

Disability Rights in Rhetoric and Reality: Bringing the Hungarian EU Presidency Home

Creating a Constructive Dialogue – 20 April 2011

Hungary currently holds the rotating EU Presidency. On 25 January 2011 the Hungarian Minister of State for Social Inclusion, Mr Zoltán Balog told Members of the European Parliament that as President of the EU, Hungary “there will be progress” on disability rights. Hungary was the first EU Member State to ratify the UN Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol in July 2007.

Participation is one of the major themes of the EU Disability Strategy 2010-2020, yet Hungary itself is failing to ensure the participation of people with disabilities into society. There is a gulf between the rhetoric of international laws, and the action which the Hungarian government is taking to respect, protect and fulfil the rights of people with disabilities.

This paper – and the constructive dialogue event from 13:00-14:00 on 20 April in the Mercure Hotel – is a contribution to raising awareness about these issues and facilitating a discussion with the Hungarian authorities.

1. The amended Constitution fails people with disabilities

a) No universal suffrage

What is the issue?

The Constitution in force automatically excludes from the right to vote those citizens under guardianship. The newly-adopted (18 April 2011, this Monday) Constitution changes the current provision above to the following: “Those deprived of their right to vote by a court for limited mental ability and for a criminal offense shall not have the right to vote.” The actual content of the right to vote will be regulated by a so-called cardinal act (shall be adopted by two-third majority of the Parliament). There is no information available about the content of the cardinal act on right to vote.

Does this comply with international law? No. The CRPD says clearly that people with disabilities have the right to vote and stand for election on an equal basis with others (Article 29). No exceptions are envisioned. An adult who asserts their desire to vote should be allowed and supported to do so. No democratic State requires its citizens to prove that they, for example, can understand the democratic process or can remember party political manifesto pledges. The simple fact of being an adult human being is enough.

What are the solutions? Ensure each provision of the new Constitution applies to people with disabilities on an equal basis with others, without exception.

b) Discrimination against young, elderly and LGBT people with disabilities

What is the issue? Although the draft Constitution contains “disability” as a prohibited ground of discrimination, it leaves a number of vulnerable groups unprotected. Specifically, the non-discrimination provision fails to include age and sexual orientation as protected grounds. There are many children with disabilities, elderly people with disabilities, and lesbian, gay, bisexual and transgender (LGBT) people with disabilities who are subject to multiple forms of discrimination.

Does this comply with international law? No. The European Union’s Charter of Fundamental Rights includes age and sexual orientation in its non-discrimination provision. The CRPD has

special provisions calling for the protection of children with disabilities and specifies in the Preamble that people with disabilities are subjected to multiple discrimination.

What are the solutions? Age and sexual orientation should be recognised as prohibited grounds of discrimination.

2. There is no coordination, monitoring or participation in disability law and policy

What is the issue? Since 2007 the National Disability Council (NDC) has served as a focal point within the government for matters relating the implementation of the CRPD as is required by Article 33(1) of the Convention. However, the NDC is an advisory body and is not a permanent structure within government. In 2008 the government designated the NDC as an “independent” mechanism to promote, protect and monitor the implementation of the Convention to comply with Article 33(2) of the CRPD, yet it is a body of the Ministry of Social and Labour Affairs and it is composed of representatives of both the government and the civil society: it is not independent at all. No NDC meeting has been called this year.

The government fails to consult with civil society in the decision-making processes concerning disability law and policy. The government intended to substitute open debate about the new Constitution by sending out a twelve-point questionnaire to eight million citizens with the right to vote, however, the questionnaire was not sent to the 67,000 people with disabilities deprived or restricted of legal capacity (under guardianship), as they are not on the electoral register.

Does this comply with international law? No. Hungary is failing in its obligations under Article 33(2) of the CRPD, which obliges Hungary to establish an independent mechanism to monitor CRPD implementation. Articles 33(3) and 4(3) of the CRPD ensure that civil society, in particular persons with disabilities and their representative organisations, are involved and participate fully in planning, implementing and monitoring law and policy.

What are the solutions? Monitoring needs to be done by a body which is truly independent from the government, and civil society plays a crucial role in these mechanisms. The government should designate the Ombudsman’s Office to play a role in the Article 33(2) framework, widening the mandate to meet CRPD demands, providing extra funding, and ensuring that civil society, and persons with disabilities and their representative organizations to be fully involved in the monitoring. MDAC has issued a guidance document on Article 33 which it recommends to the government. The government should establish transparent mechanisms for consultations with and inclusion of civil society, including people with disabilities who are under guardianship.

3. People with psycho-social disabilities are left out from the disability law

What is the issue? Hungarian disability law (Act 26/1998) does not comply with the CRPD, as it does not include groups such as persons with psycho-social (mental health) disabilities. They are prohibited from sitting on the National Disability Council. None of the provisions of the disability law apply to them.

Does this comply with international law? No. Article 1 of the CRPD states that persons with disabilities include those who have physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

What are the solutions? Amend the disability law to ensure it includes people with psycho-social disabilities, and complies with the CRPD.

4. Over 67,000 Hungarians with disabilities denied decision-making

What is the issue? More than 67,000 adults with disabilities are deprived of legal capacity, an enormous figure compared to countries with similar populations. Two thirds are under total guardianship, where they are prohibited from making any decisions about their lives. Choices about relationships, finances, healthcare and all other decisions are denied. The government intends to retain total guardianship. (see concept note on the Civil Code, Commissioner of the Ministry of Public Administration and Justice, 3 December 2010). No forms of supported decision-making exist.

Does this comply with international law? No. The maintenance of total guardianship is a violation of Articles 6 and 8 of the European Convention on Human Rights, and Article 12 of the CRPD. The government intends to reform the law in a way which will continue to violate rights.

What are the solutions? The Constitution should ensure that each person has legal capacity and should be provided with supports she may require to exercise it. The Civil Code should abolish total guardianship, and introduce forms of supported decision-making.

5. Some 24,000 Hungarians are locked up in institutions for life

What is the issue? Over 24,000 people with disabilities are forced to live segregated lives in large residential institutions, far away from the public life. A 1998 law specified that these institutions should have been closed by the beginning of 2010. No de-institutionalisation has taken place. Between 1996 and 2006 some 22 billion HUF was spent on renovating these large institutions. Smaller residential homes were established, but mostly in the territory of the large institutions community. The government has recently made public its de-institutionalisation strategy which does not include the closure of large residential institutions for persons with psycho-social (mental health) disabilities.

Does this comply with international law? No. Article 19 of the CRPD states that persons with disabilities have equal right to live independently and be included in the community, with choices equal to others. Being forced to live in an institution is a clear violation of this provision.

What are the solutions? The parliament should adopt a law which provides a legally-enforceable right to independent living. The government should commit to a de-institutionalisation process which involves establishing a network of community-based services. This should apply to all, not just people with certain types of disabilities. The plan should be independently monitored.

6. Neglect and abuse take place with impunity

What is the issue? The people with disabilities in psychiatric and social care institutions are at risk of torture, inhuman and degrading treatment or punishment. These institutions are not monitored by any independent body which would prevent such exploitation, violence and abuse.

Does this comply with international law? No. Under Article 16(3) of the CRPD the government needs to make sure that all facilities and services for people with disabilities are regularly monitored, and under Article 33(2) the government has to ensure independent monitoring of the implementation of the Convention.

What are the solutions? The government should create and finance an independent mechanism to carry out monitoring visits in these facilities. Especially until such a body exists the government should encourage and allow NGOs to do monitoring and provide them unfettered access to institutions.