.<sup>20</sup>

## The right to work (Article 11)

The **employment rate of persons with disabilities is extremely low**. According to estimates, this rate is less than 10 % in the case of persons with disabilities of working-age, most of whom work in sheltered workplaces, in supported jobs. According to the 2001 census, all together 51.806 persons with disabilities were employed among the 577.006 persons with disabilities.

The Act on Equal Treatment<sup>21</sup> 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**.

On the basis of the authorisation of the new Basic Law of Hungary, a new act replaced the disability pension system with a completely new disability and rehabilitation benefit system. In all, the introduction of the new system has resulted in the decrease of the real value of the benefits by 20-25% in comparison to the former disability pension. These changes negatively affect the lives of approximately 350.000 persons with reduced mobility to work.

Under Act I of 2012, persons under guardianship cannot enter into/amend/terminate job contracts independently: persons under partial guardianship need the approval of their guardian; and guardians conclude the contract on behalf of persons under plenary guardianship.<sup>22</sup>

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<sup>19</sup> 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.

<sup>20</sup> According to the census data of 2001.

<sup>21</sup> 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.]

<sup>22</sup> Article 21(4)-(5) of the Act I of 2012 on Labour Code

## Family Life and Motherhood (Articles 5, 12, 13, 16)

### *Family life of women with disabilities*

Women with disabilities in Hungary face **legal, financial, physical and attitudinal barriers** with respect to living 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% of the everyday problems of the 10% of those grappling with these issues.

Hungarian family law regulations **are not supportive and encouraging of persons with disabilities founding a family**, exercising their role as parents or spouses. Besides not encouraging persons with disabilities to found a family, **in some areas statutory measures expressly impede it.**<sup>23</sup>

**Hungary's Family Act**<sup>24</sup> **excludes women with disabilities** whose legal capacity is affected from

- **entering marriage or 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)
- **from exercising parental supervision rights**
- **initiating restoration of parental rights**
- **from adoption**
- **from making their own decisions**, or at least influencing the decision with respect to **putting their own children up for adoption.**

**Having children is “acceptable” for persons with disabilities other than intellectual disability**, and therefore participating in reproductive procedures, adoption of minor children and foster parenting are only available for them.<sup>25</sup>

There is a lack of support services providing help for women with disabilities when raising their children.

### *Families of children with disabilities*

Families of children with disabilities in Hungary face **lack of livelihood and an adequate social welfare and support system**. Parents raising children with disabilities do not receive an income commensurate with their responsibilities. 80% of families with a member with intellectual disability claimed to **access no services** from the local government.<sup>26</sup> Since family members – especially women – have to provide care that is often required throughout the day, they are **bound to lose or give up their jobs** which leads to impoverishment and isolation, and increases their dependence on state benefits.

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<sup>23</sup> Boglárka Benkó, János Fiala and Gábor Gombos: “MDAC tanulmány a hazai jogszabályi környezet összehangjáról 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.)

<sup>24</sup> [Családjogi törvény] Act IV of 1952 on Marriage, Family, and Custody [1952. évi IV. törvény a házasságról, a családról és a gyámságról]

<sup>25</sup> Adoption: Article 47 (1), Act IV of 1952 on Marriage, Family and Guardianship, foster parenting: 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], Article 168 (5), reproductive procedures: Act CLIV of 1997 on Health

<sup>26</sup> Questionnaire-based survey made in 2006–2007.

In its Concluding Observations on Hungary,<sup>27</sup> 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 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.**”

## Health care, family planning (Article 12)

### *Access to health care*

The right to physical and mental health is a fundamental right for everyone, enacted in the new Basic Law of Hungary. However, the above right is not properly upheld, regarding especially persons living with autism and intellectual disabilities due to **geographical inequalities, lack of personal and material conditions**, especially the **lack of special training of medical staff**, and the **lack of specialised health care providers**. Their right to health does not prevail, neither in the area of basic, nor in specialised health care (especially in the field of gynaecology and dental care).

**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 organised and mandatory screenings can be granted in the event of illness.<sup>28</sup>

According to Article 12(5) of the Act CLIV of 1997 on Health Care, patients under plenary guardianship cannot leave the hospital on their own decision; they need the approval of their guardian. Article 24(6) of the Act on Health Care declares that patients under plenary guardianship cannot exercise their right to access medical records.

### *Women in institutions*

Women placed under plenary guardianship are not entitled to make decisions about their own lives, they can be **admitted to a social institutions or be subject to health interventions without their consent and against their will**. Placement in large institutions is typically favoured over services that support the participation of persons with disabilities in community life. Data over the past years prove that the dominance of large institutions is an unvarying trend. A total of 24.658 persons with physical or intellectual disabilities accessed residential services, of whom 22.970 persons lived in large social institutions, and only 1.688 persons are known to have resided in small residential homes.<sup>29</sup>

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<sup>27</sup> In English: <http://www.szmm.gov.hu/main.php?folderID=16268&articleID=30704&ctag=articlelist&iid=1>

<sup>28</sup> A publication produced under the EU DAPHNE project, *Nők, fogyatékoság 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

<sup>29</sup> Source: Central Statistical Office [Központi Statisztikai Hivatal, KSH] 2008

On average, the number of persons living in one institution is 95 persons in a home for persons with disabilities, and 132 for psychiatric patients, but a psychiatric institution where 720 persons live together also exists.

**80–100% of adults living in patient care homes for persons with psychosocial disabilities are deprived of their rights and live under guardianship.**<sup>30</sup>

An OHCHR Thematic Study on enhancing awareness and understanding of the CRPD has noted that “**legislation authorizing the institutionalisation of persons with disabilities on the grounds of their disability without their free and informed consent must be abolished.** This must include the repeal of provisions authorizing institutionalisation of persons with disabilities for their care and treatment without their free and informed consent, as well as provisions authorizing the preventive detention of persons with disabilities on grounds such as the likelihood of them posing a danger to themselves or others, in all cases in which such grounds of care, treatment and public security are linked in legislation to an apparent or diagnosed mental illness.”<sup>31</sup>

The de-institutionalisation strategy was adopted by the Government on 21 July 2010 (by the 1257/2011 Government Decree) with a time-frame of 30 years for implementation. In its strategy, the Government promotes the development of community-based services, but at the same time supports the establishment of large residential institutions for 50 or more inhabitants.

#### *Violence against women in health & social care institutions*

According to independent reports,<sup>32</sup> ill treatment and abuse is a common phenomenon in institutional care. As numerous international studies have found, **women with disabilities are more vulnerable to sexual harassment than other women.** This holds true for women living in custodial institutions in particular. In spite of this, no national or institutional surveys have been conducted in this area at custodial institutions for persons with disabilities in Hungary.

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. A Mental Health Interest Forum 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**

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<sup>30</sup> 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]”

<sup>31</sup> [A/HRC/10/48](#), 26 January 2009, para 49; see also OHCHR Information note no 4, “The existence of a disability can in no case justify a deprivation of liberty.” [http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention\\_infonote\\_4.pdf](http://www.ohchr.org/EN/UDHR/Documents/60UDHR/detention_infonote_4.pdf)

<sup>32</sup> The Ombudsman has carried out several investigations in residential institutions. (AJB 3330/2010., AJB 4304/2010., AJB 4906/2010., AJB 3167/2011.)

In 2010, the Hungarian Civil Liberties Union delivered a monitoring program, investigating the living conditions in several large residential institutions in Hungary. The reports can be found at: <http://tasz.hu/betegjog/tasz-jelentese-palfai-fogyatekos-szemelyek-otthonarol>

**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.”<sup>33</sup>

Internal and independent inquiries maintain that the abuses alleged by media reports did not in fact occur. 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.

### *Family planning*

Women with disability are in a multiple disadvantageous situation as expectant, pregnant women or mothers raising their children. It is not only so because certain fundamental support services like, for example, counseling to facilitate the bringing up of their children, education or practical support to help with infant’s care, the enhanced attention and support of the pediatrician or the district nurse, are not ensured to them, but also because, in the general opinion of health-care professionals, disabled parents are not suitable for giving birth to and taking care of and educating children. As a result of that, **the health-care staff either openly or covertly tries to dissuade women with disability from starting a family** in numerous cases without even having any concrete ideas about their self-supporting abilities or respecting their rights of self-determination, which is a severe violation of their human dignity. This fact is currently not supported by any research or court decisions, but professionals and activists working in the disability field regularly meet such cases and complaints.

As an example, it can be mentioned that the specific preparation of visually impaired mothers for child care started only a few years ago in Hungary, but this service is available in only one location in the entire country, namely at the Group of Primary Rehabilitation for the Blind within the National Institute of the Blind.

In the case of adoption, persons with physical or sensory disability theoretically have equal opportunities with the non-disabled applicants, but their disability appears as a great risk factor in the practice of considerations and environmental studies compiled by the guardianship authorities. It has happened that a visually impaired couple was only allowed to adopt an older child, arguing that they would not be able to provide sufficient care to an infant.

### *Forced sterilisation*

On the basis of the provisions of the Health Act<sup>34</sup> (emergency and involuntary treatments) and Criminal Code (forced medical treatment), **the involuntary treatment, including sterilisation, of women with psychosocial disabilities (psychiatric patients) can be delivered without the informed consent of the person concerned**. Persons with intellectual disability almost never initiate their own sterilisation. In the decisive majority of

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<sup>33</sup> Mental Health Interest Forum (PÉF) press release, 26 January 2010. (Only in Hungarian.)

<sup>34</sup> Article 187, Act CLIV of 1997 on Health [Az egészségügyről szóló 1997. évi CLIV. törvény] Based on final court judgment, this is done 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.”

cases, the application is submitted not by the person concerned but by their legal representative.

## **Equality before the law (Article 15)**

In Hungary, women **with disabilities can be deprived of their legal capacity and placed under full or partial guardianship** by the court. In 2011, 57.000 persons with disabilities lived under guardianship,<sup>35</sup> the majority of whom were deemed legally incapable and were under plenary guardianship. The Hungarian civil law does not provide for any legal mechanism that would support women with disabilities in taking care of their own affairs.

Hungarian legislation governing legal capacity entails **the denial of exercise of both procedural and substantive rights**. It excludes women with disabilities who have been deprived of their legal capacity from their

- **right to political participation** (e.g. right to vote)
- **right to live in the community and choose their residence** (e.g. they can be admitted to a social institutions against their will)
- **right to marry and right to family**
- **protection of personal integrity** (e.g. to exercise informed consent for health interventions)
- **right of access to justice.**

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**. A study by the Mental Disability Advocacy Center concluded that “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,”<sup>36</sup> expressly **excludes hearing witnesses** about whom the court believes that correct testimony cannot be expected.”<sup>37</sup>

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<sup>35</sup> According to the figures of the National Judicial Office

<sup>36</sup> Article 81 (1) (c), Act XIX of 1998 on the Code of Criminal Procedure [1998. évi XIX. Törvény a büntetőeljárásról]

<sup>37</sup> Boglárka Benkó, János Fiala and Gábor Gombos: “MDAC tanulmány a hazai jogszabályi környezet összehangjáról 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

## **Suggested questions for the list of issues:**

### **Articles 2, 3, 4, 5**

- How does the Hungarian Government intend to bring the definition of persons with disabilities in compliance with Article 1 of the UN Convention on the Rights of persons with Disabilities, in particular to cover all categories of disability, including persons with psychosocial disabilities?
- How does the Hungarian Government ensure the effective involvement of women with disabilities and their representative organisations in the development of legislation, policies and decision making processes concerning them (also in accordance with Article 4(3) of the CRPD)?
- What kind of legislative actions and policy measures has the Hungarian Government taken in order to recognise and give effect to the rights of women and girls with disabilities, provide equal opportunities and to eliminate discrimination in this area?
- What steps are being taken to address the heightened risk for girls and women with disabilities of becoming victims of violence, abuse and exploitation in institutions, in the community and in the home? What measures are being adopted to ensure that both services and information for victims are made accessible to women and girls with disabilities?

### **Article 10**

- What measures are being taken to guarantee the implementation of inclusive education in the law and practice? Please provide statistics of the number of girls and boys with disabilities attending the following mainstream schools: primary school, middle school, high school and the rate of success and completion of schooling.

### **Article 11**

- What kind of measures has the Hungarian Government taken to increase employment and vocational opportunities for women with disabilities in the open labour market? In particular, what steps has the Hungarian Government taken to involve women with intellectual disabilities as employees on an equal basis with others into the open labour market?

### **Articles 12, 16**

- What steps are being taken to abolish the legal provision in Act CLIV of 1997 on Health which permits for the forced sterilisation of women with disabilities who are restricted or deprived of their legal capacity?
- What measures are envisaged to ensure that all medical treatment and interventions are based on the individual's full and informed consent and that consent cannot be substituted by a third party?
- What services are in place to reach out and educate women and girls with disabilities about sexual and reproductive health, including STIs, and to ensure their access to health and sexual and reproductive health services?

### **Articles 13, 16**

- Has the Hungarian Government yet reviewed the regulations that allow the involuntary treatment of persons with psycho-social disabilities and what kind of measures has the

Government taken to eliminate the above practice of deprivation of liberty on the basis of disability (also in accordance with Article 14 of the CRPD)?

- Please provide detailed information on the objectives, interim benchmarks, budget allocation and monitoring for the implementation of the thirty year de-institutionalisation strategy including the development of community based services and services of personal assistance in both urban and rural areas. Are organisations of persons with disabilities involved in the development of this plan and are they participating in the monitoring and evaluation of its implementation? What are the reasons for the establishment of large residential institutions for 50 and more habitants?
- What kind of measures has the Hungarian Government taken in order to guarantee adequate assistance for families raising a child with disabilities and to support them in their child-rearing responsibilities to prevent the separation of children from their families and their placement in institutions?

### **Articles 7, 15**

- What kind of measures has the Hungarian Government taken to repeal guardianship legislation and to ensure for women with disabilities the exercise of their full legal capacity on their own or with support in accordance with article 12 of the CRPD? How will the Government review the draft Civil Code to ensure it respects the letter and spirit of Article 12 of the CRPD, and ensure the active participation of, and meaningful consultation with organisations of persons with disabilities in this process?
- What kind of measures has the Government taken to recognise without discrimination the individual decision-making capacity of persons with disabilities and the authoritativeness of their written declarations?
- What steps are being taken to repeal exclusions on women with disabilities whose legal capacity has been restricted from the right to vote which is in violation of the right to political participation as set out in Article 7, CEDAW and Article 29, CRPD?<sup>38</sup>
- Please provide information on the steps taken by the Government in order to guarantee for all persons with disabilities the right to vote by secret ballot on an equal basis with others through the implementation of accessible measures.

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<sup>38</sup> This is confirmed in OHCHR thematic study on participation in political and public life by persons with disabilities which explicitly states that there is no reasonable restriction nor exclusion permitted regarding the right to political participation of persons with disabilities, A/HRC/19/36, 21 December 2011

## ANNEX I - Disability references in State report and Concluding Observations with respect to Hungary

### State report

#### Selected disability references in the state report:

##### *Work done by the Equal Treatment Authority*

89. Similarly to former years, in 2009, the rights related to equal treatment were infringed in the field of employment in the greatest number (21) followed by gender (6), age (5), differing opinion (4), maternity, ethics (2-2), sexuality and trade unionism (1-1). The Authority found discrimination in 17 cases in relation to age (6), **disability (3)**, ethnic origin and colour of the skin (3), maternity, political views and sexuality while it established multiple discrimination in two cases. From among the 48 cases, 30 were linked to business associations, while the remaining ones led to sanctions against municipalities, institutions and public authorities.

95. In the area of goods and services, the Authority established discrimination in 17 cases in 2009. Out of them, 6 cases concerned age, **3 on disability**, 2-2 cases ethnic minority and sexuality and 1-1 motherhood/fatherhood (5.9%), political views or another status of the complainant. One case implied multiple discrimination (belonging to an ethnic group and colour). The Authority established discrimination in all 17 cases – one case implied harassment as well. 12.5% of the procedures initiated within the framework of claims of public interest were launched because of gender.

180. The court considers the person as unable to express his/her will if he is incapacitated when the crime is committed and does not have abilities in the field of sexual life, that could make the establishment of the type and significance of the act possible. Such a condition of the abused may be temporary (e.g. faint, drunkenness, state generated by drugs) or permanent (e.g. **mental diseases or defects**). In such cases, punishment shall not be excluded even by the agreement to the act.

#### Concluding Observations of the Committee Economic, Social and cultural Rights [E/C.12/HUN/CO/3](#), 2008

12. The Committee notes with concern that, despite special support schemes in place to promote employment opportunities for persons with reduced working capacity, a very high percentage of **persons with disabilities** is still unemployed.

27. The Committee is deeply concerned about the high number of Roma children segregated in separate schools, such as special remedial schools for **children with mental disabilities**, or in separate substandard “catch-up” classes within schools, and that mainstream schools frequently put pressure on Roma parents to apply for private student status for their children. It is also concerned about the high dropout rate among Roma students at the secondary level and about their low enrolment in higher education.

35. The Committee recommends that the State party further intensify its efforts to integrate **persons with disabilities** into the labour market and the education and professional training systems, to make all workplaces and educational and professional training institutions accessible for **persons with disabilities**, and to provide detailed information on the results of the National Disability Programme and action plans in its next periodic report.

47. The Committee recommends that the State party intensify its efforts to address the socio-economic causes of **mental health problems** and suicide and strengthen the provision of psychological counselling services at the local level, as well as training of health professionals on the causes and symptoms of depression and other **mental health problems**. It also requests the State party to include a section on the mental health status of the population in its next periodic report.

24. The Committee notes with concern that every sixth man and every eleventh woman in the State party has **mental health problems** and that the suicide rate in the State party is among the highest in the world, especially among women.

Concluding Observations of the Committee on the Rights of the Child, [CRC/C/HUN/CO/2, 2006](#)

*Data collection*

15. The Committee considers that the availability of statistical data is essential in order to identify and combat direct and indirect discrimination as well as devise and implement targeted positive action programmes and subsequent measures for monitoring progress achieved. In this respect, it again notes with concern that the Data Protection Act impedes the compilation of disaggregated statistics, especially with regard to most vulnerable groups of children, such as minority children; in particular Roma, **disabled children**, asylum-seeking children and children in conflict with the law.

*Separation from parents*

30. The Committee is concerned about 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 children are not in foster families but in **institutions**. The Committee is particularly worried about the considerable overrepresentation of Roma children among children in institutions. The Committee is also very concerned that not enough efforts are made to return children to their families as soon as possible.

*Children with disabilities*

39. The Committee is concerned about the lack of an inclusion policy and integration mechanisms and inadequate assistance for **children with disabilities**.

40. The Committee recommends that the State party:

- (a) Ensure implementation of the Standard Rules for Equalizing the Possibilities for **Persons with Disabilities**, adopted by the United Nations General Assembly on 23 December 1993;
- (b) Pursue efforts to ensure that **children with disabilities** exercise their right to education to the maximum extent possible and facilitate inclusion in the mainstream education system;
- (c) Undertake greater efforts to make available the necessary professional (i.e. **disability specialists**) and financial resources, especially at the local level, and to promote and expand community-based rehabilitation programmes, including parent support groups;
- (d) Pursue further efforts to avoid the marginalisation and exclusion of **children with disabilities and of children with disabled parents**.

*Standard of living*

45. The Committee takes notice of the reform of the family allowance system, including an evident increase of benefits for children. The Committee remains concerned about the high number of families living in poverty and the even higher number of single parent families, families with three or more children and families caring for a child with severe disabilities. In particular the Committee is concerned about the predominance of the Roma population amongst the poor and the difficulty for this population to evade economic hardship because of unemployment, segregated settlements and educational deficits caused to a large extent by discrimination.

46. The Committee recommends that the State party:

- (a) Thoroughly examine the effects of the new family allowance system with a view to ensure that every child enjoys the right to an adequate standard of living;
- (b) Strengthen, if necessary, the efforts to improve the standard of living of disadvantaged children, particularly those living in single parent families, families with three or more children and **families caring for a child with severe disabilities**; and
- (c) Provide material assistance and support capacity building programmes in order to protect children against the detrimental impact of deficient living conditions.

## **ANNEX II - About the Organisations**

The **National Council of Persons with Disabilities (FESZT)** is the umbrella organization of national or regional NGOS of persons with various disabilities in Hungary.

Organisations that took part in the preparation of this submission:

- Hungarian Autistic Society (AOSZ)
- Hungarian Association for Persons with Intellectual Disability (ÉFOÉSZ)
- National Council of Disabled Persons' Organisations (FESZT)
- National Federation of Disabled Persons' Associations (MEOSZ)
- Hungarian Association of the Deaf and Hard of Hearing, (SINOSZ)
- Central Hungarian Regional Association of Blind and Visually Impaired Persons (VGYKE)

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The **European Disability Forum (EDF)** is the independent European umbrella organisation representing 80 million disabled Europeans. EDF is the only European pan-disability platform run by persons with disabilities and their families. Created in 1996 by its member organisations, EDF ensures that decisions concerning persons with disabilities are taken with and by persons with disabilities.

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The **International Disability Alliance (IDA)** is a unique international network of global and regional organisations of persons with disabilities, of which EDF is a regional member. Established in 1999, each IDA member represents a large number of national disabled persons' organisations (DPOs) from around the globe, covering the whole range of disability constituencies. IDA thus represents the collective global voice of persons with disabilities counting among the more than 1 billion persons with disabilities worldwide, the world's largest – and most frequently overlooked – minority group. IDA's mission is to advance the human rights of persons with disabilities as a united voice of organisations of persons with disabilities utilising the Convention on the Rights of Persons with Disabilities and other human rights instruments.

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