NGO information to the United Nations Human Rights Committee

For consideration when compiling the List of Issues on the Fifth Periodic Report of Hungary under the International Covenant on Civil and Political Rights

Submitted by the Mental Disability Advocacy Center, Hungary

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I.  OVERVIEW

1. This written submission provides an outline of issues of concern with regard to Hungary’s compliance with the provisions of the International Covenant on Civil and Political Rights (hereinafter “the Covenant”), with particular focus on the enjoyment by persons with disabilities to the Covenant’s provisions. The purpose of the submission is to assist the Human Rights Committee with its consideration of Hungary’s Fifth Periodic Report (hereinafter “Hungary’s Report”) in this initial stage of the compilation of the list of issues by the Country Report Task Force.

2. The submission has been written by the Mental Disability Advocacy Center (MDAC), which is an international non-governmental human rights organisation headquartered in Budapest, Hungary. Its mission is to advance the human rights of children and adults with actual or perceived intellectual or psycho-social (mental health) disabilities. Focusing on Europe and central Asia, MDAC uses a combination of law and advocacy to promote equality and social integration. MDAC has participatory status with the Council of Europe and has been implementing various strands of programming in Hungary since MDAC’s establishment in 2002.

3. Many of the Covenant’s core provisions are articulated and given a disability specificity in the UN Convention on the Rights of Persons with Disabilities (hereinafter “CRPD”), which Hungary ratified on 20 July 2007 and which entered into force in May 2008. MDAC therefore cross-references to the CRPD in its written submissions where this is helpful, with the wish and intention that members of the Human Rights Committee examine Hungary’s Report in a manner which is consistent with and supportive of other treaty bodies where their mandates overlap. To this end, MDAC encourages the Committee to enhance its focus on the rights of persons with disabilities, including people with intellectual disabilities and people with psycho-social (mental health) disabilities, by raising the reporting requirements of all States in this respect, and by highlighting them in the list of issues of all States.
II. SPECIFIC COMMENTS

Articles 2 and 26 ICCPR

4. Neither the Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities nor the Act XXVI of 1998 on the Rights and Equal Opportunities of Persons with Disabilities recognize the concept of ‘reasonable accommodation’. International human rights law defines reasonable accommodation as the “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 in an equal basis with others of all human rights and fundamental freedoms” (Article 2 CRPD). The CRPD makes clear also that the denial of reasonable accommodation amounts to discrimination. Hungary has failed to take the measures necessary to combat discrimination against persons with disabilities identified, for instance in the Human Rights Committee’s General Comment 18 on non-discrimination.

5. Consequently, the denial of reasonable accommodation cannot be argued before the one existing enforcement authority (The Equal Treatment Authority). It should also be noted that the Act XXVI of 1998 lacks any enforcement body.

SUGGESTED QUESTIONS FOR THE HUNGARIAN GOVERNMENT:

- What legislative reforms are planned in order to address this gap in the legislation and to ensure that reasonable accommodation becomes a concept embedded in Hungarian legislation, particularly Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities and Act XXVI of 1998 on the Rights and Equal Opportunities of Persons with Disabilities?

Article 9 ICCPR

6. Hungary’s Report on Article 9 on the right to liberty and security only refers to criminal justice and imprisonment, and neglects to mention deprivation of liberty which arises from involuntary hospitalization under the civil law as well as detention through the criminal justice system for people found to lack the requisite culpability to commit an offence ("forensic psychiatric detention").
7. Currently, forensic psychiatric detention amounts to restriction of liberty for an undefined period of time for many people with mental health and intellectual disabilities. Forensic psychiatric detention takes place at the Igazságügyi Megfigyelő és Elmegyógyító Intézet. (Juridical and Observational Psychiatric Institute, hereinafter “IMEI”). The Criminal Code (Act LXXIV of 1978) states that a biannual review of IMEI detention is necessary, but there is no clear legal criteria about the justification for continued deprivation of liberty: the law only states that “Forensic compulsory treatment must be terminated if its necessity no longer exists” (Para 74(3)). Patients may not be present at their biannual review hearings because it is up to the discretion of the director of IMEI and he habitually decides against a patient attending in court. In practice, attorneys who represent IMEI patients at biannual review hearings do not provide meaningful representation, as they do not meet their clients before the court hearing, or they ignore instructions given by their clients. Act LXXX of 2009 on the amendment of the Criminal Code (due to enter into force 1 May 2010) changes the situation and prescribes that the period of forensic psychiatric detention shall not exceed the penalty otherwise prescribed for the criminal act by the Criminal Code. The amendment also states that the forensic compulsory treatment must be terminated if its necessity no longer exists.

8. Outside the criminal law, according to Act CLIV of 1997 on Health Care, patients without full legal capacity are prohibited from deciding themselves to leave the hospital. They are subject to deprivation of liberty at the whim of their legal guardian.

9. Interpretation of these rights and liberties is at stake when it comes to civil commitment cases, such as Gajcsi v. Hungary (2006). MDAC is concerned at the ease with which people are involuntarily detained in psychiatric hospitals in various countries in Central and Eastern Europe: Hungary is no exception. To challenge this practice, MDAC therefore helped a client lodge a claim before the European Court of Human Rights. It was argued that his detention for three years was based on court rulings which had failed to assess the criteria set by the law for involuntary hospitalisation, and therefore breached Article 5(1) of the European Convention on Human Rights (ECHR). The case - Gajcsi v. Hungary - was successful and resulted in the Hungarian government acknowledging weaknesses in the judicial process concerning judicial assessment for involuntary hospitalisation. However, the State did not take any steps following the decision and there was no follow-up process that would result in changing the relevant laws and practices. MDAC conducted research in 2007-2008 in which Hungarian courts

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were inquired about their judicial review process. It was found that the courts approved the hospital’s application for detention in nearly 100% of cases. Thus the judicial review is no more than a cosmetic nicety: it serves no human rights purpose as it lacks any substance.

**SUGGESTED QUESTIONS FOR THE HUNGARIAN GOVERNMENT:**

- Why have detainees in psychiatric hospitals not been dealt with in Hungary’s Report?
- How is the government ensuring that judicial review of detention in psychiatric hospitals is substantive and meaningful? (e.g. Has the government provided funding for independent research to be conducted into these judicial reviews? How is the State planning to tighten professional control of attorneys?)
- Will the government take steps remove the discretionary power of the IMEI director to prevent a patient from attending their biannual court review and implement legal safeguards for patients under forensic detention?
- What steps are being taken to clarify the legal criteria for the termination of forensic detention in IMEI? What safeguards are currently in place to prevent measures of arbitrary continuation of detention by courts?
- How are judges trained to deal with ensuring a fair trial for cases of involuntary hospitalisation?
- What steps have been taken by the government or judiciary to ensure that the violations found by the European Court of Human Rights in *Gajcsi v. Hungary* are not repeated in other cases?
- The State should also make mention of the amendment of the Criminal Code that limits the period of forensic psychiatric detention to the period of penalty otherwise prescribed by the Criminal Code.

**Article 10 ICCPR**

10. Hungary’s Report does not mention people with disabilities under this Article. However, many people with disabilities are detained, either through involuntary hospitalisation or in residential institutions (“szociális otthon”). Persons with disabilities in any of these situations are vulnerable to abuse and suffer grave and unwarranted restrictions in the exercise of their rights. In some cases systematic abuse may amount to torture or cruel,
inhuman and degrading treatment or punishment, and may amount to a violation of article 7 of the ICCPR. There are also problems in the provisions made by the criminal detention system for detainees with disabilities.

Detention through involuntary hospitalisation

11. Persons subject to involuntary hospitalisation under the Healthcare Act can be detained for indefinite periods and are subject to a range of abuses and they are also prohibited from exercising various rights. These people are subject to forced treatment with antipsychotic drugs as a form of restraint. A person under influence of such drugs that are applied without his or her consent cannot express any opinion. The use of antipsychotic drugs with their side effects to sedate patients and residents can be as restrictive as the use of cage beds and other forms of physical restraints criticized by a range of intergovernmental bodies following MDAC’s 2004 cage beds report.²

12. Act CLIV of 1997 on Health Care acknowledges the right to self-determination, respect for privacy and right to health of patients with restricted legal capacity only to the extent that they are entitled to receive information on their treatment in an accessible way and their opinion shall be taken into account as far as possible. However, when it comes to accessing medical files or consenting to or rejecting medical treatment, these rights are exercised with the assent of or solely by the person’s guardian as legal representative. Persons without full legal capacity who are detained for mental health reasons are not entitled on an equal basis with others to receive information about their own medical treatment.

13. The involuntary hospitalisation of a person with psycho-social disability has the consequence that such person is restricted in many classic patients’ rights areas, such as 1) appropriate and continuously accessible healthcare justified by the patient’s health condition, without discrimination, 2) choosing the treating doctor, 3) having contact with visitors, 4) receiving information about his/her own treatment, 5) self-determination, 6) refusing healthcare interventions, 7) accessing his/her own medical records, 8) having respect for medical confidentiality. MDAC submits that deprivation of these rights leads to an invasion on the right to respect for private life, and can in certain circumstances amount to inhuman and degrading treatment when the patient’s capacitous consent/refusal is disregarded.

Detention in Residential Institutions

14. There are an estimated 25,000 people living in large social care residential institutions, an extremely high number given Hungary’s overall population. Most of these residents have been deprived of their legal capacity and appointed a guardian who is supposed to act and protect their best interests. However, residents are denied the right to leave the premises without their guardian’s consent and often due to conflicting interests, their guardian will not give their consent as it was their decision to place them into the home in the first place. There are cases where guardians have over 180 individuals under their control, making a mockery of the role of the guardian to discuss issues with the adults on whose behalf they are taking decisions and ensure that their welfare is secured. The Act III of 1993 on Social Care includes a provision that enables the court to decide on institutional placement of the person with mental health problem, merely on the ground of lacking a social support network and if the person is assessed as unable to live on their own.

15. People living in these institutions are prevented by law to exercise many of their rights particularly with regard to freedom of movement (article 12 ICCPR), freedom of association (article 22 ICCPR) and the right not to be subjected to arbitrary or unlawful interference with privacy, family, or correspondence (article 17 ICCPR). According to MDAC’s anecdotal evidence, and in the absence of any research or other data, MDAC suspects that there are very low levels of judicial review of these detention decisions. There is no independent and regular inspection of the human rights of inmates in this institution, similarly to all psychiatric hospitals.

Persons with Disabilities in Criminal Detention

16. In his most recent report on the conditions of detainees with disabilities, the Ombudsman documented some serious human rights violations. In conjunction with Article 14 of the CRPD (liberty and security of person), and as noted above, Hungary is under a treaty obligation to provide reasonable accommodation, and this includes adjusting all places of detention where people with disabilities are subject to being detained. This is true for people with sensory disabilities, for example there are no Sign language interpreters available in Hungarian prisons.

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17. Forensic psychiatric detention is prescribed by the Criminal Code and is executed in the only forensic psychiatric hospital in Hungary (IMEI). IMEI operates under a criminal regime, and not as a psychiatric hospital the use of restraints, use of uniforms for the guards, as well as the fact that IMEI is financed and managed by the Ministry of Justice, whereas hospitals are financed and managed by the Ministry of Health. This is contrary to international standards for high security psychiatric hospitals. The institution is situated within the premises of Budapest Prison (Budapesti Fegyház és Börtön). The 2005 and 2009 reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishments (CPT) as well as the recent report of the Ombudsman found that the conditions in IMEI are inadequate to provide treatment to people with psychiatric problems. Further, there is no department for juvenile patients. Despite several plans and promises to establish the institution outside the prison, the government has taken no concrete steps to this end.

18. Another issue at stake is that in 2010 IMEI will release over 25 patients to return to community living. There are no community based services or alternative settings that can offer them care and treatment. Our concern is that these people will not find shelter and treatment and how to prevent the State to place them into prisons with no adequate accommodations.

SUGGESTED QUESTIONS FOR THE HUNGARIAN GOVERNMENT:

- What steps is the government taking to change the legal provisions on informed consent and involuntary hospitalisation to protect people with intellectual and mental health disabilities in hospitals and social care institutions who are especially vulnerable to ill-treatment?

- How is the government ensuring that persons detained via involuntary hospitalisation or those de facto detained in residential social care institutions are not arbitrarily deprived of their rights under the Covenant, particularly with regard to the right to privacy?

- Why are people with disabilities deprived of legal capacity denied the right to live in the community under Article (and stipulated explicitly in Article 19 of CRPD) and remain detained in large institutions unable to leave without their guardian’s consent?
• How is the government ensuring that reasonable accommodation is being provided for detainees with disabilities in a variety of places of detention (prisons, psychiatric hospitals, social care institutions)

• What steps is the Government taking to ensure that IMEI comes under the management of the Ministry of Health? What steps is the Government taking to situate the country’s only forensic psychiatric hospital outside the capital city’s prison?

Article 16 coupled with Article 25 ICCPR

19. Article 16 on the recognition as a person before the law embraces the question of legal capacity. In Hungary’s Report it is stated that “there has been no change since the submission of the previous report.” However, the Hungarian Parliament in November 2009 adopted a new Civil Code which prohibits plenary guardianship and introduces supported decision-making. Therefore, people with real or perceived mental health and intellectual disabilities have the right now to be recognized as persons before the law on an equal basis with others. This development corresponds to Article 12 of the CRPD and thus is a step forward towards enhancing the rights and freedoms of people with disabilities. The Government should be congratulated in this regard. It is of concern, however, that at the time of submitting these written comments (30 December 2009) the President of the Republic had sent back the piece of legislation specifying the date on which the new Civil Code should come into force. There is no guarantee therefore that the new law will come into force, and if it will, when.

20. However, even if we assume that the new Civil Code will come into force, there is one issue which goes to the heart of ICCPR and civil and political rights, and that is the right to vote. All individuals under any type of guardianship, which is almost 80,000 adults, are excluded from the right to vote and take part in the conduct of public affairs. This limitation is embedded in the Article 70(5) of the Hungarian Constitution. This is an obvious breach of Article 29 of the CRPD on the right to participation in political and public life. An individual’s ‘ability’ to vote (whatever that means) is not individually assessed at any stage in the guardianship process, and such an arbitrary and disproportionate approach to disenfranchisement is, in MDAC’s submission, a violation of Articles 16 and 25 of the ICCPR, and we ask the Human Rights Committee to concur.

SUGGESTED QUESTIONS FOR THE HUNGARIAN GOVERNMENT:
• What steps are being taken to change the Constitution to allow the rights of all persons with disabilities to vote and stand for election?
• The State should make mention of the amendment of the Civil Code in its Report that recognises people with mental health and intellectual disabilities before the law on an equal basis with others and provides them with alternatives to guardianship such as supported decision making.

Article 27 ICCPR

21. The Hungarian Parliament adopted the Act on Sign Language that is now recognized as an official language and Sign language speakers are considered to be a linguistic minority. This is a positive example of recent development that enhances the right to enjoy their own culture and use their own language. MDAC requests the Human Rights Committee to include this positive development of the recognition of Sign language as an official language in its Report as a good practice which could set a good example for other States to follow.

• It is encouraged that the State include this positive development of the recognition of Sign language as an official language in its Report as a good practice which could set a good example for other States to follow.

Thank you for your attention to these written submissions. If you would like any further information, please contact Boglárka Benkó, MDAC Legal Monitor, bbenko@mdac.info or telephone +361 413 2730.