



Ms Emily O'Reilly
European Ombudsman
1 avenue du Président Robert Schuman
CS 30403, F-67001 Strasbourg Cedex

18 December 2013

Evidence of maladministration by the Commission in using Structural Funds to finance human rights violations in Hungary

Dear Ms O'Reilly,

1. I am writing to you on behalf of the Mental Disability Advocacy Center (MDAC), an international human rights NGO headquartered in Budapest - with evidence that the European Commission is knowingly allowing EU Structural Funds to finance segregation of people with disabilities in Hungary, in breach of EU regulations and in breach of commitments made by the EU through its accession to the UN Convention on the Rights of Persons with Disabilities.
2. As an EU legal entity, namely a Hungarian foundation registered under No. 8689 by the Decision No. 11. Pk.60797/2002/3 of the Metropolitan Court of Budapest (effective as of 24 October 2002), we hereby submit a complaint in accordance with Article 228(1) of the Treaty on the Functioning of the European Union, asking that the Ombudsman open an inquiry into the misuse of the EU Structural Funds in Hungary.

Evidence

3. In January 2012 the Hungarian Ministry of National Resources issued a tender for applications (entitled "Deinstitutionalisation – Social care homes component A" reference TIOP.3.4.1.A-11/1.1). The tender was aimed at directors of social care institutions. The purported purpose of the funding was to enable these directors to shut down the institutions, and use the money to establish community-based housing for the residents of the institutions. The value of this tender was 7 billion HUF which is roughly 24 million EUR. Half of the total funding is provided by way of structural funds from the EU Regional Development Fund (ERDF).
4. The Ministry of Human Resources has this year decided that six institutions will receive 5.8 billion HUF (18.7 million EUR) funding. These are in the towns of Bélapátfalva, Berzence, Kalocsa, Mérk, Szakoly and Szentes. These six institutions house 749 residents. 638 will participate in deinstitutionalisation and much to our disappointment, the rest of the people will stay in large institutions.
5. MDAC has unearthed evidence that the structural funds are not going to finance the purported aim – namely de-institutionalisation and community-based services – but rather are going to be used to finance the construction and renovation of institutions to which the residents will be transferred. Article 19 of the CRPD sets out the right to live in the community, and contains into three key elements. They are Article 19(a): choice¹, Article 19(b): individualised supports², and Article 19(c) accessibility of general services³.

¹ "Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement", CRPD, Article 19(a).

² "Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community", Article 19(b), CRPD.

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The Mental Disability Advocacy Center is an international human rights organisation which advances the rights of children and adults with intellectual disabilities and psycho-social disabilities. Our vision is a world of equality – where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form.

Member States – and in this case the Commission as EU taxpayers’ money is being allocated – need to ensure that they “prevent isolation or segregation from the community”, as per Article 19(b) of the CRPD.

Article 19(a): Choice

6. Each institution carried out a “needs assessment”, but this process was flawed. An independent research report which was issued in November 2013 stated that the needs assessment process, “played a marginal role in preparing the applications”,⁴ because despite clearly-expressed wishes of the majority of residents,⁵ staff relied solely on their own judgment in deciding which resident will live in which new setting.⁶
7. Preferences of residents played second fiddle to local political interests. Local municipalities have ensured that funding is spent locally (rather than ensuring that residents are moved to places close to their original homes), and that institutional staff members retain their jobs.⁷

Article 19(b): Individualised support services

8. The tender has allowed for two types of institutions to be built. The Hungarian government has labelled these two types with euphemisms. “Group homes” is the label which is given to institutions with between 8 and 12 beds. “Living centres” is the name of institutions with up to 30 beds.⁸ Both of these types of institutions are congregate settings where residents will be deprived of making choices about their own lives, where they will be forced to share their lives with strangers, and where the only thing in common is that all of the residents have a disability of some sort.⁹ These institutions do exactly what the CRPD was written to prevent, namely segregate and isolate people from the community. Of the 638 residents affected, the tragedy is that only 97 will live in regular apartments in the community. 396 will be forced to live in 8-12 bedded institutions, and 145 will live in institutions with up to 30 beds (see Annex I).¹⁰

Article 19(b) and (c): Community-based services

9. The tender fails to address community support needs, instead focusing on congregated housing stock. No consideration is given to the development of a range of in-home and community services or address the accessibility of general services, including transportation and employment. Without these in place, residents will continue to be confined to their living spaces and reliant on all types of services from institutional staff provided within the new institutions. Again, this perpetuates segregation and isolation

³ “Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs”, CRPD Article 19(c).

⁴ Zsolt Bugarszki, Orsolya Eszik, Zsuzsanna Kondor, *Deinstitutionalisation in Hungary: 2012-2013* (Hungary: 2013). p. 29.

⁵ Out of 489 individual needs assessment sheets examined by researchers, 332 (68%) contained evidence that residents had at the time of the needs assessment expressed meaningful and specific opinions about where, and with whom they would like to live. 103 (21%) documented that residents received some form of support from the team that carried out the assessment to do this, and gave clear and concrete responses. Only in 58 cases (11%) did researchers find that residents provided no opinions, although the claim of the authorities that this many residents are incapable of providing an opinion remains independently unverified, as researchers did not go and ask those residents any follow-up questions. *Deinstitutionalisation in Hungary: 2012-2013*, p. 30.

⁶ Ibid.

⁷ *Deinstitutionalisation in Hungary: 2012-2013*, op cit, p. 20.

⁸ Group homes may house up to 12 people and living centers up to 30. All of the 6 institutions will establish living centres.

⁹ *Deinstitutionalisation in Hungary: 2012-2013*, p. 20.

¹⁰ See the comprehensive study of the Hungarian Civil Liberties Union (Társaság a Szabadságjogokért) on the applications of the six institutions, *Elbírálás alatt a kitagolási pályázatok. Olvasson megvalósíthatósági tanulmányokat! (NFÜ ügy, 8. rész) / Deinstitutionalisation applications under consideration. Read the applications! (NDA case, part 8)*. 3 May 2013. Available at: <http://tasz.hu/fogyatekosugy/elbiralas-alatt-kitagolasi-palyazatok-olvasson-megvalosithatosagi-tanulmanyokat-nfu>. In lack of a publicly available application form, the information about the Szakoly social care home comes from a press conference held in the institution on 24 April 2013, which was attended by both MDAC and HCLU.

from the community. The European institutions are legally bound to *prevent* segregation and isolation, not to fund it.

Maladministration by the European Commission

10. The European Commission is fully aware of the evidence presented above and has had over a year to remedy this situation. It has done nothing to prevent the bulldozers moving in and building new institutions with European funding. On **3 May 2012** MDAC alerted Mr Johannes Hahn, Commissioner for Regional Policy and Mr Marco Orani, Head of Unit for Hungary in writing (ref (2012)574322) of the violations outlined above and requested that the Commission initiate a review of the tender for the purpose of investigating CRPD and EU law compliance. The letter requested the EC to instruct the Hungarian government to withdraw the tender in its current form and to refrain from funding institutions. As a last measure the letter requested the EC to suspend the payment of funds from the ERDF. On **22 June 2012** we received a response (ref (2012)750557) wherein the Commission stated that the responsibility for implementation was the managing authority of the Hungarian Social Infrastructure Operational Programme and the Hungarian National Body of De-institutionalisation.
11. On **30 July 2013**, after gathering concrete evidence of how the vast majority of residents will be transferred into new residential institutions instead of being provided with community-based settings MDAC again wrote to the Commissioner (Ref. Ares(2013) 2834328 - 06/08/2013) requesting that the EC conditions or withdraws the funding. On **3 October 2013** we received the EC's response in which it refused to condition or withdraw the EU structural funds. It stated that Member States bear the responsibility to detect irregularities regarding the use of EU resources and correct these if necessary. It reiterated that the Commission can only enter into a discussion with the Member State on the existence of evidence obtained about these. This stance is unrealistic and inadequate because the Hungarian government is deliberately packaging the irregularities as progress. It is framing 'trans-institutionalisation' (a human rights violation) as 'de-institutionalisation' (progress).
12. The EC's is knowingly allowing EU funds to be used to finance human rights violations. That it has taken no action to cease or resist this action is surely grounds for the Ombudsman to initiate an investigation.
13. Construction of these new residential institutions is going to start unless the Ombudsman office intervenes, because there are no other remedies which MDAC or other civil society organisations can seek, or other authorities to turn to.
14. It is not only the lives of 638 people which are at stake. Once built, these new institutions will be around for many generations to come. The policy of European Union is to implement the UN Convention on the Rights of Persons with Disabilities. The Commission is funding the direct opposite. There are no other viable mechanisms which are available to MDAC to stop EU funding being spent in this way and I urge you to take action. In doing so you will have the support not only of MDAC, but undoubtedly of many other civil society organisations across Europe, and beyond.

I look forward to hearing from you at your earliest opportunity.

Yours sincerely,

Oliver Lewis
Executive Director

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1. MDAC letter to the Commission, 3 May 2012 (ref (2012)574322).
2. Response by Commission to the above letter, 22 June 2012 (ref (2012)750557).
3. Second MDAC letter to the Commission, 30 July 2013 (Ref. Ares(2013) 2834328 – 06/08/2013).
4. Response of the Commission to MDAC's 2nd letter, 3 October 2013 (Ref. Ares(2013)3177332 - 03/10/2013).
5. Zsolt Bugarszki, Orsolya Eszik, Zsuzsanna Kondor, Deinstitutionalisation in Hungary: 2012-2013 (Hungary: 2013)

Annex I

Institution	Total number of current residents	Number of residents moving out		Up to 7 beds	8-12 beds	13-30 beds
Bélapátfalva	200	148	Number of properties	3	10	1
			Number of residents	15	110	23
Berzence	145	120	Number of properties	3	6	1
			Number of residents	18	72	30
Kalocsa	50	60	Number of properties	2	3	1
			Number of residents	6	30	24
Mérk	114	102	Number of properties	1	6	1
			Number of residents	5	72	25
Szentés	90	90	Number of properties	4	4	1
			Number of residents	17	48	25
Szakoly	150	118	Number of properties	6	8	1
			Number of residents	36	64	18
Total	749	638	Total number of properties	13	29	5
			Total number of residents	97	396	145

Source: www.tasz.hu, the website of the Hungarian Civil Liberties Union, an independent human rights NGO based in Budapest. The data comes from the official applications of the social care institutions to the national Hungarian authorities, except for the Szakoly institution. For this institution the data is not publicly available but MDAC carried out a visit to the institution in May 2013 and gathered the data from its director.